

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

**- and -**

**IN THE MATTER OF MARLENE BERRY, ALLAN EIZENGA, RICHARD JULES  
FANGEAT, MICHAEL HERSEY, LUKE JOHN MCGEE,  
NORMAND RIOPELLE and ROBERT LOUIS RIZZUTO**

**SETTLEMENT AGREEMENT BETWEEN STAFF OF THE  
ONTARIO SECURITIES COMMISSION  
AND NORMAND RIOPELLE**

**I. INTRODUCTION**

1. By Notice of Hearing dated September 24, 1998 and Amended Notice of Hearing dated February 7, 2003 (the "Notice of Hearing"), the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing to consider, among other things, 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 Normand Riopelle ("Riopelle") permanently or for such time as the Commission may direct or such other orders as the Commission deems appropriate.

2. By Temporary Order dated September 24, 1998, the Commission ordered that the exemptions contained in subsections 35(1)21 and 35(2)10 of the Act do not apply to Riopelle (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 Riopelle initiated by the Notice of Hearing in accordance with the terms and conditions set out below. Riopelle 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 Riopelle agree with the facts set out in paragraphs 5 through 20 of this Settlement Agreement.

#### **Facts**

5. Saxton Investments Ltd. (“Saxton”) was incorporated on January 13, 1995. 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. During the material time, Riopelle was a level two life insurance agent. He has never been registered with the Commission under the Act to trade in securities.
9. Riopelle sold two Saxton investment products namely: (i) a “Fixed Dividend Account” product; and (ii) an “Equity Dividend Account” product. In either case, the investor purchased securities in one or more of the Offering Corporations (the “Saxton Securities”).
10. Riopelle sold the Saxton Securities to 11 Ontario investors for a total amount sold of approximately \$505,700. Each of the investors was an existing client of Riopelle.
11. The Offering Corporations were incorporated pursuant to the laws of Ontario. Riopelle’s sales of the Saxton Securities constituted trades in securities of an issuer that had not been previously issued. None of the Offering Corporations filed a prospectus with the Commission.
12. By selling the Saxton Securities to his clients, Riopelle 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.
13. Further, by selling the Saxton Securities to his clients, Riopelle traded in securities without being registered with the Commission and with no exemption from the registration requirements being available to him.
14. Riopelle 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 investors were provided with an Offering Memorandum, such Memorandum provided little information about Saxton other than the geographic location in which the company conducted business. Further, Riopelle never received any financial statements from Saxton.
15. Riopelle did not have a sufficient understanding of the Saxton products. He failed to conduct the appropriate due diligence respecting the nature and quality of the Saxton products and the regulatory requirements to sell such products.
16. Riopelle told his clients that the Saxton products were similar in nature to an insurance segregated fund notwithstanding that the Saxton Securities were described in the Offering Memoranda as “speculative”.
17. The Fixed Dividend Account product was marketed by Saxton and sold by Riopelle as providing an annual rate of return of 10.25% for a three year term compounded or 12% for a five year term compounded. Investors’ quarterly account statements reflected this rate of return.

18. Riopelle told investors that the Saxton products had been available for purchase for five years. He also told investors that a dividend of 30% had been paid on the Equity Dividend Account in each of the last two years. Investors' quarterly account statements reflected a market increase of between 25% to 30%.

19. Riopelle received commissions of approximately \$25,000 on the sales described in paragraph 10 above.

20. Riopelle's conduct was contrary to Ontario securities law and the public interest.

#### **IV. RIOPELLE'S POSITION**

21. Riopelle takes the position and represents to Staff that:

- (a) Rick Fangeat ("Fangeat") and Eizenga told him that he did not need a license to sell the Saxton Securities;
- (b) With reference to paragraph 18, he was told by Fangeat and Eizenga that Saxton had been in operation for five years and a dividend of 30% had been paid in each of the last two years. Fangeat and Eizenga showed him account statements that reflected a 30% dividend. He passed that information on to his clients;
- (c) He took comfort in the involvement of the Laurentian Bank. He received an agent number from, and investors opened accounts at, the Bank in order to purchase Saxton RRSP products. He assumed that the Bank had done due diligence on Saxton and the agents' licensing requirements; and
- (d) He did not move clients' money out of secure investments to purchase the Saxton Securities.

#### **V. TERMS OF SETTLEMENT**

22. Riopelle agrees to the following terms of settlement:

- (a) the making of an order:
  - (i) approving this settlement;
  - (ii) that trading in any securities by Riopelle cease for eleven months;
  - (iii) reprimanding Riopelle; and

- (iv) that the Temporary Order no longer has any force or effect.

## **VI. STAFF COMMITMENT**

23. If this Settlement Agreement is approved by the Commission, Staff will not initiate any proceeding under Ontario securities law respecting any conduct or alleged conduct of Riopelle in relation to the facts set out in Part III of this Settlement Agreement.

## **VII. APPROVAL OF SETTLEMENT**

24. Approval of the settlement set out in this Settlement Agreement shall be sought at the public hearing of the Commission scheduled for October 1, 2003 or such other date as may be agreed to by Staff and Riopelle (the "Settlement Hearing") in accordance with the procedures described in this Settlement Agreement. Riopelle will attend the Settlement Hearing in person.

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

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

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

28. 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 Riopelle leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and Riopelle;
- (b) Staff and Riopelle 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 Riopelle or as may be required by law; and

- (d) Riopelle 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.

### **VIII. DISCLOSURE OF SETTLEMENT AGREEMENT**

29. Subject to paragraph 25 above, this Settlement Agreement and its terms will be treated as confidential by Staff and Riopelle until approved by the Commission, and forever if, for any reason whatsoever, this settlement is not approved by the Commission, except with the written consent of Staff and Riopelle, or as may be required by law.

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

### **IX. EXECUTION OF SETTLEMENT AGREEMENT**

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

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

**DATED** this 22nd day of September, 2003

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**WITNESS**

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**NORMAND RIOPELLE**

**DATED** this 1st day of October , 2003

**STAFF OF THE ONTARIO  
SECURITIES COMMISSION**

"Michael Watson"  
**MICHAEL WATSON**  
Director, Enforcement Branch