

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

and

**IN THE MATTER OF ERNEST ANDERSON,  
GOLDEN GATE FUNDS LP, BERKSHIRE CAPITAL LIMITED,  
GP BERKSHIRE CAPITAL LIMITED AND  
PANAMA OPPORTUNITY FUND**

**SETTLEMENT AGREEMENT  
BETWEEN STAFF AND ERNEST ANDERSON  
AND GOLDEN GATE FUNDS LP**

**PART I – INTRODUCTION**

1. The Ontario Securities Commission (the “Commission”) will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”), it is in the public interest for the Commission to make certain orders in respect of Ernest Anderson, Golden Gate Funds LP, Berkshire Capital Limited, GP Berkshire Capital Limited and Panama Opportunity Fund (the “Respondents”).

**PART II – JOINT SETTLEMENT RECOMMENDATION**

2. Staff of the Commission (“Staff”) agree to recommend settlement of the proceeding commenced by Notice of Hearing dated September 21, 2009 (the “Proceeding”) against Ernest Anderson (“Anderson”) and Golden Gate Funds LP according to the terms and conditions set out in Part VI of this Settlement Agreement. Anderson and Golden Gate Funds LP agree to the making of an order in the form attached as Schedule “A”, based on the facts set out below.

**PART III – AGREED FACTS**

3. For this proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, Anderson and Golden Gate Funds LP agree with the facts as set out in Part III of this Settlement Agreement.
4. Anderson is an individual who resides in Ontario. Anderson was the owner and the signatory and/or an officer and director of the Golden Gate entities described below from December 31, 2003 until at least October 1, 2008 when GP Golden Gate Ltd., the general partner, was assigned into bankruptcy. In or about February 2009, Anderson became the founding Chairman and managing director of the Berkshire entities also described below.
5. Anderson has never been registered in accordance with Ontario securities law.
6. Golden Gate Funds LP is a limited partnership which was registered with the Ontario Ministry of Consumer and Businesses Services on December 31, 2003. GP Golden Gate Limited was the general partner. Anderson is the signatory. The stated general nature of business of Golden Gate Funds LP was investments.
7. Golden Gate Funds LP has never been registered in accordance with Ontario securities law.
8. Golden Gate Funds LP has never been a reporting issuer in Ontario.
9. Golden Gate Funds LP has never filed a preliminary or final prospectus with the Ontario Securities Commission (the “Commission”) and receipts have not been issued for them by the Director.
10. Berkshire Capital Limited is a company incorporated in the Republic of Panama (“Berkshire”).
11. GP Berkshire Capital Limited is a company incorporated in the Republic of Panama (“GP Berkshire”).

12. Panama Opportunity Fund is purported to be a fund wholly owned and operated by Berkshire (“POF”).
13. Berkshire, GP Berkshire, POF (collectively, the “Berkshire entities”) have never been registered in accordance with Ontario securities law.
14. The Berkshire entities have never been reporting issuers in Ontario.
15. The Berkshire entities have never filed a preliminary or final prospectus with the Commission and receipts have not been issued for them by the Director.

**A. Illegal distribution and unregistered trades of Golden Gate Funds LP securities**

16. Golden Gate Funds LP was a fund that purported to invest in cash, cash equivalents, liquid investments, residential and commercial mortgages and real property assets.
17. Golden Gate Funds LP offered for sale to investors, units of Golden Gate Funds for \$100 each with a guaranteed annual rate of return of 8% and “100% protection of principal”. The minimum investment required per person was \$10,000 for 100 units and there were no restrictions on the maximum investment. In addition, Golden Gate Funds LP offered the opportunity to share 50% of the company’s net profit, no fees to invest or withdraw funds, no minimum investment period and low risk and volatility.
18. Between September 9, 2004 and May 21, 2007, approximately \$8,169,687.10 worth of units in Golden Gate Funds LP were sold to at least 155 Ontario investors.
19. Golden Gate Funds LP sold units: (i) directly by unregistered salespeople who were employees of Golden Gate Funds or a related company; (ii) indirectly by at least one unregistered salesperson at an unregistered entity; and (iii) approximately \$3,525,429 worth of units indirectly by a dealer/registrant.

20. On August 10, 2005, May 31, 2006 and October 19, 2007, Golden Gate Funds LP filed 45-106 forms (or its predecessor form 45-501) with the Commission and claimed the accredited investor exemption from prospectus and registration requirements in paragraph 2.3 of National Instrument 45-106. Several Golden Gate Funds LP investors who invested directly through unregistered salespeople were not accredited at the time they purchased the units.
21. Anderson and Golden Gate Funds LP traded in approximately \$4,644,258.10 worth of Golden Gate Funds LP securities in breach of the prospectus and registration requirements of Ontario securities law.
22. Contrary to the Golden Gate Limited Partnership agreement, investor funds were not used to purchase an investment portfolio of mortgages.
23. Investor money was transferred from Golden Gate Funds LP to the bank accounts of other related companies, used to pay operating costs for Golden Gate Funds LP and other related companies used to pay monthly interest payments to other investors and, used to re-pay investors from a previous investment scheme operated by Anderson.
24. Although Golden Gate Funds LP stated business was investments, Golden Gate Funds LP has been holding itself out as and have been engaging in the business of trading securities in Ontario as described above. Accordingly, Golden Gate Funds LP has been acting as a market intermediary and is required to be registered in accordance with Ontario securities law.

**B. Illegal distribution and unregistered trades of Panama Opportunity Fund securities**

25. In February or March of 2008, Anderson moved to Panama where he started a similar business offering a new investment called POF. Anderson was the founding Chairman and managing director of Berkshire and GP Berkshire, the Panamanian companies that offered POF for sale on Berkshire's website.

26. Anderson also put together some forms for the Berkshire entities, including a subscription agreement. These promotional documents are similar to the Golden Gate Funds LPs' promotional documents and promised "a simple 8% annual return" and "investor principal is 100% protected and a steady income is generated by investing in a diverse portfolio of mortgages".
27. As a result of these acts in furtherance of a trade of POF securities, on January 27, 2009, Staff obtained a temporary cease trade order against the Berkshire entities and against Anderson personally, which order has been extended.

#### **PART IV – CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST**

28. By engaging in the conduct described above, Anderson and Golden Gate Funds LP have breached Ontario securities law by contravening section 25(1) and 53(1) of the Act, particulars of which are set out below, and has acted contrary to the public interest.

#### **PART V – TERMS OF SETTLEMENT**

29. Anderson and Golden Gate Funds LP agree to the terms of settlement listed below.
30. The Commission will make an order pursuant to section 127(1) and section 127.1 of the Act that:
  - (a) The settlement agreement is approved;
  - (b) Trading in any securities by or of Anderson and Golden Gate Funds LP shall cease permanently;
  - (c) Acquisition of any securities by Anderson and Golden Gate Funds LP is prohibited permanently;

- (d) Any exemptions contained in Ontario securities law do not apply to Anderson and Golden Gate Funds LP permanently.
  - (e) Anderson and Golden Gate Funds LP are reprimanded.
  - (f) Anderson resign any position that he holds as a director or officer of an issuer;
  - (g) Anderson is prohibited from becoming or acting as a director or officer of any issuer;
  - (h) Anderson and Golden Gate Funds LP shall each pay an administrative penalty of \$126,795.00 to be allocated under s. 3.4(2) of the Act to or for the benefit of third parties;
  - (i) Anderson and Golden Gate Funds LP shall jointly disgorge to the Commission the sum of \$4,644,258.10 to be allocated under s. 3.4(2) of the Act to or for the benefit of third parties; and
  - (j) Anderson and Golden Gate Funds LP shall jointly pay costs of the investigation in this matter in the amount of \$20,000.00.
31. Anderson and Golden Gate Funds LP undertake to consent to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the prohibitions set out in sub-paragraphs 30(a) to (g) above. These prohibitions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

#### **PART VI – STAFF COMMITMENT**

32. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding under Ontario securities law in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 33 below.

33. If the Commission approves this Settlement Agreement and Anderson and Golden Gate Funds LP fail to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against Anderson and Golden Gate Funds LP. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement.

#### **PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT**

34. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for October 2, 2009, or on another date agreed to by Staff and Anderson and Golden Gate Funds LP, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Practice.
35. Staff and Anderson and Golden Gate Funds LP agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on Anderson and Golden Gate Funds LP's conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.
36. If the Commission approves this Settlement Agreement, Anderson and Golden Gate Funds LP agree to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.
37. If the Commission approves this Settlement Agreement, neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.
38. Whether or not the Commission approves this Settlement Agreement, Anderson and Golden Gate Funds LP will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

**PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT**

39. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule “A” to this Settlement Agreement:
- i. this Settlement Agreement and all discussions and negotiations between Staff and Anderson and Golden Gate Funds LP before the settlement hearing takes place will be without prejudice to Staff and Anderson and Golden Gate Funds LP; and
  - ii. Staff and Anderson and Golden Gate Funds LP will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.
40. The parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality. If the Commission does not approve the Settlement Agreement, both parties must continue to keep the terms of the Settlement Agreement confidential, unless they agree in writing not to do so or if required by law.

**PART IX – EXECUTION OF SETTLEMENT AGREEMENT**

41. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.

42. A fax copy of any signature will be treated as an original signature.

Dated this 25th day of September, 2009.

"Ernest Anderson"  
Ernest Anderson

"Milton Chambers"  
Witness

"Milton Chambers"  
The Trustee in Bankruptcy of  
Golden Gate Ltd. which is the  
General Partner of Golden Gate Funds LP

"Ernest Anderson"  
Witness

"Tom Atkinson"  
Director, Enforcement Branch

"Jessica Magpayo"  
Witness