

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

**IN THE MATTER OF THE *STATUTORY POWERS PROCEDURE ACT*, R.S.O. 1990, c. S. 22, as amended; and**

**IN THE MATTER OF MICHAEL NEWBURY**

**SETTLEMENT AGREEMENT BETWEEN THE  
STAFF OF THE ONTARIO SECURITIES COMMISSION  
AND MICHAEL NEWBURY**

**I. INTRODUCTION**

1. Pursuant to section 5(1) of the “Practice Guidelines – Settlement Procedures in Matters before the Ontario Securities Commission” of the Ontario Securities Commission Rules of Practice, Staff of the Ontario Securities Commission and Michael Newbury (“Newbury”) propose to settle the matters described below on the terms set out herein.

**II. STATEMENT OF FACTS**

**Acknowledgment**

2. Newbury acknowledges that the facts set out in paragraphs 3 through 16 of this Settlement Agreement are correct.

**Facts**

3. OntZinc Corporation (“OntZinc”) is a mining company incorporated under the Ontario *Business Corporations Act* with its head office in Toronto, Ontario.
4. Newbury is a registered professional engineer in Ontario.

5. On March 24, 2004, OntZinc entered into a confidentiality agreement with Anglo American plc (“Anglo”) respecting the sale of the assets of Hudson Bay Mining and Smelting Co. Ltd. (“HBMS”) to OntZinc.
6. In April 2004, OntZinc received a Confidential Information Memorandum from RBC Capital Markets, Anglo’s financial advisors. On May 5, 2004, OntZinc’s Board of Directors approved a non-binding proposal to acquire HBMS which was submitted to RBC the following day. OntZinc proposed a bid in the range of \$250 million to \$350 million.
7. On May 15, 2004, OntZinc was informed by RBC that they had been selected to continue in the acquisition process. OntZinc engaged legal counsel and financial advisors. The financial advisors were Credit Suisse First Boston (“CSFB”). OntZinc also retained the geological consulting firm of A.C.A. Howe. A.C.A. Howe contracted with Newbury to complete the geological due diligence of HBMS for OntZinc.
8. On July 20, 2004, OntZinc submitted a binding acquisition proposal to RBC.
9. On September 17, 2004, OntZinc received word that they would negotiate exclusively with Anglo from that point.
10. On October 7, 2004, OntZinc and Anglo signed the Purchase Sale Agreement for the assets of HBMS pending shareholder approval. This agreement was publicly disclosed on October 8, 2004. Trading was halted on this date prior to the announcement. On October 18, 2004, trading in OntZinc resumed and there was a significant impact on the price of OntZinc shares.
11. As the geological consultant for OntZinc, Newbury completed a due diligence review of HBMS. This involved a review of the financial documents, resource reports, operating statistics as well as a visit to the mine site. Newbury used the material he reviewed to prepare a report on HBMS. He also developed a financial model for OntZinc which assessed HBMS’s forecast.
12. Approximately one week prior to the submission of the binding offer on July 20, 2004, Newbury delivered his report to OntZinc and its principal financial advisor, CSFB. In general terms, Newbury made a favourable assessment of HBMS.
13. In September, 2004, Newbury was aware that Ontzinc was involved in exclusive negotiations for the acquisition of HBMS.
14. On October 1, 2004, Newbury purchased 50,000 shares of OntZinc at .06¢ per share. The “profit made” on the 50,000 shares was \$3,925.00.

15. Newbury believed that the information about the acquisition of HBMS by OntZinc had been disclosed but, in fact, the acquisition had not been generally disclosed and was not generally disclosed until October 8, 2004.

#### **Newbury's Conduct**

16. Newbury purchased the OntZinc's shares at a time when he was in a special relationship with OntZinc while possessed of undisclosed material information. Newbury believed that OntZinc had generally disclosed the material information but acknowledges that he failed to ensure that the information had been generally disclosed before he purchased the OntZinc shares.
17. Newbury has cooperated with staff throughout this investigation.

### **III. TERMS OF SETTLEMENT**

18. Newbury agrees to the following settlement terms:
  - a. payment of \$7,850.00 payable to the Ontario Securities Commission for the benefit of the third parties;
  - b. payment in the amount of \$5,000 toward to the cost of investigation of this matter;
  - c. for the next 12 months, Newbury undertakes not to trade in any securities of any company to which Newbury acts as a geological consultant unless he receives prior written confirmation from in-house counsel of the company to which he acts as a consultant; and
  - d. that he comply with Ontario securities law.

### **IV. STAFF COMMITMENT**

19. If this Settlement receives the consent of the Executive Director, and Newbury satisfies the terms set out above, Staff will not initiate any other proceedings under the Act against Newbury in relation to the facts set out in Part II of this Settlement Agreement.
20. If this Settlement receives the consent of the Executive Director, and at any subsequent time Newbury fails to honour the terms of this Settlement Agreement, Staff reserve the right to refer to this Settlement Agreement in any future proceeding.

### **V. APPROVAL OF SETTLEMENT**

21. If, for any reason whatsoever, the Executive Director does not consent to this Settlement:

- (a) this Settlement Agreement and its terms, including all discussions and negotiations between Staff and Newbury leading up to the execution of this Settlement Agreement, shall be without prejudice to Staff and Newbury;
- (b) Staff and Newbury shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of these matters before the Commission, unaffected by this Settlement Agreement or the settlement discussions/negotiations; and
- (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 Newbury or as may be required by law.

## **VI. DISCLOSURE OF SETTLEMENT AGREEMENT**

- 22. This Settlement Agreement and its terms will be treated as confidential by Staff and Newbury until consented to by the Executive Director, and forever, if for any reason whatsoever this settlement is not consented to by the Executive Director, except with the consent of Staff and Newbury, or as may be required by law.
- 23. Any obligation of confidentiality shall terminate upon receiving the Executive Director's consent to this settlement.
- 24. Staff and Newbury agree that if the Executive Director does consent to this Settlement, they will not make any public statement inconsistent with this Settlement Agreement.

## **VII. EXECUTION OF SETTLEMENT AGREEMENT**

- 25. Newbury hereby acknowledges and agrees that he has obtained or waived legal advice in connection with this Settlement Agreement and acknowledges that he understands and voluntarily accepts and agrees to the terms set out herein.
- 26. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

