



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 and H. W. PETER KNOLL**

**SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND H.W. PETER KNOLL**

PART I – INTRODUCTION

1. The Ontario Securities Commission (the “Commission”) will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S-5, as amended (the “Act”), it is in the public interest for the Commission to make certain orders in respect of H.W. Peter Knoll (the “Respondent”).

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission (“Staff”) agree to recommend settlement of the proceeding commenced by Notice of Hearing dated May 12, 2010 (the “Proceeding”) against the Respondent according to the terms and conditions set out in Part V of this Settlement Agreement. The Respondent agrees to the making of an order in the form attached as Schedule “A”, based on the facts set out below.

PART III – AGREED FACTS

3. This proceeding relates to Staff’s allegations of 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”) (collectively, the “Nelson Entities”), 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”).
4. Between December 19, 2006 and January 31, 2010 (the “Material Time”), Nelson Financial, through Nelson Investment and/or its employees and agents, including the Respondent, 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. The Respondent’s conduct as described herein constituted a violation of Ontario securities law.

A. 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 and sold 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 was the directing mind of the Nelson Entities.
8. The Respondent was initially employed by Nelson Financial in the Fall of 2005 and was then later employed by Nelson Investment as a salesperson and its chief compliance officer from at least December 19, 2006 until September 15, 2009. In that period, the Respondent was registered with the Commission as a trading officer and the designated compliance officer of Nelson Investment.

B. BACKGROUND AND PARTICULARS

Illegal Distribution – Sections 25 and 53 of the Act

9. 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.
10. 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.
11. 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.
12. The Respondent 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.

13. Throughout the Material Time, the scope of registration for the Respondent was limited to the sale of securities for which a prescribed exemption was properly available.
14. In distributing its securities, Nelson Financial relied upon the accredited investor exemption (the "AI Exemption") as set out in section 2.3 of National Instrument 45-106 and the minimum investment exemption as set out in section 2.10 of 45-106.
15. 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 (including the Respondent) to make that determination.
16. In many instances, the Respondent 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. For example, some "know-your-client" forms noted that not all financial assets were liquid and no further inquiries were made by Nelson Financial staff to ensure investors were qualified. Other know-your-client forms did not include income or net worth information for the investors, or included information that, on its face, did not meet the requirements of the AI Exemption.
17. As the Chief Compliance Officer, the Respondent was responsible for reviewing the documents for each investment. The Respondent approved know-your-client forms where it was clear that the investor did not qualify as an accredited investor, or where there was not enough information to make that determination. The Respondent 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.
18. The Respondent 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 Respondent did not discuss the criteria to qualify for the AI Exemption with investors, unless they asked. He did not review the Know Your Client documentation that was completed by investors. In addition, the Respondent did not discuss risks with potential investors for the Respondent. The Respondent breached section 53 of the Act by distributing securities of Nelson Financial without a prospectus in circumstances where no exemption was properly available.

19. 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 for the Respondent under the Act and thus in breach of section 25 of the Act.
20. The Respondent received a salary of \$48,000 per year and 0.5% commission on all new investments and investments “rolled over”. In 2009, the Respondent earned approximately \$210,000 in total. He did not advise investors that he, or his employer, Nelson Investment, received a sales commission.
21. 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. The Respondent (and some of his friends) redeemed their investments in Nelson Financial in 2009. The Respondent redeemed investments in Nelson Financial valued at \$206,000.
22. 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.
23. On November 22, 2010, the Court made an order approving certain heads of agreement (the "Heads of Agreement") between Boutet, A. John Page & Associates Inc. and Representative Counsel which provided for the resignation of Boutet as a director, officer and employee of Nelson Financial and the appointment of Sherry Townsend, a member of the Noteholders' Committee, as the Interim Operating Officer of Nelson Financial to direct and manage the business operations of the company and to manage its efforts to develop a

restructuring plan under the CCAA. Amongst other things and in addition to the above, the Heads of Agreement required Boutet to surrender his ownership interest in Nelson Financial and to surrender and release any and all claims Boutet might otherwise have against Nelson Financial under the CCAA.

24. On March 4, 2011, the Ontario Superior Court accepted for filing a Plan of Compromise and Arrangement in respect of Nelson Financial. The purpose of the Plan of Compromise and Arrangement is to "enable the business...to continue as a going concern" in its reorganized form.

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

25. The foregoing conduct engaged in by the Respondent constituted breaches of Ontario securities law and/or was contrary to the public interest:
- (a) The Respondent 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) The Respondent traded securities of Nelson Financial where no exemption was available contrary to the scope of his registration and the registration requirements of section 25 of the Act and contrary to the public interest;

PART V – TERMS OF SETTLEMENT

26. The Respondent agrees to the terms of settlement listed below.
27. The Commission will make an order pursuant to section 127(1) of the Act that:
- (a) The settlement agreement is approved;

- (b) Trading in any securities by the Respondent shall cease permanently, with a carve out for trading by the Respondent in his personal RRSP account after the payment set out in subparagraph (f) is paid in full;
- (c) The registration granted to the Respondent under Ontario securities law shall be terminated, permanently;
- (d) The Respondent is prohibited from becoming or acting as a director or an officer of any issuer for the greater of 15 years, or until such time as the payment specified in paragraph (f) is made in full;
- (e) Any exemptions contained in Ontario securities law do not apply to the Respondent, permanently;
- (f) The Respondent shall pay the amount of \$60,000 to be allocated to or for the benefit of third parties under s. 3.4(2) of the *Act*, with payment of \$15,000 to be made by certified cheque at the time of the settlement hearing and the remaining \$45,000 to be paid in quarterly instalments over a period of 3 years from the date this Agreement is executed.

28. In connection with this settlement, the Respondent has represented to the Commission that his net worth is not sufficient to pay the entire settlement amount immediately.

PART VI – STAFF COMMITMENT

- 29. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding against the Respondent under Ontario securities law in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 30 below.
- 30. If the Commission approves this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against the Respondent. These proceedings may be based

on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement.

PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

31. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for May 30, 2011, or on another date agreed to by Staff and the Respondent, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Practice.
32. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on the Respondent's conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.
33. If the Commission approves this Settlement Agreement, the Respondent agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.
34. If the Commission approves this Settlement Agreement, neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.
35. Whether or not the Commission approves this Settlement Agreement, the Respondent will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART X – DISCLOSURE OF SETTLEMENT AGREEMENT

36. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:

- i. this Settlement Agreement and all discussions and negotiations between Staff and the Respondent before the settlement hearing takes place will be without prejudice to Staff and the Respondent; and
 - ii. Staff and the Respondent will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.
37. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality. If the Commission does not approve the Settlement Agreement, both parties must continue to keep the terms of the Settlement Agreement confidential, unless they agree in writing not to do so or if required by law.

PART X – EXECUTION OF SETTLEMENT AGREEMENT

38. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.
39. A fax copy of any signature will be treated as an original signature.

DATED at Toronto this 24th day of May, 2011

"Bruce Forth"
Bruce Forth
Witness

"Peter Knoll"
H.W. Peter Knoll
Respondent

"Tom Atkinson"
Tom Atkinson
Director, Enforcement Branch

SCHEDULE "A"

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ORDER

WHEREAS on May 12, 2010, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "*Act*") in connection with a Statement of Allegations issued by Staff of the Commission ("Staff") in this matter;

AND WHEREAS on November 10, 2010, the Staff amended the Statement of Allegations;

AND WHEREAS H.W. Peter Knoll ("Knoll") entered into a settlement agreement with Staff dated May 24, 2011 (the "Settlement Agreement"), subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement, and upon hearing submissions from counsel for Staff and counsel for Knoll.

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order;

IT IS ORDERED THAT

(a) The settlement agreement is approved;

- (b) Pursuant to clause 2 of s. 127(1) of the Act, trading in any securities by Knoll shall cease permanently, with a carve out for trading by Knoll in his personal RRSP account after the payment set out in subparagraph (f) is paid in full;
- (c) Pursuant to clause 1 of s. 127(1) of the Act, the registration granted to Knoll under Ontario securities law shall be terminated, permanently;
- (d) Pursuant to clause 8 of s. 127(1) of the Act, Knoll is prohibited from becoming or acting as a director or an officer of any issuer for the greater of 15 years, or until such time as the payment specified in paragraph (f) is made in full;
- (e) Pursuant to clause 3 of s. 127(1) of the Act, Any exemptions contained in Ontario securities law do not apply to Knoll, permanently;
- (f) Pursuant to clauses 9 and 10 of s. 127(1) of the Act, Knoll shall pay the amount of \$60,000 to be allocated to or for the benefit of third parties under s. 3.4(2) of the *Act*, with payment of \$15,000 to be made by certified cheque at the time of the settlement hearing and the remaining \$45,000 to be paid in quarterly instalments over a period of 3 years from the date the Settlement Agreement is executed.

DATED at Toronto this 30th day of May, 2011.
