



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, c.S.5, AS AMENDED**

- AND -

**IN THE MATTER OF
NELSON FINANCIAL GROUP LTD., NELSON INVESTMENT GROUP LTD.,
MARC D. BOUTET, STEPHANIE LOCKMAN SOBOL,
PAUL MANUEL TORRES, H. W. PETER KNOLL**

**STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission (“the Commission”) make the following allegations:

I. OVERVIEW

1. This proceeding relates to an illegal distribution of securities in breach of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the “Act”), by the respondent issuer, Nelson Financial Group Ltd. (“Nelson Financial”), its related investment company, Nelson Investment Group Ltd. (“Nelson Investment”), the directing mind of these entities, Marc D. Boutet (“Boutet”), and by the other individually named respondents, H. W. Peter Knoll (“Knoll”), Paul Manuel Torres (“Torres”) and Stephanie Lockman Sobol (“Sobol”), who were employees and/or agents of Nelson Financial and/or Nelson Investment (collectively, the “Respondents”).

2. Between December 19, 2006 and January 31, 2010 (the “Material Time”), Nelson Financial, through Nelson Investment and/or its employees and agents, including the individual Respondents, raised investor funds of over \$50 million (net of redemptions) from approximately 500 Ontario investors by issuing non-prospectus qualified securities. Although the Respondents purported to rely upon the Accredited Investor Exemption (defined below) in selling securities of Nelson Financial, a significant percentage of investors were not accredited.

2.

3. Throughout the Material Time, Nelson Financial operated at an increasing accumulated deficit and was unable to meet its obligations to investors without the receipt of new investor capital. In addition to its ongoing working capital requirements and contrary to express representations to investors about the use of their capital, Nelson Financial used investor funds that it had obtained in breach of the Act to pay other investors the returns on their investment and continued to accept additional investor funds in order to do so when Nelson Financial was insolvent. Boutet, as the directing mind of the Nelson entities, and Sobol, as Nelson Financial's *de facto* chief financial and chief operating officer, were aware of and/or directed this conduct. This conduct was misleading to investors and was abusive to the integrity of the capital markets.

4. In addition to the unlawful conduct identified above, Nelson Financial, Nelson Investment and Boutet made statements to the Commission and to Staff of the Commission that were materially misleading and in breach of the Act.

II. THE RESPONDENTS

5. Nelson Financial was incorporated in Ontario on September 14, 1990. Nelson Financial is not a reporting issuer and is not registered under the Act. Nelson Financial provides vendor assisted financing for the purchase of home consumable products, either through a vendor (or an aggregator of vendors), or directly to the consumer (the "Consumer Loans").

6. Nelson Investment was incorporated in Ontario on September 14, 2006 for the sole purpose of selling securities of Nelson Financial. On December 19, 2006, Nelson Investment obtained registration under the Act as a dealer in the category of limited market dealer ("LMD"), now exempt market dealer ("EMD").

7. Boutet is a resident of Ontario and was at all material times listed as the sole officer and director of Nelson Financial and Nelson Investment (together, the "Nelson Entities"). Boutet is the directing mind of the Nelson Entities. Throughout the Material Time and, in addition to acting as the directing mind of the Nelson Entities, Boutet acted as a salesperson at Nelson Investment and dealt with a select group of investors.

8. Throughout the Material Time, Boutet was registered with the Commission: first as a trading officer under the category of LMD with Nelson Investment and then subsequently as the ultimate designated person and chief compliance officer under the firm registration category of EMD.

9. Knoll was initially employed by Nelson Financial in the Fall of 2005 and was then later employed by Nelson Investment as a salesperson and its compliance officer from at least December 19, 2006 until September 15, 2009. In that period, Knoll was registered with the Commission as a trading officer and the designated compliance officer of Nelson Investment. Upon Knoll's departure from Nelson Investment, Boutet took over as the compliance officer of Nelson Investment.

10. Torres was employed by and acted as a salesperson for Nelson Investment beginning in or around August 2008. Torres has been registered under the Act as a salesperson (now dealing representative) with Nelson Investment since November 13, 2008.

11. Sobol is employed by and was the *de facto* chief financial officer ("CFO") and *de facto* chief operating officer ("COO") of Nelson Financial and has been so employed since May 2008. Sobol was a key member of the management team of the Nelson Entities. Sobol is not and has never been registered with the Commission.

III. BACKGROUND AND PARTICULARS TO ALLEGATIONS

A. Illegal Distribution – Sections 25 and 53 of the Act

12. Nelson Investment was incorporated by Boutet in 2006 for the sole purpose of selling securities of Nelson Financial and, throughout the Material Time, Nelson Investment's business was limited to selling securities of Nelson Financial.

13. During the Material Time and through Nelson Investment, Nelson Financial raised approximately \$82 million through the sale and distribution of securities of Nelson Financial to (almost exclusively) Ontario investors. As of February 28, 2010, there were approximately 500

Nelson investors with a total investment amount outstanding of approximately \$51.2 million, net of redemptions.

14. The securities sold and distributed by Nelson Financial were in the form of fixed term promissory notes and preferred shares and were offered by Nelson Financial at fixed/guaranteed annual rates of return of 12% and 10%, respectively, typically paid to investors on a monthly basis.

15. Nelson Investment, Boutet, Knoll and Torres each received commissions on the funds raised by the sale of Nelson Financial securities, including on amounts “rolled over” by investors upon maturity of the promissory notes, i.e. where an investor opted to remain invested with Nelson Financial instead of redeeming their investment.

16. Throughout the Material Time, the scope of registration for Nelson Investment, Boutet, Knoll and Torres was limited to the sale of securities for which a prescribed exemption was properly available.

17. In distributing securities of Nelson Financial, the Nelson Entities purported to rely upon the accredited investor exemption as set out in section 2.3 of National Instrument 45-106 (the “AI Exemption”).

18. A significant percentage of the investors to whom securities were issued by Nelson Financial either did not meet the requirements necessary to qualify as accredited investors or there was insufficient information for the Nelson Entities and their employees and/or agents to make that determination.

19. In many instances, the Respondents knew or ought to have known that the investors were not accredited and failed to make further inquiries to determine whether investors were, in fact, accredited.

20. For each investment up to October 2009, Boutet signed the respective offering and issuance documents in his capacity as President of Nelson Financial, including the term sheet for each promissory note/preferred share, and each promissory note issued by Nelson Financial. After that time and upon Boutet's replacement of Knoll as the compliance officer of Nelson Investment, Sobol signed the issuance documents on behalf of Nelson Financial in lieu of Boutet. As of October 2009, Sobol was aware of significant compliance issues and/or deficiencies at Nelson Investment. In many instances, Boutet and Sobol knew or ought to have known that the investors were not accredited and failed to make further inquiries to determine whether investors were, in fact, accredited.

21. All of the Respondents traded, either directly or through acts in furtherance of trading, in securities of Nelson Financial. The trades in the securities of Nelson Financial were trades in securities not previously issued and were therefore distributions. No preliminary prospectus or prospectus was filed and no receipts were issued for them by the Director to qualify the trading of the securities.

22. The Respondents failed to ensure that the requirements of the AI Exemption were met and, therefore cannot rely on the AI Exemption in respect of many of the trades of Nelson Financial securities. The Respondents breached section 53 of the Act by distributing securities of Nelson Financial without a prospectus in circumstances where no exemption was properly available.

23. Further, as no exemption was properly available, the trades in the securities of Nelson Financial were beyond the registerable activity permitted by the category of registration under the Act and thus in breach of section 25 of the Act.

B. Misleading Staff of the Commission – Section 122(1)(a) of the Act

24. Boutet made a number of materially misleading statements to Staff, including by providing inaccurate or untrue information and/or failing to provide relevant information about the business and operations of Nelson Investment and Nelson Financial in a) a Risk Assessment Questionnaire (“RAQ”) he completed and submitted on behalf of Nelson Investment on October

6, 2009; and b) during the course of an on-site compliance review of Nelson Investment by Staff of the Commission in October and November 2009.

25. Boutet's misrepresentations in the RAQ included statements regarding the disclosure of commissions and risks to investors, the strength and nature of Nelson Investment's compliance system, and the relatedness of the parties involved in the distribution of the securities.

26. Boutet's misrepresentations to Staff during the on-site compliance review related primarily to statements about the financial position of Nelson Financial.

27. Staff allege that Boutet's misrepresentations were material and contrary to section 122(1) of the Act and contrary to the public interest.

C. Misleading the Commission – Section 122(1)(b)

28. During the Material Time, Nelson Financial filed 45-106F1s – Report of Exempt Distribution (the "Forms 45-106") with the Commission relating to the distribution of securities of Nelson Financial to investors in Ontario.

29. The Forms 45-106 did not accurately report either the commissions paid in connection with the distribution or the nature of the securities that were distributed, including by failing to identify approximately \$2 million in commissions charged by Nelson Investment.

30. Staff allege that Nelson Financial's misrepresentations were material and contrary to section 122(1) of the Act and contrary to the public interest.

D. Conduct Abusive to the Integrity of the Capital Markets

31. Nelson Financial relied on investors' funds for liquidity throughout the relevant period and raised new investor funds in a manner that was misleading to investors and abusive to the capital markets.

32. In soliciting investors, Nelson Investment and Nelson Financial expressly and implicitly represented to investors that Nelson Financial's business model, and consequently the success of the Nelson Financial investments, was premised upon applying investor capital to fund the Consumer Loans so that Nelson Financial would generate a higher return on the Consumer Loans than the returns promised to investors, as follows: a) investors' funds are used directly to fund the Consumer Loans; b) the Consumer Loans are extended at interest rates ranging from 29.9%; c) the fixed rates of return of 10-12% on the securities are paid to investors from the high interest rates earned on the Consumer Loans; and d) the "remaining spread" is used by Nelson Financial for "portfolio management, administration, underwriting and profit".

33. Throughout the Material Time, Nelson Financial made all of its monthly interest and "dividend" payments to investors and, for those who elected to redeem their investments upon maturity or otherwise, Nelson Financial repaid investors their full principal.

34. Throughout the Material Time, however, Nelson Financial's operations did not generate sufficient revenue for it to cover its operating expenses or its interest, "dividend", and principal repayment obligations to investors. During the Material Time, Nelson Financial had no other source of financing available to it and was solely dependant on the receipt of new investor capital.

35. In addition to its ongoing working capital requirements and contrary to express representations to investors about the use of their capital, Nelson Financial used at least part of the new investor funds that it obtained in breach of ss. 25 and 53 of the Act to offset its growing accumulated deficit, to pay other investors their monthly returns and to repay investors their principal upon redemption. Nelson Financial's continued acceptance of new investor funds in order to do meet its obligations to investors was abusive to investors in the circumstances.

36. At no time did the Respondents advise investors that Nelson Financial was insolvent or that their funds would be used either in whole or in part to pay or repay other investors.

37. On or about January 31, 2010, due to regulatory concerns raised by Staff following its on-site compliance review, Nelson Financial temporarily suspended the distribution of any of its securities.

38. On March 23, 2010, less than two months after suspending its capital raising activities, Nelson Financial was required to seek an order for creditor protection and restructuring under the *Companies' Creditors Arrangement Act* on the basis that it was insolvent.

39. During the Material Time, Boutet, as the directing mind of the Nelson entities, and Sobol, as Nelson Financial's *de facto* COO and *de facto* CFO, were aware of and/or directed Nelson Financial to continue to accept investors' funds in circumstances where it was misleading to investors and was abusive to the integrity of the capital markets.

IV. BREACHES OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

40. Staff allege that the foregoing conduct engaged in by the Respondents constituted breaches of Ontario securities law and/or was contrary to the public interest:

- (a) Nelson Financial, Nelson Investment, Boutet, Knoll, Torres and Sobol traded securities of Nelson Financial without a prospectus in circumstances where no exemption was available contrary to the prospectus requirements of section 53 of the Act and contrary to the public interest;
- (b) Boutet, as an officer and director of Nelson Financial and Nelson Investment, authorized, permitted or acquiesced in the breaches of 53 of the Act by Nelson Financial and Nelson Investment contrary to section 129.2 of the Act and contrary to the public interest;
- (c) Sobol, from at least October 2009, as a *de facto* officer of Nelson Financial, authorized, permitted or acquiesced in the breaches of 53 of the Act by Nelson Financial contrary to section 129.2 of the Act and contrary to the public interest;

- (d) Nelson Investment, Boutet, Knoll and Torres traded securities of Nelson Financial where no exemption was available contrary to the scope of their registration and the registration requirements of section 25 of the Act and contrary to the public interest;
- (e) Boutet, as an officer and director of Nelson Investment, authorized, permitted or acquiesced in the breaches of section 25 by Nelson Investment contrary to section 129.2 of the Act and contrary to the public interest;
- (f) Nelson Financial made statements in the Forms 45-106 filed with the Commission that were materially misleading or untrue and/or failed to state facts which were required to be stated contrary to subsection 122(1) of the Act and contrary to the public interest;
- (g) Nelson Investment made statements in the Risk Assessment Questionnaire filed with the Commission that were materially misleading or untrue and/or failed to state facts which were required to be stated contrary to subsection 122(1) of the Act and contrary to the public interest;
- (h) Boutet, as an officer and director of the Nelson Entities, authorized, permitted or acquiesced in the breaches of section 122(1) by Nelson Financial and Nelson Investment (described in subparagraph (e)-(f)) which was contrary to subsection 122(3) of the Act and contrary to the public interest;
- (i) Boutet made statements to Staff of the Commission during the course of its on-site review of Nelson Investment that were materially misleading or untrue and/or failed to state facts which were required to be stated contrary to subsection 122(1) of the Act and contrary to the public interest; and
- (j) Boutet, as the directing mind of the Nelson Entities, and Sobol, as a key member of the management team of the Nelson Entities and as a *de facto* officer of Nelson Financial, permitted, authorized or acquiesced in Nelson Financial's continued distribution of securities and continued acceptance of new investor capital in circumstances where it was

misleading to investors, abusive to the integrity of the capital markets and contrary to the public interest.

41. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

DATED at Toronto this 12th day of May, 2010.