

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

- AND -

IN THE MATTER OF  
RANDALL ELSIE (the "RESPONDENT")

**SETTLEMENT AGREEMENT**

**PART I – INTRODUCTION**

1. The parties to this Settlement Agreement ("Agreement") are the Respondent and Staff of the Nova Scotia Securities Commission.
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. Staff of the Commission ("Staff") 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 the Agreement constitutes the entirety of evidence to be submitted to the Commission at the Settlement Hearing.
6. Staff 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. Staff and the Respondent acknowledge and agree that the facts and conclusions set out herein are for the purposes of this Agreement only and

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further agree that this agreement of facts and the conclusions are without prejudice to the Respondent in any other proceeding of any kind including, but without limiting the generality of the foregoing, any civil or other proceeding which may be brought by any other person or agency. No other person or agency may raise or rely upon terms of this Agreement or any agreement to the facts stated herein whether or not this Agreement is approved by the Commission.

9. Staff and the Respondent agree with the facts and conclusions set out in this Part of the Agreement.
10. The Respondent is an investment advisor, employed with BMO Nesbitt Burns ("BMO NB"), in Sydney, Nova Scotia.
11. On or around December 10, 2001, the Respondent met with a client ("Client") to open a Retirement Savings Plan ("RRSP") account with BMO NB. At this meeting, the Client indicated that his risk tolerance for the RRSP account was "balanced" and placed his initials in the corresponding box on the new Client Account Agreement Form ("CAAF").
12. On or around February 22, 2006 the Respondent met with the Client to open a new cash account and to discuss his existing investment portfolio with BMO NB. At this meeting, the Respondent discussed the Client's investment objectives and risk tolerances. It was determined that the Client's risk tolerance for the new cash account was "growth".
13. At this meeting, the Respondent had the Client complete and sign a CAAF to open the new cash account and to update the Client's address on the existing RRSP account. The Client confirmed that his risk tolerance for the new cash account was "growth" and placed his initials in the corresponding box on the CAAF.
14. The Respondent forwarded the CAAF to BMO NB Head Office for processing. The CAAF was returned to the Respondent as incomplete, in that the risk tolerance for the existing RRSP account had not been filled out.
15. On or around April 2006, the Respondent wrote on the form that the Client's risk tolerance for the existing RRSP account was "balanced" and inserted the Client's initials in the corresponding box titled "Your Initials" to confirm the Client's investment objectives for the existing RRSP account.
16. By inserting the Client's initials on the CAAF to confirm the Client's investment objectives for the existing RRSP account, the Respondent failed to conform with prudent practices, thereby violating section 61 of the Securities Regulations, as rep. by Rule 31-801.

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

17. The Respondent admits the facts set forth in Part III herein and acknowledges and admits that his actions violated Nova Scotia securities laws and were contrary to the public interest.

**PART V - MITIGATING FACTORS**

18. The Respondent acknowledges and accepts responsibility for his conduct which is the subject matter of this Agreement.
19. The Respondent cooperated with Staff's investigation of this matter.
20. The Client suffered no financial loss as a result of the Respondent's actions.
21. The Respondent regularly consulted with the Client regarding all investment decisions.
22. The Respondent was subject to internal discipline by BMO NB through a fine of \$2,000 and more stringent supervision.

**PART VI – TERMS OF SETTLEMENT**

23. The terms of settlement are set forth in the order contained in Schedule "A" to this Agreement which is expressly incorporated herein.
24. The Respondent consents to the order contained in Schedule "A".

**PART VII – COMMITMENTS**

25. 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.
26. 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.
27. If this Agreement is approved by the Commission, the Respondent agrees to abide by all terms of this Agreement as set out in the Order attached as Schedule "A".

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28. 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. Staff 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 terms of the Agreement will not be raised in any other proceeding or disclosed to any person except with the written consent of Staff and the Respondent or as may otherwise be required by law; and
  - c. The Respondent agrees that he 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.
29. If, in the view of Staff and prior to the approval of this Agreement by the Commission, there are new facts or issues of substantial concern regarding the facts set out in Part III of this Agreement, Staff will be at liberty to withdraw from this Agreement. Notice of such intention will be provided to the Respondent in writing. In the event of such notice being given, the provisions of paragraph 28 in this Part will apply as if this Agreement had not been approved in accordance with the procedures set out herein.

#### **PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT**

30. Staff or the Respondent may refer to any or all parts of this Agreement as required by the 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**

31. 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 this 19 day of October, 2010.

SIGNED, SEALED AND DELIVERED  
In the presence of:

  
Witness Donna Peach.

  
Randall Elsie  
RANDALL ELSIE

Dated this 21<sup>st</sup> day of October, 2010.

SIGNED, SEALED AND DELIVERED  
In the presence of:

  
Witness

Staff of the Nova Scotia Securities  
Commission

  
R. Scott Peacock  
Director, Enforcement

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**SCHEDULE "A"**

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

- AND -

IN THE MATTER OF RANDALL ELSIE ("Respondent")

**ORDER**

(Sections 135, 135A and 136)

**WHEREAS** on \_\_\_\_\_, 2010 the Nova Scotia Securities Commission ("Commission") issued a Notice of Hearing to the Respondent pursuant to sections 135, 135A and 136 of the Act;

**AND WHEREAS** the Respondent entered into a settlement agreement with Staff of the Commission ("Staff") whereby he agreed to a proposed settlement of the proceeding, subject to the approval of the Commission;

**AND WHEREAS** Staff and the Respondent recommended approval of the settlement agreement;

**AND WHEREAS** the Commission is of the opinion that the Respondent has contravened the Act and it is in the public interest to make this Order;

**AND UPON** reviewing the settlement agreement;

**AND UPON** and upon hearing submissions of counsel for Staff and the Respondent;

**IT IS HEREBY ORDERED** that:

1. The Settlement Agreement dated \_\_\_\_\_, a copy of which is attached, is approved;
2. Pursuant to section 135 of the Act, the Respondent shall pay an administrative penalty in the amount of the two thousand five hundred dollars (\$2,500.00) forthwith; and
3. Pursuant to section 135A of the Act, the Respondent shall pay costs in connection with the investigation and conduct of the proceedings before the Commission in the amount of one thousand dollars (\$1,000.00) forthwith; and

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4. Pursuant to section 136 of the Act, the Respondent shall successfully complete the Conduct and Practices Handbook Course offered by the Canadian Securities Institute within one year of the date of this Order.

DATED at Halifax, Nova Scotia, this \_\_\_\_\_ day of \_\_\_\_\_ 2010.

NOVA SCOTIA SECURITIES COMMISSION



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(Chairman)