

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

- and -

**IN THE MATTER OF
ROBERT THOMISLAV ADZIJA, LARRY ALLEN AYRES, DAVID ARTHUR
BENDING, MARLENE BERRY, DOUGLAS CROSS, ALLAN JOSEPH DORSEY,
ALLAN EIZENGA, GUY FANGEAT, RICHARD JULES FANGEAT, MICHAEL
HERSEY, GEORGE EDWARD HOLMES, TODD MICHAEL JOHNSTON, MICHAEL
THOMAS PETER KENNELLY, JOHN DOUGLAS KIRBY, ERNEST KISS,
ARTHUR KRICK, FRANK ALAN LATAM, BRIAN LAWRENCE, LUKE JOHN
MCGEE, RON MASSCHAELE, JOHN NEWMAN, RANDALL NOVAK, NORMAND
RIOPELLE, ROBERT LOUIS RIZZUTO, AND MICHAEL VAUGHAN**

**SETTLEMENT AGREEMENT BETWEEN STAFF OF THE
ONTARIO SECURITIES COMMISSION
AND DOUGLAS CROSS**

I. INTRODUCTION

1. By Notice of Hearing dated September 24, 1998 (the "Notice of Hearing"), the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing to consider, among other things:

- (a) whether, pursuant to subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act"), it is in the public interest for the Commission to make an order that the exemptions contained in Ontario securities law do not apply to the respondent Douglas Cross ("Cross") permanently or for such time as the Commission may direct; and
- (b) such other orders as the Commission deems appropriate.

2. By Temporary Order dated September 24, 1998, the Commission ordered that the exemptions contained in subsections 35(1)21 and 35(2)10 of the Act do not apply to Cross (the "Temporary Order"). The Temporary Order was extended by Commission Orders dated October 9, 1998 and February 4, 1999.

II. JOINT SETTLEMENT RECOMMENDATION

3. Staff of the Commission ("Staff") agrees to recommend settlement of the proceeding respecting Cross initiated by the Notice of Hearing in accordance with the terms and conditions set out below. Cross consents to the making of an order against him in the form attached as Schedule "A" based on the facts set out in Part III of this Settlement Agreement.

III. STATEMENT OF FACTS

Acknowledgement

4. Solely for the purposes of this proceeding, and of any other proceeding commenced by a securities regulatory agency, Staff and Cross agree with the facts set out in paragraphs 5 through 15 of this Settlement Agreement.

Facts

5. Saxton Investment Ltd. (“Saxton”) was incorporated on January 13, 1995. The respondent Allan Eizenga (“Eizenga”) was Saxton’s registered director. Saxton and Eizenga established numerous offering corporations, as listed below (the “Offering Corporations”).

The Saxton Trading Corp.
The Saxton Export Corp.
The Saxton Export (II) Corp.
The Saxton Export (III) Corp.
The Saxton Export (IV) Corp.
The Saxton Export (V) Corp.
The Saxton Export (VI) Corp.
The Saxton Export (VII) Corp.
The Saxton Export (VIII) Corp.
The Saxton Export (IX) Corp.
The Saxton Export (X) Corp.
The Saxton Export (XI) Corp.
The Saxton Export (XII) Corp.
The Saxton Export (XIII) Corp.
The Saxton Export (XIV) Corp.
The Saxton Export (XV) Corp.
The Saxton Export (XVI) Corp.
The Saxton Export (XVII) Corp.
The Saxton Export (XVIII) Corp.
The Saxton Export (XIX) Corp.
The Saxton Export (XX) Corp.
The Saxton Export (XXI) Corp.
The Saxton Export (XXII) Corp.
The Saxton Export (XXIII) Corp.
The Saxton Export (XXIV) Corp.
The Saxton Export (XXV) Corp.
The Saxton Export (XXVI) Corp.
The Saxton Export (XXVII) Corp.
The Saxton Export (XXVIII) Corp.
The Saxton Export (XXIX) Corp.
The Saxton Export (XXX) Corp.
The Saxton Export (XXXI) Corp.
The Saxton Export (XXXII) Corp.
The Saxton Export (XXXIII) Corp.

The Saxton Export (XXXIV) Corp.
The Saxton Export (XXXV) Corp.
The Saxton Export (XXXVI) Corp.
The Saxton Export (XXXVII) Corp.
The Saxton Export (XXXVIII) Corp.

6. Saxton and the Offering Corporations represented to the public that they were investing in businesses in Cuba and other Caribbean companies.
7. On or about October 7, 1998, the Court appointed KPMG Inc. (“KPMG”) as the custodian of Saxton’s assets. In early 1999, KPMG reported that the Offering Corporations had raised approximately \$37 million from investors. All funds invested in the Offering Corporations had been transferred to Saxton. At that time, KPMG held the view that the value of the Saxton assets, at its highest (as reported by related companies), was approximately \$5.5 million.
8. Cross has never been registered with the Commission to trade securities.
9. Between July 1996 and May 1998, Cross sold to Ontario investors securities of one or more of the Offering Corporations (the “Saxton Securities”). Cross sold the Saxton Securities to 48 Ontario investors for a total amount sold of approximately \$1,169,425.
10. The Offering Corporations were incorporated pursuant to the laws of Ontario. Cross’ sales of the Saxton Securities constituted trades in securities of an issuer that had not been previously issued.
11. None of the Offering Corporations filed a prospectus with the Commission. By selling the Saxton Securities to his clients, Cross traded in securities, which trades were distributions, without a prospectus being filed or receipted by the Commission and with no available exemption from the prospectus requirements of Ontario securities law.
12. Further, by selling the Saxton Securities to his clients, Cross traded in securities without being registered with the Commission and with no exemption from the registration requirements being available to him.
13. Cross received commissions of approximately \$58,500 on the sales described in paragraph 9 above.
14. Cross’ conduct in selling the Saxton Securities was contrary to Ontario securities law and the public interest.
15. Cross informs Staff that he invested approximately \$101,000 in the Saxton Securities.

IV. TERMS OF SETTLEMENT

16. Cross agrees to the following terms of settlement:

- (a) the making of an order:
 - (i) approving this settlement;
 - (ii) that trading in any securities by Cross cease for four years from the date of the approval of this settlement with the exception that, after one year, Cross is permitted to trade securities for the account of his registered retirement savings plan (as defined in the *Income Tax Act (Canada)*);
 - (iii) reprimanding Cross; and
 - (iv) that the Temporary Order no longer has any force or effect.

V. STAFF COMMITMENT

17. If this settlement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Cross in relation to the facts set out in Part III of this Settlement Agreement.

VI. APPROVAL OF SETTLEMENT

18. Approval of the settlement set out in this Settlement Agreement shall be sought at the public hearing of the Commission scheduled for December 19, 2002, or such other date as may be agreed to by Staff and Cross (the "Settlement Hearing"). Cross will attend in person at the Settlement Hearing.

19. Counsel for Staff or Cross may refer to any part, or all, of this Settlement Agreement at the Settlement Hearing. Staff and Cross agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing.

20. If this settlement is approved by the Commission, Cross agrees to waive his rights to a full hearing, judicial review or appeal of the matter under the Act.

21. Staff and Cross agree that if this settlement is approved by the Commission, they will not make any public statement inconsistent with this Settlement Agreement.

22. If, for any reason whatsoever, this settlement is not approved by the Commission, or an order in the form attached as Schedule "A" is not made by the Commission:

- (a) this Settlement Agreement and its terms, including all discussions and negotiations between Staff and Cross leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and Cross;
- (b) Staff and Cross shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by this Agreement or the settlement discussions/negotiations;
- (c) the terms of this Settlement Agreement will not be referred to in any subsequent proceeding, or disclosed to any person, except with the written consent of Staff and Cross or as may be required by law; and
- (d) Cross agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement, the settlement discussions/negotiations or the process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

VII. DISCLOSURE OF SETTLEMENT AGREEMENT

23. Except as permitted under paragraph 19 above, this Settlement Agreement and its terms will be treated as confidential by Staff and Cross until approved by the Commission, and forever, if for any reason whatsoever this settlement is not approved by the Commission, except with the consent of Staff and Cross, or as may be required by law.

24. Any obligations of confidentiality shall terminate upon approval of this settlement by the Commission.

VIII. EXECUTION OF SETTLEMENT AGREEMENT

25. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

26. A facsimile copy of any signature shall be as effective as an original signature.

DATED this 5th day of October, 2002

WITNESS

“Douglas Cross”
DOUGLAS CROSS

DATED this 7th day of October, 2002

**STAFF OF THE ONTARIO
SECURITIES COMMISSION**

“Michael Watson”
MICHAEL WATSON
Director, Enforcement Branch