

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

and

**IN THE MATTER OF RONALD JAMES OVENDEN, NEW SOLUTIONS CAPITAL
INC., NEW SOLUTIONS FINANCIAL CORPORATION AND NEW SOLUTIONS
FINANCIAL (II) CORPORATION**

**SETTLEMENT AGREEMENT BETWEEN STAFF OF THE ONTARIO
SECURITIES COMMISSION, RONALD JAMES OVENDEN AND NEW
SOLUTIONS CAPITAL INC.**

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 sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "*Securities Act*") it is in the public interest for the Commission to make certain orders in respect of Ronald James Ovenden ("Ovenden") and New Solutions Capital Inc. ("NSCI").

PART II - JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceeding commenced by Notice of Hearing dated March 28, 2013 (the "Proceeding"), against Ovenden and NSCI according to the terms and conditions set out in Part V of this settlement agreement (the "Settlement Agreement"). Ovenden and NSCI agree to the making of an order in substantially the same form attached as Schedule "A" based on the facts set out below.

PART III - AGREED FACTS

3. For the Proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, Ovenden and NSCI agree with the facts as set out in Part III of this Settlement Agreement.

Ovenden and the New Solutions Companies**Ovenden**

4. Ovenden is 58 years old and a resident of Georgetown, Ontario. Ovenden was registered with the Commission in various capacities throughout the relevant period, January 1, 2009 to January 5, 2012 (the "Relevant Period"). As of January 19, 2009, Ovenden was registered as a trading officer, and approved as a designated compliance officer and director of NSCI. On September 28, 2009, with the implementation of National Instrument 31-103 - *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103"), the trading officer category was changed to dealing representative and officer, the designated compliance officer approval category was removed, and NSCI's registration category of limited market dealer ("LMD") was changed to exempt market dealer ("EMD").

5. Ovenden was registered as the ultimate designated person ("UDP") and chief compliance officer ("CCO") of NSCI on March 4, 2010. Ovenden's CCO category of registration was surrendered on October 13, 2010. On October 18, 2010, Ovenden's registration as a dealing representative was surrendered because he did not meet the new proficiency requirements under NI 31-103. Ovenden remained with NSCI as an officer, director and registered UDP until April 26, 2012, when his registration was suspended.

6. Ovenden was the sole director and an officer of each of NSCI, New Solutions Financial Corporation ("NSFC") and New Solutions Financial (II) Corporation ("NSFII") (collectively the "New Solutions Companies") during the Relevant Period.

7. Throughout the Relevant Period, Ovenden was a directing and a controlling mind of each of the New Solutions Companies. In that capacity, Ovenden bears responsibility for his own conduct, and for the conduct of each of the New Solutions Companies.

NSCI

8. NSCI is an Ontario corporation, and was registered as an LMD from June 14, 2006 until January 1, 2009, when its registration was suspended for non-payment of annual participation fees. NSCI's registration as an LMD was reinstated on January 19, 2009. On September 28, 2009, NSCI's LMD registration category was changed to EMD with the implementation of NI 31-103. NSCI's registration was suspended on April 26, 2012.

9. NSCI traded in debentures issued by NSFII to accredited investors.

NSFII

10. NSFII was incorporated federally and has never been registered with the Commission. NSFII was not a reporting issuer in Ontario during the Relevant Period.

11. NSFII issued debentures to investors throughout Canada.

NSFC

12. NSFC was incorporated in Ontario and has never been registered with the Commission.

13. NSFC advanced funds raised from investors who purchased debentures issued by NSFII to persons and companies in the form of factored receivables and loans.

Trades in NSFII Debentures to Investors

14. During the Relevant Period, there were approximately 190 trades in debentures of NSFII to new and existing investors, totaling approximately \$25 million. Of that amount, about \$15 million of debentures were purchased using funds rolled over from matured debentures and about \$10 million of debentures were purchased using new investor funds.

Misrepresentations and Omissions

15. Through interactions with investors and potential investors and documents provided to them, referred to below, Ovenden, the New Solutions Companies and their

agents and employees misled and/or failed to properly inform investors and potential investors about the true state of affairs of NSFC and its underlying portfolio, and the risks associated with investing in NSFII debentures. Ovenden and the New Solutions Companies also failed to properly inform investors and potential investors that their funds would be loaned to companies owned and/or controlled directly or indirectly by Ovenden, to Ovenden's business associates and/or to companies owned or controlled directly or indirectly by Ovenden or his business associates.

16. During the Relevant Period, investors and potential investors were variously provided with:

- a) NSFC Semi-Annual Reports dated February 2009, August 2009, February 2010, Summer 2010 and Winter 2011;
- b) a brochure entitled "New Solutions Financial (II) Corporation 1-Year, 3-Year, 5-Year Non-Redeemable, Non-Convertible Secured Term Debentures" (the "Debentures Brochure");
- c) a brochure entitled "Top 5 Questions for New Solutions Financial (II) Corporation Secured Term Debentures" (the "Top 5 Brochure");
- d) a brochure entitled "A Conservative Entrepreneurial Investment" (the "Conservative Brochure");
- e) an NSFII offering memorandum dated December 15, 2008 (the "2008 OM"); and
- f) an NSFII offering memorandum dated August 10, 2010 (the "2010 OM").

Safety and Risks Associated with Investment

17. The February 2009 Semi-Annual Report was co-signed by Ovenden as Chair and Chief Executive Officer of NSFC. It stated that NSFC offered "safe above market returns to [its] investors...while maintaining an acceptable risk profile in all the lending transactions [it] become[s] involved in." The same report also provided that "the success of [its] borrowers continue [sic] to be the prime factors in [its] success."

18. The August 2009 Semi-Annual Report was co-signed by Ovenden as Chair and Chief Executive Officer of NSFC. The Conclusion in the August 2009 Semi-Annual Report stated in part: "While the road to economic recovery appears to be opening up before us, the stability we seek as investors and lenders will remain elusive in the short term. Nonetheless we are confident that our processes and experienced personnel are more than up to the task of ensuring our continued profitability during these difficult times."

19. The brochures included claims that:

- the investments were "[b]acked by a portfolio of managed receivables from companies with deemed "A" credit ratings or better" and offered "safety of investment from: [d]iversification of [the] underlying borrower pool" (Debentures Brochure);
- "[d]iversification of [an] "A" rated or better quality accounts receivable pool" (Debentures Brochure);
- "[NSFC]...will use proceeds to lend/factor against **"A" rated or better** accounts receivables owed to borrowing merchants"¹ (Top 5 Brochure);
- "An Investment in New Solutions Financial Corporation Debentures Provides Access to:...[c]onservative structure and historical surplus security" (Conservative Brochure); and
- "A stringent approach to asset based lending provides an investor an acceptable low-risk way to generate returns" (Conservative Brochure).

20. Contrary to the statements referred to above, which assured investors and potential investors of the safety, quality and profitability of investments in NSFII debentures, NSFC provided bridge loans, asset based financing services and other credit facilities to high risk entities.

¹ (emphasis in original)

Loans to Ovenden's Companies, Associates' Companies and Others

21. Ovenden co-signed a certificate dated December 15, 2008 by which he certified that the 2008 OM did not contain a misrepresentation. Ovenden signed a certificate dated August 10, 2010 by which he certified that the 2010 OM did not contain a misrepresentation.

22. While the 2008 and 2010 OMs each contained a section entitled "Risk Factors", neither the 2008 nor 2010 OMs disclosed that a significant portion of the loans were made to companies that were (or became) related parties and business associates.

23. As at June 30, 2009, at least 50% of the outstanding advances made by NSFC were to companies that were (or became) related parties and business associates.

24. In or around the commencement of the CCAA Proceeding as defined below, Ovenden caused companies owned and/or controlled directly or indirectly by him to be transferred to NSFC.

Proceeding under the *Companies' Creditors Arrangement Act*

25. In a related proceeding (the "CCAA Proceeding"), on application made by NSFC, NSFII, New Solutions Financial (III) Corporation, New Solutions Financial (VI) Corporation and 2055596 Ontario Limited (the "Companies"), the Ontario Superior Court of Justice issued an order on April 11, 2012 granting protection to the Companies under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA Order"). The CCAA Order has been extended from time to time and the CCAA Proceeding is ongoing. Pursuant to the CCAA Order, MNP Ltd. was appointed as monitor (the "Monitor") over the business and financial affairs of the Companies.

26. But for the appointment of the Monitor and the CCAA Proceeding, Staff would be seeking significant monetary sanctions, including costs, as against Ovenden and NSCI for the conduct set out herein.

27. On April 19, 2013, the Monitor commenced a claim against Ovenden for damages for breach of duty (the "Civil Claim"). This Settlement Agreement is conditional upon settlement and court approval of the Civil Claim in the CCAA Proceeding.

**PART IV - CONDUCT CONTRARY TO SECTIONS 44(2) AND 129.2 OF THE
SECURITIES ACT, SECTION 2.1 OF OSC RULE 31-505, AND CONTRARY
TO THE PUBLIC INTEREST**

28. In the manner described above, Ovenden and NSCI made untrue statements about matters that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship and/or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made. As such, during the Relevant Period, Ovenden and NSCI breached subsection 44(2) of the *Securities Act*. Further, as registrants, Ovenden and NSCI breached section 2.1 of OSC Rule 31-505 - *Conditions of Registration* by failing to deal fairly, honestly and in good faith with their clients. Ovenden and NSCI also engaged in conduct contrary to the public interest.

29. In his role as director and an officer of the New Solutions Companies, Ovenden permitted or acquiesced in the non-compliance of the New Solutions Companies with Ontario securities law and, accordingly, failed to comply with Ontario securities law contrary to section 129.2 of the *Securities Act*.

PART V - TERMS OF SETTLEMENT

30. Ovenden and NSCI agree to the terms of settlement set out below.

31. The Commission will make an order pursuant to section 127(1) and section 127.1 of the *Securities Act* that:

- (a) the Settlement Agreement is approved;
- (b) Ovenden's registration shall be terminated and he shall not apply for or obtain registration with the Commission;
- (c) NSCI's registration shall be terminated and it shall not apply for or obtain registration with the Commission;

- (d) Ovenden shall cease trading in any securities and derivatives for a period of 15 years as of and from the date of the order approving this Settlement Agreement (the “Order”), except that Ovenden may trade in securities for the account of his registered retirement savings plans and/or registered retirement income funds (as defined in the *Income Tax Act* (Canada)) in which he and/or his spouse have sole legal and beneficial ownership;
- (e) NSCI shall permanently cease trading in any securities and derivatives as of and from the date of the Order;
- (f) Ovenden shall cease acquisitions of any securities for a period of 15 years as of and from the date of the Order, except that Ovenden may acquire securities for the account of his registered retirement savings plans and/or registered retirement income funds (as defined in the *Income Tax Act* (Canada)) in which he and/or his spouse have sole legal and beneficial ownership;
- (g) NSCI shall permanently cease acquisitions of any securities as of and from the date of the Order;
- (h) any exemptions in Ontario securities law shall not apply to Ovenden for a period of 15 years as of and from the date of the Order;
- (i) any exemptions in Ontario securities law shall not apply to NSCI permanently as of and from the date of the Order;
- (j) Ovenden is reprimanded;
- (k) NSCI is reprimanded;

- (l) Ovenden shall resign any positions he holds as a director or officer of an issuer as of the date of the Order;
- (m) Ovenden is prohibited from becoming a director or officer of any issuer for a period of 15 years as of and from the date of the Order;
- (n) Ovenden shall resign any positions he holds as a director or officer of a registrant, investment fund manager or promoter as of the date of the Order; and
- (o) Ovenden is prohibited permanently from becoming a director or officer of a registrant, investment fund manager or promoter as of and from the date of the Order.

32. Ovenden and NSCI consent to a regulatory order made by any Canadian securities regulatory authority containing any or all of the sanctions set out in paragraph 31 above. These sanctions may be modified to reflect the provisions of the relevant securities law in that jurisdiction.

PART VI - STAFF COMMITMENT

33. If this Settlement Agreement is approved by the Commission, Staff will not commence any other proceeding under Ontario securities law against Ovenden and NSCI respecting the facts set out in Part III of the Settlement Agreement, subject to the provisions of paragraph 34 below.

34. If the Commission approves this Settlement Agreement and Ovenden and/or NSCI fail to comply with any of the terms of the Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against Ovenden and/or NSCI. Staff further reserve the right to bring proceedings under Ontario securities law against Ovenden and/or NSCI if settlement and court approval of the Civil Claim in the CCAA Proceeding is not achieved or if Ovenden and/or NSCI fail to comply with any of the terms of the settlement and court approval of the Civil Claim in the CCAA Proceeding.

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 any breach of the Settlement Agreement.

PART VII - PROCEDURE FOR APPROVAL OF SETTLEMENT

35. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission according to the procedures set out in this Settlement Agreement and the Commission's Rules of Procedure.

36. Staff, Ovenden and NSCI agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing regarding Ovenden's and NSCI's conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.

37. If the Settlement Agreement is approved by the Commission, Ovenden and NSCI each agree to waive all of their rights to a full hearing, judicial review or appeal of the matter under the *Securities Act*.

38. If the Commission approves this Settlement Agreement, none of the parties will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

39. Whether or not the Commission approves this Settlement Agreement, neither Ovenden nor NSCI will 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 VIII - DISCLOSURE OF SETTLEMENT AGREEMENT

40. If the Commission does not approve this Settlement Agreement or does not make the Order in substantially the same form as attached at Schedule "A":

- a. this Settlement Agreement and all discussions and negotiations between Staff, Ovenden and NSCI before the settlement hearing takes place will be without prejudice to Staff, Ovenden and NSCI; and
- b. Staff, Ovenden and NSCI will 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 Settlement Agreement.

41. The 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 regarding the terms of the Settlement Agreement. If the Commission does not approve the Settlement Agreement, the 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 IX - EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 2nd day of April, 2014

“Ronald James Ovenden”

Ronald James Ovenden

DATED this 2nd day of April, 2014

“Ronald James Ovenden”

Ronald James Ovenden
New Solutions Capital Inc.
I have authority to bind the corporation.

DATED this 2nd day of April, 2014

“Tom Atkinson”

Tom Atkinson
Director, Enforcement Branch
Ontario Securities Commission



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Schedule "A"

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

- AND -

**IN THE MATTER OF RONALD JAMES OVENDEN, NEW SOLUTIONS CAPITAL INC.,
NEW SOLUTIONS FINANCIAL CORPORATION AND NEW SOLUTIONS FINANCIAL (II)
CORPORATION**

ORDER

WHEREAS on March 28, 2013, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "*Securities Act*") in respect of Ronald James Ovenden ("Ovenden"), New Solutions Capital Inc. ("NSCI"), New Solutions Financial Corporation ("NSFC") and New Solutions Financial (II) Corporation ("NSFII");

AND WHEREAS on March 28, 2013, Staff of the Commission ("Staff") filed a Statement of Allegations (the "Statement of Allegations") in respect of the same matter;

AND WHEREAS NSFC and NSFII entered into a Settlement Agreement dated March 28, 2013 (the "NSFC and NSFII Settlement Agreement") in relation to certain matters set out in the Statement of Allegations;

AND WHEREAS on April 1, 2013 the Commission issued a Notice of Hearing in respect of the NSFC and NSFII Settlement Agreement;

AND WHEREAS by order dated April 10, 2013 the Commission approved the NSFC and NSFII Settlement Agreement;

AND WHEREAS Ovenden and NSCI (the “Remaining Respondents”) entered into a settlement agreement with Staff dated April 2, 2014 (the “Settlement Agreement”), subject to the approval of the Commission;

AND WHEREAS on **MONTH XX, 2014**, the Commission issued a Notice of Hearing pursuant to section 127 of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve the Settlement Agreement;

AND UPON reviewing the Settlement Agreement, the Notices of Hearing and the Statement of Allegations of Staff, and upon hearing submissions from counsel for Staff and counsel for the Respondents;

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

IT HEREBY IS ORDERED that:

- (a) the Settlement Agreement is approved;
- (b) pursuant to paragraph 1 of subsection 127(1) of the Act, the Remaining Respondents’ registration shall be terminated and neither of the Remaining Respondents shall apply for or obtain registration with the Commission as of and from the date of this order (“the Order”);
- (c) pursuant to paragraph 2 of subsection 127(1) of the Act, Ovenden shall cease trading in any securities and derivatives for a period of 15 years as of and from the date of the Order, except that Ovenden may trade in securities for the account of his registered retirement savings plans and/or registered retirement income funds (as defined in the *Income Tax Act* (Canada)) in which he and/or his spouse have sole legal and beneficial ownership;
- (d) pursuant to paragraph 2 of subsection 127(1) of the Act, NSCI shall permanently cease trading in any securities and derivatives as of and from the date of the Order;

- (e) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Ovenden is prohibited for a period of 15 years as of and from the date of the Order, except that Ovenden may acquire securities for the account of his registered retirement savings plans and/or registered retirement income funds (as defined in the *Income Tax Act* (Canada)) in which he and/or his spouse have sole legal and beneficial ownership;
- (f) pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by NSCI is prohibited permanently as of and from the date of the Order;
- (g) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Ovenden for a period of 15 years as of and from the date of the Order;
- (h) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to NSCI permanently as of and from the date of the Order;
- (i) pursuant to paragraph 6 of subsection 127(1) of the Act, each of the Remaining Respondents is reprimanded;
- (j) pursuant to paragraph 7 of subsection 127(1) of the Act, Ovenden shall resign any positions he holds as a director or officer of an issuer as of the date of the Order;
- (k) pursuant to paragraph 8 of subsection 127(1) of the Act, Ovenden is prohibited from becoming or acting as a director or officer of any issuer for a period of 15 years as of and from the date of the Order;
- (l) pursuant to paragraphs 8.1 and 8.3 of subsection 127(1) of the Act, Ovenden shall resign any positions he holds as a director or officer of a registrant or an investment fund manager as of the date of the Order;
- (m) pursuant to paragraphs 8.2 and 8.4 of subsection 127(1), Ovenden is prohibited permanently from becoming or acting as a director or officer of a registrant or an investment fund manager as of and from the date of the Order; and

- (n) pursuant to paragraph 8.5 of subsection 127(1), Ovenden is prohibited permanently from becoming or acting as registrant, as an investment fund manager, or as a promoter, and NSCI is prohibited permanently from becoming a registrant.

DATED at Toronto this day of April, 2014.

Edward P. Kerwin