



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Toronto ON M5H 3S8

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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 DAVID M. O'BRIEN

- AND -

**IN THE MATTER OF A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION AND DAVID M. O'BRIEN**

ORDER

(Sections 127 and 127.1 of the Securities Act)

WHEREAS on December 7, 2010, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing, pursuant to sections 37, 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") to consider whether it is in the public interest to make orders, as specified therein, against and in respect of David M. O'Brien ("O'Brien"). The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission ("Staff") dated December 8, 2010;

AND WHEREAS the Respondent entered into a Settlement Agreement with Staff of the Commission executed June 19, 2015 (the "Settlement Agreement") in which the Respondent agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated December 7, 2010, subject to the approval of the Commission;

AND WHEREAS on June 19, 2015, 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 a Settlement Agreement entered into between Staff and the Respondent;

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

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

IT IS HEREBY ORDERED THAT:

- (a) The settlement agreement is approved;
- (b) pursuant to paragraph 2 of section 127(1) of the Act, trading in any securities by or of the Respondent shall cease permanently;
- (c) pursuant to paragraph 2.1 of section 127(1) of the Act, acquisition of any securities by the Respondent is prohibited permanently;
- (d) pursuant to paragraph 3 of section 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to the Respondent permanently;
- (e) pursuant to paragraphs 7, 8.1 and 8.3 of section 127(1) of the Act, O'Brien shall immediately resign all positions that he holds as a director or officer of any issuer, registrant or investment fund manager (except as set out in paragraph (f) below);
- (f) pursuant to paragraphs 8, 8.2 and 8.4 of section 127(1) of the Act, O'Brien shall be permanently prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, with the exception that O'Brien is permitted to continue to act as a director and officer of any company through which he carries on business, so long as there are no more than 5 holders of the securities of the corporation, including him, his spouse, and/or immediate family;

- (g) pursuant to paragraph 8.5 of section 127(1) of the Act, O'Brien shall be permanently prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter;
- (h) pursuant to paragraph 10 of section 127(1) of the Act, O'Brien shall disgorge to the Commission the sum of \$5,000.00 obtained as a result of non-compliance with Ontario securities law, which is to be designated for allocation or for use by the Commission pursuant to subsection 3.4(2)(b) of the Act;
- (i) pursuant to paragraph 9 of section 127(1) of the Act, O'Brien shall pay to the Commission an administrative penalty of \$1,000.00, for his failure to comply with Ontario securities law, which is to be designated for allocation or for use by the Commission pursuant to subsection 3.4(2)(b) of the Act;
- (j) pursuant to section 37(1) of the Act, O'Brien shall be permanently prohibited from:
 - i. calling at any residence in Ontario for the purpose of trading in securities, or
 - ii. telephoning from within Ontario to any residence within or outside Ontario for the purpose of trading in securities;
- (k) After the payments set out in paragraphs (h) and (i), are made in full, as an exception to the provisions of paragraphs (b), (c), and (d) of this Order above, O'Brien is permitted to trade in or acquire:
 - i. for the account of his personal registered retirement savings plan and his registered pension plan as defined in the Income Tax Act, R.S.C. 1985, c.1, as amended (the "Income Tax Act"), solely through a registered dealer or, as appropriate, a registered dealer in a foreign jurisdiction (which dealer must be given a copy of this Order) (a) any "exchange-traded security" or "foreign exchange-traded security" within the

meaning of National Instrument 21-101 provided that he does not own beneficially or exercise control or direction over more than 5 percent of the voting or equity securities of the issuer(s) of any such securities, or (b) any security issued by a mutual fund that is a reporting issuer; and

ii. securities of a company through which he carries on business, so long as there are no more than 5 holders of the securities of the corporation, including him, his spouse, and/or immediate family at the time of the trade.

(l) until the entire amount of the payments set out in paragraphs (h) and (i), are paid in full, the prohibitions set out in subparagraphs (b), (c), and (d) shall continue in force without any limitation as to time period.

DATED at Toronto this 23rd day of June, 2015.

“Mary G. Condon”

Mary G. Condon