

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

**- and -**

**IN THE MATTER OF  
ROBERT THOMISLAV ADZIJA, LARRY ALLEN AYRES,  
DAVID ARTHUR BENDING, MARLENE BERRY, DOUGLAS CROSS,  
ALLAN JOSEPH DORSEY, ALLAN EIZENGA, GUY FANGEAT, RICHARD JULES  
FANGEAT, MICHAEL HERSEY, GEORGE EDWARD HOLMES, TODD MICHAEL  
JOHNSTON, MICHAEL THOMAS PETER KENNELLY, JOHN DOUGLAS KIRBY,  
ERNEST KISS, ARTHUR KRICK, FRANK ALAN LATAM, BRIAN  
LAWRENCE, LUKE JOHN MCGEE, RON MASSCHAELE, JOHN NEWMAN,  
RANDALL NOVAK, NORMAND RIOPELLE, ROBERT LOUIS RIZZUTO AND  
MICHAEL VAUGHAN**

**SETTLEMENT AGREEMENT BETWEEN  
STAFF OF THE ONTARIO SECURITIES COMMISSION  
AND FRANK ALAN LATAM**

**I. INTRODUCTION**

1. By Notice of Hearing dated September 24, 1998 (the "Notice of Hearing"), the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing to consider, among other things:

- (a) whether, pursuant to subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act"), it is in the public interest for the Commission to make an order that the exemptions contained in Ontario securities law do not apply to the respondent Frank Alan Latam ("Latam") permanently or for such time as the Commission may direct; and
- (b) such other orders as the Commission deems appropriate.

2. By Temporary Order dated September 24, 1998, the Commission ordered that trading in securities by Latam cease immediately except for trades in mutual fund securities and trades for his personal account (the “Temporary Order”). The Temporary Order was extended by Commission Orders dated October 9, 1998 and February 4, 1999.

## **II. JOINT SETTLEMENT RECOMMENDATION**

3. Staff of the Commission (“Staff”) agrees to recommend settlement of the proceeding respecting Latam initiated by the Notice of Hearing in accordance with the terms and conditions set out below. Latam consents to the making of an order against him in the form attached as Schedule “A” based on the facts set out in Part III of this Settlement Agreement.

## **III. STATEMENT OF FACTS**

### **Acknowledgement**

4. Solely for the purposes of this proceeding, and of any other proceeding commenced by a securities regulatory agency, Staff and Latam agree with the facts set out in paragraphs 5 through 25 of this Settlement Agreement.

### **Facts**

5. Saxton Investment Ltd. (“Saxton”) was incorporated on January 13, 1995. The respondent, Allan Eizenga (“Eizenga”) was Saxton’s registered director. Saxton and Eizenga established numerous offering corporations, as listed below (the “Offering Corporations”).

The Saxton Trading Corp.  
The Saxton Export Corp.  
The Saxton Export (II) Corp.  
The Saxton Export (III) Corp.  
The Saxton Export (IV) Corp.  
The Saxton Export (V) Corp.  
The Saxton Export (VI) Corp.  
The Saxton Export (VII) Corp.  
The Saxton Export (VIII) Corp.  
The Saxton Export (IX) Corp.  
The Saxton Export (X) Corp.  
The Saxton Export (XI) Corp.  
The Saxton Export (XII) Corp.  
The Saxton Export (XIII) Corp.  
The Saxton Export (XIV) Corp.  
The Saxton Export (XV) Corp.  
The Saxton Export (XVI) Corp.  
The Saxton Export (XVII) Corp.  
The Saxton Export (XVIII) Corp.  
The Saxton Export (XIX) Corp.  
The Saxton Export (XX) Corp.  
The Saxton Export (XXI) Corp.

The Saxton Export (XXII) Corp.  
The Saxton Export (XXIII) Corp.  
The Saxton Export (XXIV) Corp.  
The Saxton Export (XXV) Corp.  
The Saxton Export (XXVI) Corp.  
The Saxton Export (XXVII) Corp.  
The Saxton Export (XXVIII) Corp.  
The Saxton Export (XXIX) Corp.  
The Saxton Export (XXX) Corp.  
The Saxton Export (XXXI) Corp.  
The Saxton Export (XXXII) Corp.  
The Saxton Export (XXXIII) Corp.  
The Saxton Export (XXXIV) Corp.  
The Saxton Export (XXXV) Corp.  
The Saxton Export (XXXVI) Corp.  
The Saxton Export (XXXVII) Corp.  
The Saxton Export (XXXVIII) Corp.

6. Saxton and the Offering Corporations represented to the public that they were investing in businesses in Cuba and other Caribbean companies.

7. On or about October 7, 1998, the Court appointed KPMG Inc. ("KPMG") as the custodian of Saxton's assets. In early 1999, KPMG reported that the Offering Corporations had raised approximately \$37 million from investors. All funds invested in the Offering Corporations had been transferred to Saxton. At that time, KPMG held the view that the value of the Saxton assets, at its highest (as reported by related companies), was approximately \$5.5 million.

8. Latam became registered with the Commission under the Act to sell mutual fund securities and limited market products in January 1992. He has not been registered with the Commission since December 30, 1998.

9. Between September 1996 and July 1998, Latam sold to Ontario investors securities of one or more of the Offering Corporations (the "Saxton Securities"). Latam sold the Saxton Securities to approximately 113 Ontario investors for a total amount sold of approximately \$4.3 million. Latam informs Staff that approximately \$1.9 million of the \$4.3 million were sales for which Latam split the commissions with the investor (including sales of almost \$600,000 to the respondents Larry Ayres and Ron Masschaele).

10. All of the Offering Corporations were incorporated pursuant to the laws of Ontario. Sales of the Saxton Securities constituted trades in securities of an issuer that had not been previously issued.

11. None of the Offering Corporations filed a prospectus with the Commission. By selling the Saxton Securities to his clients, Latam traded in securities, which trades were distributions, without a prospectus being filed or receipted by the Commission and with no available exemption from the prospectus requirements of Ontario securities law.

12. Latam failed to provide his clients with access to substantially the same information concerning the Saxton Securities that a prospectus filed under the Act would provide. Although Latam had Saxton Offering Memoranda available to him, none of his clients received an Offering Memorandum prior to purchasing the Saxton Securities. The only documentation provided by Latam was vague promotional material prepared by Saxton. In some cases, however, Latam introduced his clients to Saxton representatives, including Eizenga, the respondent Luke McGee (“McGee”) and Michael Tibollo.

13. Latam told certain clients that they were purchasing a low risk “GIC” or other guaranteed product from Saxton. In fact, investors were purchasing shares in Saxton, such securities which were described in the Offering Memoranda as “speculative”.

14. In some cases, Latam told prospective Saxton investors that he had invested several hundred thousand dollars in Saxton. In fact, Latam never purchased any Saxton Securities. He informs Staff, however, that his renewal commissions were not paid to him in cash. Rather, such commissions were accumulating and would be matched by Saxton and converted to founders’ shares when the company went public.

15. Latam failed to adequately assess the suitability of his clients’ investments in the Saxton Securities. Latam did not have a sufficient understanding of the Saxton products and their purported guarantees to effectively evaluate the risk to his clients in purchasing such Securities.

16. Between 1996 until 1999, Latam worked out of the Integrated Planning offices in St. Thomas. The respondent Richard Fangeat (“Fangeat”) ran the Integrated Planning office and held himself out as Latam’s Branch Manager. Latam always operated as an independent contractor, however, with his sponsors.

17. Latam failed to inform his sponsoring firms that he was selling the Saxton Securities. In or about the fall of 1997, however, Latam says that Fangeat represented to him that Balanced Planning (their sponsor) had authorized their sales of the Saxton Securities.

18. Latam informs Staff that he relied extensively on the representations of Fangeat and McGee. McGee was Saxton’s Vice-President and a lawyer. McGee and Fangeat made several representations to Latam concerning the business and financial state of Saxton, the nature and risk of the Saxton products and the implications of securities law to the distribution of the Saxton Securities.

19. Latam relied on McGee’s and Fangeat’s representations with no independent inquiry and without the requisite knowledge and experience upon which to properly judge the veracity of their statements. Among other things, Latam never reviewed any Saxton financial statements. Moreover, Latam’s earlier experience with Fangeat militated against significant reliance on Fangeat.

20. Latam received commissions of approximately \$185,000 on the sales described in paragraph 9 above. Latam had also been promised founders' shares when Saxton went public in lieu of renewal or trailer fees.

21. Latam sold Saxton Securities to at least one client after he was shown (in April 1998) documents which strongly indicated that Eizenga had used Saxton funds for his personal residence.

22. In early October 1997, Latam was contacted by an investigator in the Commission's Corporate Relations Branch respecting a client complaint. Among other things, the complaint related to Latam's sale of the Saxton Securities. Latam responded to the Commission's inquiries in early December, 1997. Although Latam did not hear from the Commission again until September 1998 (when the Commission issued the Temporary Order), Latam sold the Saxton Securities throughout November and December 1997 and continued to sell them until June 1998.

23. Latam's conduct in selling the Saxton Securities was contrary to Ontario securities law and the public interest.

24. Latam encouraged his clients Larry Ayres and Ron Masschaele to become salespeople of the Saxton Securities.

25. Latam co-operated with the Commission's investigation respecting the sale of Saxton Securities.

#### **IV TERMS OF SETTLEMENT**

26. Latam agrees to the following terms of settlement:

- (a) the making of an order:
  - (i) approving this settlement;
  - (ii) that trading in any securities by Latam cease for 8 years with the exception that, after one year from the date of the approval of this settlement, Latam is permitted to trade securities for the account of his registered retirement savings plan (as defined in the *Income Tax Act (Canada)*);
  - (iii) reprimanding Latam; and
  - (iv) that the Temporary Order no longer has any force or effect; and
- (b) Latam will undertake to the Commission that he will not apply to the Commission for registration for 8 years; and

- (c) within one year prior to applying to the Commission for registration Latam will successfully complete the Canadian Securities Course and Conduct and Practices Handbook Course.

## **V. STAFF COMMITMENT**

27. If this settlement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Latam in relation to the facts set out in Part III of this Settlement Agreement.

## **VI. APPROVAL OF SETTLEMENT**

28. Approval of the settlement set out in this Settlement Agreement shall be sought at the public hearing of the Commission scheduled for August 8, 2002, or such other date as may be agreed to by Staff and Latam (the "Settlement Hearing"). Latam will attend in person at the Settlement Hearing.

29. Counsel for Staff or Latam may refer to any part, or all, of this Settlement Agreement at the Settlement Hearing. Staff and Latam agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing.

30. If this settlement is approved by the Commission, Latam agrees to waive his rights to a full hearing, judicial review or appeal of the matter under the Act.

31. Staff and Latam agree that if this settlement is approved by the Commission, they will not make any public statement inconsistent with this Settlement Agreement.

32. If, for any reason whatsoever, this settlement is not approved by the Commission, or an order in the form attached as Schedule "A" is not made by the Commission:

- (a) this Settlement Agreement and its terms, including all discussions and negotiations between Staff and Latam leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and Latam;
- (b) Staff and Latam shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by this Agreement or the settlement discussions/negotiations;
- (c) the terms of this Settlement Agreement will not be referred to in any subsequent proceeding, or disclosed to any person, except with the written consent of Staff and Latam or as may be required by law; and

- (d) Latam agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement, the settlement discussions/negotiations or the process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

## **VII. DISCLOSURE OF SETTLEMENT AGREEMENT**

33. Except as permitted under paragraph 29 above, this Settlement Agreement and its terms will be treated as confidential by Staff and Latam until approved by the Commission, and forever, if for any reason whatsoever this settlement is not approved by the Commission, except with the consent of Staff and Latam, or as may be required by law.

34. Any obligations of confidentiality shall terminate upon approval of this settlement by the Commission.

## **VIII. EXECUTION OF SETTLEMENT AGREEMENT**

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

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

**DATED** this 6th day of August, 2002

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**WITNESS**

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**FRANK ALAN LATAM**

**DATED** this 6th day of August, 2002

**STAFF OF THE ONTARIO  
SECURITIES COMMISSION**

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**MICHAEL WATSON**  
Director, Enforcement Branch