

**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S-5, as amended**

- and -

**PARADIGM CAPITAL INC.
and
PATRICK McCARTHY**

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Hearing dated June 8, 2004, the Ontario Securities Commission announced that it proposed to hold a hearing to consider whether, pursuant to section 127 and 127.1 of the *Securities Act* (the “Act”), it is in the public interest for the Commission to make the following orders:

i) Re: Paradigm Capital Inc. (“Paradigm”)

- (a) that Paradigm submit to a review of certain of its practices, and procedures and institute such changes as may be ordered by the Commission;
- (b) that Paradigm be reprimanded;
- (c) that Paradigm be ordered to pay a portion of the costs of the investigation and this proceeding; and
- (d) such other order as the Commission may deem appropriate.

ii) Re: Patrick McCarthy (“McCarthy”)

- (a) that certain terms and conditions be placed on the registration of McCarthy;
- (b) that McCarthy be reprimanded;
- (c) that McCarthy be ordered to pay a portion of the costs of the investigation and this proceeding; and
- (d) such other orders as the Commission may deem appropriate.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission (“Staff”) recommends settlement of the allegations against Paradigm and McCarthy (the “Respondents”) in accordance with the terms and conditions set out below. The Respondents agree to the settlement on the basis of the facts set out in Part IV herein and consent to the making of an Order against them in the form attached as Schedules “A” and “B” on the basis of the facts set out in Part IV herein.
3. This settlement agreement, including the attached Schedules “A” and “B” (collectively, the “Settlement Agreement”) will be released to the public only if and when the Settlement Agreement is approved by the Commission.

III ACKNOWLEDGEMENT

4. Staff and the Respondents agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondents in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the Commission under the Act or any civil or other proceedings which may be brought by any other person or agency.

IV AGREED FACTS

i) The Respondents

5. Paradigm is registered in Ontario as a broker and investment dealer. During the material time Paradigm was acting as a co-lead agent in connection with a private placement of special warrants to be issued by Bioscript Inc. (“Bioscript”), a reporting issuer in Ontario, listed and posted for trading on the Toronto Stock Exchange (“TSX”), under the trading symbol “BYT”.
6. McCarthy is a shareholder and institutional salesperson at Paradigm and is registered in Ontario as a salesperson. McCarthy owns a 6.5% equity interest in Paradigm. During the material time McCarthy, on behalf of Paradigm, was actively involved in the sale of special warrants being issued by Bioscript by means of a private placement.

ii) The Offering

7. By letter dated October 11, 2001, Bioscript was advised by National Bank Financial Inc. (“NBF”) that a syndicate of agents would be formed to work with Bioscript in connection with a proposed private placement of special warrants

- (the “Offering”). NBF agreed to invite Paradigm, as well as other securities dealers, to act as an agent. The letter specified that Paradigm was to be allocated 42.5% of the Offering and that the terms of the Offering were to include the following: that the special warrant would be exercisable for no additional consideration into a common share; that the Offering would be for gross proceeds of \$10 million; that the agents would market the Offering on a best efforts basis; that the Offering would close on November 13, 2001; and that the agents’ commission would be 6.5% of the gross proceeds of the Offering, as well as compensation options. On October 12, 2001 the President and CEO of Bioscript, Pierre Donaldson (“Donaldson”), accepted the terms and conditions set out in the October 11, 2001 letter, subject to a minor amendment specifying that only 5% commission would be paid in connection with gross proceeds received from insiders.
8. On October 11, 2001, Paradigm placed Bioscript on a Restricted List. It was the policy of Paradigm at that time to place an issuer on its Restricted List in circumstances where: Paradigm had been asked to act as an underwriter in a public offering; Paradigm was working on an engagement which was sufficiently developed; and, where Paradigm was in a special relationship with the issuer according to section 76(5)(b) of the *Securities Act* (Ontario) (the “Act”). Pursuant to the Paradigm policy, once a security was placed on the Restricted List, trading in that security was limited to: normal market making; unsolicited orders; and, transactions as part of a basket for hedging, provided that any trading was done by persons who did not have knowledge of any material non-public information. The security could be removed from the Restricted List where the material non-public information had been generally disclosed to the marketplace, for example, upon the issuance of a press release covering all of the relevant facts.
 9. On October 17, 2001, a meeting was held at the offices of NBF attended by the members of the syndicate, including Paradigm, and management of Bioscript. At this meeting, a dry run was held of the presentation which was to be given during a cross country “road show” which was to commence on October 22, 2001. The dry run included the presentation of the Terms of the Issue (the “Terms”) which specified the nature of the security being offered (special warrants), the size of the Offering (approximately \$10 million, of which \$1 million had been committed to by Donaldson), the closing date (November 13, 2001), the escrow conditions, and the agents on the Offering.
 10. By letter dated October 17, 2001, Bioscript made an initial request to the TSX to grant price protection in respect of the Offering, noting that the closing price of Bioscript’s common shares on October 16, 2001 was \$2.38. In a further letter to the TSX dated October 22, 2001, Bioscript provided additional details in respect of the terms of the proposed Offering including the fact that insiders of Bioscript intended to participate in the Offering. By letter dated October 26, 2001 the TSX confirmed that price protection had been granted by the TSX to yield a minimum issue price of \$2.12 per special warrant. A subsequent amendment of the price

protection was sought by Bioscript on October 30, 2001 in order to reflect the closing price of Bioscript's common shares of \$1.95 on October 29, 2001. The TSX granted the amendment, but only in respect of arm's length purchasers of the Offering. As a result, the special warrants were ultimately issued to arm's length purchasers at \$1.60, and to insiders (i.e. Donaldson) at \$1.74.

11. In the period October 22, 2001 to October 30, 2001 the road show was conducted. A series of presentations to market the Offering were made to various institutional investors in Montreal, Toronto, Winnipeg and Vancouver by senior officers of Bioscript, and representatives from the syndicate. At these meetings, the Terms of the Offering were discussed with the would-be investors. In addition to the formal "road show" presentations, during this same period, the members of the syndicate also solicited the interest of institutional investors via telephone communications.
12. On November 2, 2001 Bioscript issued a press release in respect of the Offering announcing that NBF, as lead agent, together with Paradigm as co-lead, and two other securities dealers, had agreed to act as agents on a "best efforts" basis in connection with a private placement of \$10 million of Special Warrants to be issued at \$1.60 each. The private placement closed on November 14, 2001.

iii) "The Overtrade"

13. On October 18, 2001, McCarthy sent an e-mail to Eden Rahim, a portfolio manager at RBC Global Investment Management Inc. ("RBC GIM"), forwarding a copy of the Terms of the Offering. McCarthy suggested that a meeting be held the following week, at which Bioscript's CEO, Donaldson, would attend. Rahim managed the Royal Canadian Growth Fund ("RCGF") which held, at that time, approximately 1,551,100 freely trading shares of Bioscript. Approximately 570,000 of these shares had been purchased in the period July 1 to September 30, 2001 in an RBC GIM account at Paradigm in respect of which McCarthy was the institutional salesperson.
14. On or about October 26, 2001, a meeting was held with Rahim at the offices of RBC GIM attended by McCarthy and Donaldson. During the course of the meeting a presentation was made to Rahim in respect of the Offering. By no later than October 30, 2001, Rahim advised McCarthy that he intended to invest \$2 million in the Offering on behalf of the RCGF.
15. Contemporaneous with confirming Rahim's interest on behalf of the RCGF in the Offering, McCarthy also discussed with Rahim participating in what McCarthy described as an "overtrade" involving the freely trading shares of Bioscript held by the RCGF. An "overtrade" was understood to be an investment strategy that resulted in an investor purchasing freely trading shares in a company from an existing shareholder with the existing shareholder replacing those shares by purchasing shares on a new issue from the company's treasury.

16. On October 31, 2001, McCarthy e-mailed Rahim, stating “I need to talk to you on BYT, we are closing the books tonight and I want to make sure that we are clear on a few things. I have you in the book for \$2m plus the overtrade, which we talked about being 450,000 shares at \$1.70, but I could make that slightly bigger if you are interested. Please give me a call...”
17. On the morning of November 1, 2001, Rahim sent an e-mail in response to McCarthy, stating “that’s fine if you need to make the overtrade larger, let me know how much, and I’ll put it on the desk with JP [an equity trader at RBC GIM]”. McCarthy replied to Rahim the same day, stating:

Just want to double check all of the numbers with you:
You are buying 1,250,000 shares of the deal at \$1.60.
The overtrade we are proposing has been increased to 600,000 shares at \$1.70.
Therefore, you will be subscribing for 1,850,000 shares of the deal, and writing a cheque on November 12 for closing on November 13 for \$2,960,000.
On the overtrade, you will have proceeds of \$1,020,000.
Please confirm that this is OK, and we can do that trade later today.

Rahim replied shortly thereafter, stating “That’s fine, I’ll put the order on the desk”.

18. During the course of the road show in respect of the Offering, certain institutional investors, including Synergy Asset Management Inc. and Canadian Pacific Management Limited, advised Paradigm that they were not interested in purchasing securities pursuant to the Offering (which securities were subject to certain resale restrictions), but were interested in purchasing freely trading stock.
19. Peter Hodson (“Hodson”) was a portfolio manager at Synergy Asset Management Inc. (“Synergy”) serving as lead manager for the Synergy Canadian Small Cap Fund. Synergy was a client of Paradigm. On October 23, 2001, Hodson met with officials from Bioscrypt and Paradigm during which time a presentation was made in respect of the Offering. Hodson declined to purchase special warrants under the Offering but advised Paradigm that Synergy would be interested in purchasing freely trading shares of Bioscrypt. On November 1, 2001 Synergy placed an order to purchase up to 150,000 shares of Bioscrypt at \$1.70.
20. Chayanne Fickes (“Fickes”) was a portfolio manager with Canadian Pacific Management Limited (“CP”) where she managed the Canadian Pacific North American Pension Trust. CP was a client of Paradigm. On or about November 1, 2001, Fickes became aware of a block of Bioscrypt stock being made available. As a result, on November 1, 2001 CP placed an order to purchase up to 450,000 freely trading shares of Bioscrypt at \$1.70.

21. On November 1, 2001, trading in shares of Bioscript opened at a price of \$1.90. In order for Paradigm to complete the “overtrade”, which was to be filled at \$1.70, it was necessary for Paradigm to displace all better-priced bids in the market to achieve the “crossing” price for the overtrade. By means of 34 sell transactions, totaling 56,100 Bioscript shares (which formed part of the 600,000 shares to be sold on the “overtrade” by RBC GIM), the price of Bioscript was brought down to \$1.70. The purchasers of these 56,100 shares, at an average price of \$1.7984, had no knowledge of the Offering at the time their buy orders were filled by Paradigm on November 1, 2001.
22. Once the share price was brought down to \$1.70, the cross of the remaining 600,000 shares from the “overtrade” was executed. The 56,100 shares sold to bring the price down were deducted on a pro-rata basis from the orders placed by Synergy and CP. As a result of the “overtrade”, Synergy purchased 135,000 shares at \$1.70; CP purchased 408,900 at \$1.70; and RBC GIM sold 600,000 shares at an average price of \$1.7092.
23. In connection with the sale of the 600,000 special warrants to the RCGF and the cross of the 600,000 shares further to the overtrade, Paradigm earned a commission of \$43,340. In addition to these commissions, Paradigm also received 24,000 compensation options in connection with the sale of the 600,000 special warrants sold to the RCGF which options were exercised and subsequently sold at a profit to Paradigm of \$12,415. Paradigm’s total profit with respect to these transactions was \$55,755.

iv) The Respondents’ Position

24. The Paradigm employees who were involved in arranging and executing the overtrade did not intend to breach any aspect of Ontario securities law, but simply failed to appreciate that the overtrade resulted in shares of Bioscript being sold by a person who had knowledge of the Offering to persons who had no such knowledge. Paradigm has cooperated fully with Staff’s investigation of this matter since the outset. In addition, on its own initiative Paradigm has retained outside counsel to revise Paradigm’s restricted list policy to ensure that all of its employees are fully aware of the potential ramifications of overtrades in connection with private placements.
25. McCarthy did not intend to breach any section of the Act or any policy of the Ontario Securities Commission. At the time he believed that the purchasers of the overtrade stock (i.e. Synergy and CP) were aware of the private placement. He did not turn his mind to the fact that the trades necessary to achieve the crossing price for the overtrade, i.e. the 56,100 shares, would or could be sold to persons without knowledge of the private placement which was scheduled to be announced the next day. McCarthy did not himself make those trades, although he was aware that they were being made. There was no commission charged or

received with respect to the sale of the 56,100 shares. Although McCarthy is a 6.5% equity owner in Paradigm, he received no direct commission or fee credit with respect to the overtrade or any aspect thereof.

V. CONDUCT CONTRARY TO THE PUBLIC INTEREST

26. Paradigm's conduct was contrary to the public interest in failing to properly supervise and restrict the activities of McCarthy, and other employees, in connection with the conduct of secondary market trading in shares of Bioscript, at a time when Bioscript was on the Paradigm Restricted List as a consequence of Paradigm agreeing to act as an agent for the purpose of an offering which had not been generally disclosed to the public.
27. McCarthy acted contrary to the public interest by agreeing to facilitate a transaction in the secondary market, the "overtrade", which resulted in shares of Bioscript being sold by persons, with knowledge of a material fact which had not been generally disclosed, to persons who had no knowledge of that material fact, despite Bioscript having been placed on a Paradigm Restricted List.

VI. TERMS OF SETTLEMENT

28. Paradigm agrees to the following terms of settlement:
 - (a) that further to a recent review of its practices and procedures respecting the receipt of confidential material information while acting as an agent on behalf of an issuer, Paradigm will implement a revised policy with such modifications as may be requested by Staff;
 - (b) that Paradigm be reprimanded;
 - (c) that Paradigm will make a settlement payment of \$55,755 to the Ontario Securities Commission for allocation to or for the benefit of such third parties as may be approved by the Minister under section 3.4(2) of the Act; and
 - (d) that Paradigm will make a payment of \$30,000 to the Ontario Securities Commission in respect of a portion of the costs of the investigation and this proceeding.
29. McCarthy agrees to the following terms of settlement:
 - (a) that McCarthy's registration as a salesperson be restricted to institutional sales for a period of one year from the date of the Commission order;

- (b) that McCarthy will take the Canadian Securities Course on Securities Law and Regulations within one year from the date of the Commission order;
- (c) that McCarthy be reprimanded; and
- (d) that McCarthy will make a payment of \$30,000 to the Ontario Securities Commission in respect of a portion of the costs of the investigation and this proceeding.

VII. STAFF COMMITMENT

- 30. If this Settlement Agreement is approved by the Commission, Staff will not initiate any proceeding under Ontario securities law in respect of any conduct or alleged conduct of the Respondents in relation to the facts set out in Part IV of this Settlement Agreement, subject to the provisions of paragraph 34 and 35 below.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

- 31. Approval of this Settlement Agreement shall be sought at the public hearing of the Commission scheduled for June 11, 2004 or such other date as may be agreed to by Staff and the Respondents.
- 32. Staff and the Respondents may refer to any part, or all, of the Settlement Agreement at the Settlement Hearing. Staff and the Respondents also agree that if this Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted respecting the Respondents in this matter, and Respondents agrees to waive their rights to a full hearing, judicial review or appeal of the matter under the Act.
- 33. Staff and the Respondents agree that if this Settlement Agreement is approved by the Commission, neither Staff nor the Respondents will make any public statement inconsistent with this Settlement Agreement.
- 34. If the Respondents fails to honour the agreement contained in paragraph 33 of this Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against the Respondents based on the facts set out in Part IV of this Settlement Agreement, as well as the breach of the Settlement Agreement.
- 35. If the Settlement Agreement is approved by the Commission, and at any subsequent time the Respondents fails to honour any of the Terms of Settlement set out in Part V herein, Staff reserve the right to bring proceedings under Ontario securities law against the Respondents based on the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement.

36. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or an Order in the form attached as Schedules "A" and "B" is not made by the Commission, each of Staff and the Respondents will 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, unaffected by this Settlement Agreement or the settlement negotiations.
37. Whether or not this Settlement Agreement is approved by the Commission, the Respondents agree that they will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

IX. DISCLOSURE OF AGREEMENT

38. The terms of this Settlement Agreement will be treated as confidential by all parties hereto until approved by the Commission, and forever if, for any reason whatsoever, this Settlement Agreement is not approved by the Commission, except with the written consent of both the Respondents and Staff or as may be required by law.
39. Any obligations of confidentiality shall terminate upon approval of this Settlement Agreement by the Commission.

X. EXECUTION OF SETTLEMENT AGREEMENT

40. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.
41. A facsimile copy of any signature shall be effective as an original signature.

Dated this 7th day of June, 2004.

“John Warwick”

Witness

“David Roland”

Paradigm Capital Inc.

“John Warwick”

Witness

“Patrick McCarthy”

Patrick McCarthy

Dated this 9th day of June, 2004

“Michael Watson”

Staff of the Ontario Securities Commission
Per: “Michael Watson”
Director, Enforcement Branch

SCHEDULE "A"

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

AND

PARADIGM CAPITAL INC.

**ORDER
(Sections 127 and 127.1)**

WHEREAS on June 8, 2004, the Commission issued a Notice of Hearing (the "Notice of Hearing") pursuant to sections 127 and 127.1 of the *Securities Act* (the "Act") in respect of Paradigm Capital Inc.;

AND WHEREAS Paradigm Capital Inc. ("Paradigm") entered into a settlement agreement with Staff of the Commission (the "Settlement Agreement"), in which Paradigm agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

AND WHEREAS Paradigm, of its own initiative, has recently undertaken a review of its practices and procedures respecting the receipt of confidential material information while acting as an agent on behalf of an issuer, and has submitted for Staff's review a revised policy which Paradigm undertakes to implement with such modifications as may be requested by Staff;

AND UPON reviewing the Settlement Agreement and the Notice of Hearing and Statement of Allegations of Staff of the Commission, and upon hearing submissions from the Respondent 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 dated _____, attached hereto, is hereby approved;
- (b) that pursuant to s.127(2) and further to a recent review of its practices and procedures respecting the receipt of confidential material information while acting as an agent on behalf of an issuer, Paradigm will implement a revised policy with such modifications as may be requested by Staff;
- (c) that pursuant to s.127(1) clause 6, that Paradigm is reprimanded;
- (d) that Paradigm make a settlement payment of \$55,755 to the Ontario Securities Commission for allocation to or for the benefit of such third parties as may be approved by the Minister under section 3.4(2) of the Act; and
- (e) that pursuant to s.127.1, Paradigm make a payment of \$30,000 to the Ontario Securities Commission in respect of a portion of the costs of the investigation and this proceeding.

DATED at Toronto this ____ day of _____, 2004

SCHEDULE “B”

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

AND

PATRICK McCARTHY

**ORDER
(Sections 127 and 127.1)**

WHEREAS on June 8, 2004, the Commission issued a Notice of Hearing (the “Notice of Hearing”) pursuant to sections 127 and 127.1 of the *Securities Act* (the “Act”) in respect of Patrick Mccarthy;

AND WHEREAS Patrick McCarthy (“McCarthy”) entered into a settlement agreement with Staff of the Commission (the “Settlement Agreement”), in which he agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement and the Notice of Hearing and Statement of Allegations of Staff of the Commission, and upon hearing submissions from the Respondent 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 dated _____, attached hereto, is hereby approved;

- (b) that pursuant to s.127(1) clause 1, McCarthy's registration as a salesperson be restricted to institutional sales for a period of one year from the date of the Commission order;
- (c) that McCarthy take the Canadian Securities Course on Securities Law and Regulations within one year from the date of the Commission order;
- (d) that pursuant to s.127(1) clause 6, McCarthy be reprimanded; and
- (e) that pursuant to s.127.1, McCarthy make a payment of \$30,000 to the Ontario Securities Commission in respect of a portion of the costs of the investigation and this proceeding.

DATED at Toronto this _____ day of _____, 2004
