

IN THE MATTER OF  
THE *SECURITIES ACT*, R.S.N.S. 1989, CHAPTER 418, AS AMENDED (“Act”)

-and-

IN THE MATTER OF VESTCAP INVESTMENT MANAGEMENT INC. (“Respondent”)

**ORDER**

(Sections 134, 135 and 135A)

**WHEREAS** on April 30, 2018, the Nova Scotia Securities Commission (“Commission”) issued a Notice of Hearing to the Respondent pursuant to sections 134, 135, and 135A of the Act;

**AND WHEREAS** the Respondent entered into a Settlement Agreement with the Director of Enforcement for the Commission (“Director of Enforcement”) whereby it agreed to a proposed settlement of the proceeding, subject to the approval of the Commission;

**AND WHEREAS** the Director of Enforcement and the Respondent recommend approval of the Settlement Agreement;

**AND WHEREAS** the Commission is of the opinion that the Respondent contravened Nova Scotia securities laws and it is in the public interest to make this order;

**AND UPON** reviewing the Settlement Agreement, and upon hearing submissions of counsel for the Director of Enforcement and counsel for the Respondent;

**IT IS HEREBY ORDERED** that:

1. The Settlement Agreement dated April 27, 2018, a copy of which is attached, is approved;
2. Pursuant to section 134(1)(a) of the Act, the Respondent shall comply with Nova Scotia securities laws;
3. Pursuant to section 134(1)(h) of the Act, the Respondent is reprimanded;
4. Pursuant to section 135 of the Act, the Respondent shall forthwith pay an administrative penalty in the amount of thirty thousand dollars (\$30,000.00); and
5. Pursuant to section 135A of the Act, the Respondent shall forthwith pay costs in the amount of one thousand five hundred dollars (\$1,500.00) in connection with the investigation and conduct of this proceeding.

**DATED** at Halifax, Nova Scotia, this 30<sup>th</sup> day of May, 2018.

**NOVA SCOTIA SECURITIES COMMISSION**



Michael Deturbide, Q.C., Chair

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**SETTLEMENT AGREEMENT**

**PART I – INTRODUCTION**

1. The parties to this Settlement Agreement ("Agreement") are the Respondent and the Director of Enforcement for the Nova Scotia Securities Commission, Enforcement Branch ("Director of Enforcement").
2. The parties agree that the Nova Scotia Securities Commission ("Commission") has jurisdiction over this matter.
3. The parties agree to recommend to the Commission approval of this Agreement in accordance with the terms and process set out herein.

**PART II – PROCEDURE FOR APPROVAL OF THE AGREEMENT**

4. The Director of Enforcement agrees to request that a Notice of Hearing be issued setting down a hearing ("Settlement Hearing") wherein the Commission will consider whether it is in the public interest to approve this Agreement and to issue an order in the form attached as **Schedule "A"**.
5. The parties agree that this Agreement constitutes the entirety of evidence to be submitted to the Commission at the Settlement Hearing.
6. The Director of Enforcement agrees to recommend that the allegations acknowledged and admitted by the Respondent be resolved and disposed of in accordance with this Agreement.
7. The parties acknowledge that this Agreement will become a public document upon its approval by the Commission at the Settlement Hearing.

**PART III – STATEMENT OF AGREED FACTS**

8. The Director of Enforcement and the Respondent agree with the facts and conclusions set out in this Agreement.
9. The Respondent is a portfolio management firm, with its head office located in Toronto, Ontario. The Respondent has been in operation since 1988.



10. In June and July 2006, the Respondent opened five investment accounts for two clients, a married couple, who were residents of Alberta.
11. In or about July 2008, the two clients relocated to Nova Scotia. They continue to reside in Nova Scotia at present.
12. In July 2008 and March 2009, two additional investment accounts were opened for the two clients.
13. From July 2008 to present, the Respondent has been advising the two Nova Scotia clients under discretionary authority with respect to the buying and selling of securities in their seven investment accounts.
14. From July 2008 to present, the Respondent conducted numerous trades in securities in the seven investment accounts of the two Nova Scotia clients.
15. From May 18, 2006 to September 28, 2009, the Respondent was registered as Investment Counsel and Portfolio Manager with the Ontario Securities Commission.
16. From September 28, 2009 to present, the Respondent has been registered as a Portfolio Manager with the Ontario Securities Commission.
17. Until January 4, 2018, the Respondent was not registered in any capacity with the Alberta Securities Commission.
18. The Respondent has never been registered in any capacity with the Nova Scotia Securities Commission.
19. By having discretionary trading authority and by effecting numerous trades in seven accounts of two Nova Scotia clients without registration, the Respondent acted as an advisor without being registered to do so in violation of section 31(1)(c) of the Act, as rep. by R.S.N.S. 2008, c. 32, s. 6 (proclaimed in force 28 September 2009), and section 31(2)(a) of the Act.

**PART IV – STATEMENT OF ALLEGATIONS ACKNOWLEDGED AND ADMITTED BY THE RESPONDENT**

20. The Respondent admits the facts set forth in Part III herein and acknowledges that it violated Nova Scotia securities laws.
21. The Respondent acknowledges and admits that it violated section 31(1)(c) of the Act, as rep. by R.S.N.S. 2008, c. 32, s. 6 (proclaimed in force 28 September 2009), and section 31(2)(a) of the Act.
22. The Respondent acknowledges that this violation undermined investor confidence in the fairness and efficiency of capital markets in Nova Scotia and is contrary to the public interest.



## **PART V – MITIGATING FACTORS**

23. The Respondent acknowledges and accepts responsibility for its conduct which is the subject matter of this Agreement.
24. The Respondent cooperated with the investigation of this matter.
25. The Respondent has no past record of violations of Nova Scotia securities laws.
26. The Respondent has taken steps to properly register with the Commission and other applicable Canadian jurisdictions to comply with securities laws.
27. The Respondent did not solicit potential new clients in Nova Scotia.
28. The Respondent's Nova Scotia clients have not made any complaints regarding their seven investment accounts.
29. There is no evidence or allegation that any investor was harmed as a result of the breaches described herein.

## **PART VI – TERMS OF SETTLEMENT**

30. The terms of settlement are set forth in this Agreement and in the order contained in **Schedule "A"** to this Agreement, which is expressly incorporated herein.
31. The Respondent consents to the order contained in **Schedule "A"**.
32. The Respondent acknowledges that approximately twenty thousand dollars (\$20,000.00) of registration fees would have been payable to the Commission if it had been registered under the Act during the relevant period as required. The parties acknowledge that the agreed upon administrative penalty in the amount of thirty thousand dollars (\$30,000.00) set out in the order contained in **Schedule "A"** to this Agreement is partially comprised of the twenty thousand dollars (\$20,000.00) of registration fees that otherwise would have been payable.

## **PART VII – COMMITMENTS**

33. If this Agreement is approved and the order as set out in **Schedule "A"** is granted, the parties agree to waive any right to a full hearing and judicial review and appeal of this matter.
34. If this Agreement is approved by the Commission, the parties will not in any way make any statement, public or otherwise, that is inconsistent with the terms of this Agreement.
35. If this Agreement is approved by the Commission, the Respondent agrees to abide by all terms of this Agreement.



36. If, for any reason whatsoever, this Agreement is not approved, or the order set forth in **Schedule "A"** is not granted by the Commission:
- (a) The Director of Enforcement and the Respondent will be entitled to proceed to a hearing of the allegations which are the subject matter of this Agreement unaffected by the Agreement or the settlement negotiations;
  - (b) The negotiations, the terms of the Agreement and the Agreement will not be raised in any other proceeding or disclosed to any person except with the written consent of the Director of Enforcement and the Respondent or as may otherwise be required by law; and
  - (c) The Respondent agrees that it will not raise in any proceeding the Agreement or the negotiations or process of approval thereof as a basis of any attack or challenge of the Commission's jurisdiction, alleged bias, appearance of bias, alleged unfairness or any other challenge that may otherwise be available.
37. The Respondent acknowledges that the Director of Enforcement has the discretion to withdraw from this Agreement if additional facts or issues are discovered that cause him to conclude that it would not be in the public interest to request approval of this Agreement. In the event of such withdrawal, notice will be provided to the Respondent in writing and the provisions of paragraphs 36(a) and 36(b) of this Agreement will apply.

**PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT**

38. The Director of Enforcement or the Respondent may refer to any or all parts of this Agreement as required by Rule 15-501 General Rules of Practice and Procedure and in the course of the Settlement Hearing. Otherwise, this Settlement Agreement and its terms will be treated as confidential by all parties to it until approved by the Commission, and forever if, for any reason whatsoever, this settlement is not approved by the Commission.

**PART IX – EXECUTION OF SETTLEMENT AGREEMENT**

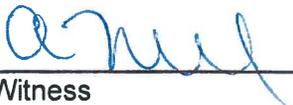
39. This Agreement may be signed in one or more counterparts that together shall constitute a binding agreement and a facsimile copy of any signature shall be as effective as an original signature.

DATED at Toronto , Ontario , this 20<sup>th</sup> day of April , 2018.

SIGNED, SEALED AND DELIVERED

**VESTCAP INVESTMENT MANAGEMENT  
INC.**

In the presence of:

  
Witness

  
Per:



DATED at Halifax, Nova Scotia, this 27 day of April, 2018.

**SIGNED, SEALED AND DELIVERED**

In the presence of:



Witness

Marlene E. Bucci  
A Commissioner of the  
Supreme Court of Nova Scotia



~~Randy Gass~~ Heidi Schedler  
Acting Director of Enforcement  
Nova Scotia Securities Commission  
Enforcement Branch



**SCHEDULE "A"**

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