



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

-and-

IN THE MATTER OF IBK CAPITAL CORP. and WILLIAM F. WHITE

SETTLEMENT AGREEMENT

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 IBK Capital Corp. (“IBK”) and William White (“Mr. White”).

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission (“Staff”) and the Respondents agree to recommend settlement of the proceeding commenced by Notice of Hearing dated November 12, 2009 (the “Proceeding”) against the Respondents according to the terms and conditions set out in Part V of this Settlement Agreement. Staff and the Respondents agree to the making of an order in the form attached as Schedule “A”, based on the facts set out below.

III. AGREED FACTS

3. The Respondents admit the facts set out in this Settlement Agreement solely for the purposes of this Settlement Agreement. This Settlement Agreement and the facts and admissions set out herein are without prejudice to the Respondents in any actions or proceedings including, without limitation, any civil, administrative, quasi-criminal or criminal actions or proceedings that may be brought by any person or agency, whether or not this Settlement Agreement is approved by the Commission.

Background

4. The Respondent, IBK is a privately owned investment banking firm which offers a range of services, including private placements. Mining is one of several sectors in which IBK specializes. IBK is registered under the *Act* as an exempt market dealer.

5. Mr. White is a founder of IBK and has been a shareholder, director and the President of IBK since its inception in 1989.

Private Placements - South American Gold and Copper Company

6. In 2003 and 2004, IBK acted as the placement agent on three private placements for South American Gold and Copper Company ("SAG"), which shall be referred to as PP1, PP2 and PP3. Mr. White was SAG's main contact at IBK during the time of PP1, PP2 and PP3.

7. IBK was registered under the *Act* as a limited market dealer during 2003 and 2004.

8. SAG is an Ontario company listed on the Toronto Stock Exchange (TSX). SAG is a mineral exploration and development mining company. SAG's exploration and development

interests were concentrated in Chile where it owned 100% of the Pimenton gold mine. During PPI, PP2 and PP3, SAG was represented by a senior securities lawyer with a prominent Canadian law firm who had advised SAG and served as its Secretary since 1998.

9. During the time of PP1 and PP2, the price of gold was rising. On October 9, 2003, the price of gold closed at US \$370.60 per ounce. On November 14, 2003, the price of gold closed at US \$396.70 per ounce. The price of gold had not broken through the US \$400 an ounce level since 1996.

PP1

10. On October 15, 2003, SAG executed a private placement term sheet with IBK, as placement agent, under which SAG proposed to raise up to \$3.5 million¹ by issuing up to 50 million units priced at \$0.07 each (the "PP1 Term Sheet"). Each unit was to entitle the holder to acquire one common share of SAG and one half of one common share purchase warrant. Each full warrant was to entitle the holder to purchase an additional common share of SAG for a purchase price of \$0.09 for a period of two years from the closing date.

11. On October 28, 2003, SAG's counsel filed a notice of a proposed private placement in respect of PP1 with the TSX. The proposal was conditionally accepted by the TSX the following day.

12. SAG's Board of Directors approved PP1 by resolution dated November 3 or 6, 2003.

13. On November 10 and 11, 2003, SAG made presentations to 75 brokers and accredited investors in Montreal and 90 brokers and accredited investors in Toronto during luncheons held at the AMEX Club. The Respondents have advised Staff that PP1 was discussed at the luncheons in Montreal and Toronto.

¹ All amounts in Canadian dollars unless otherwise noted.

14. On November 12, 2003, IBK emailed the term sheet for PP1 to approximately 230 institutions, including brokers, and accredited investors.
15. The financing for PP1 closed on November 27, 2003. By means of a press release dated December 2, 2003, SAG publicly announced the terms and closing of PP1.
16. On December 10, 2003, SAG's counsel filed a Material Change Report in respect of PP1 with the Commission. The Material Change Report refers to November 27, 2003 as the date of the material change.

PP2

17. Around November 14, 2003, Mr. White became aware that there were indications of interest in PP1 in excess of the allotted 50 million units. Mr. White communicated this information to SAG, which in turn communicated the information to SAG's counsel.
18. On November 14, 2003, SAG's counsel sought permission from the TSX to increase the size of PP1, which request was denied.
19. On or about November 17, 2003, IBK sent a draft term sheet for a second private placement to SAG.
20. SAG executed a private placement term sheet with IBK on November 19, 2003 under which SAG proposed to raise up to \$3.15 million by issuing up to 40 million units priced at \$0.07875 each and IBK was to be the placement agent (the "PP2 Term Sheet"). Each unit was to entitle the holder to acquire one common share of SAG and one whole common share purchase warrant. Each warrant was to entitle the holder to purchase an additional common share of SAG for a purchase price of \$0.105 for a period of three years from the closing date.

21. On November 20, 2003, SAG's counsel filed a notice of a proposed private placement in respect of PP2 with the TSX. The proposal was conditionally accepted by the TSX on November 27, 2003.
22. SAG's Board of Directors approved PP2 by resolution dated December 3 or 5, 2003.
23. The financing for PP2 closed on December 10, 2003. By means of a press release dated December 12, 2003, SAG publicly announced the terms and closing of PP2.
24. On December 12, 2003, SAG's counsel filed a Material Change Report in relation to PP2 with the Commission. The Material Change Report refers to December 10, 2003 as the date of the material change.
25. The effect of PP2 was to increase the share capital of SAG by 12.6% on a proforma basis and 21.38% on a fully diluted basis assuming the exercise of all options and warrants outstanding.
26. The combined effect of PP1 and PP2 was to increase the share capital of SAG by 33.7% on a proforma basis and 52.49% on a fully diluted basis assuming the exercise of all options and warrants outstanding.

Trading by Mr. White and IBK

27. By November 17, 2003, Mr. White and IBK knew that there were indications of interest in excess of the 50 million units allotted to PP1. In addition, by that date, IBK had prepared a second private placement term sheet for SAG, which was executed by IBK and SAG as of November 19, 2003. By November 19, 2003, the Respondents knew that the PP2 term sheet had been signed.

28. On November 17 and 18, 2003, at Mr. White's instruction, IBK sold a total of 8,153,781 shares of SAG held in the name of IBK through five separate sell orders. Approximately 50% of the sales were made for the benefit of IBK. The balance of the sales were in relation to shares held in IBK's house account on behalf of other SAG shareholders, including 450,607 shares for Mr. White and 445,984 shares for Kreative Ventures Limited ("Kreative"), a company owned jointly by Mr. White and his wife.

29. On November 17 and 18, 2003, Mr. White sold a total of 5,213,675 shares of SAG in his own name and 383,924 shares of SAG in the name of Kreative, through four separate sell orders.

30. From November 19, 2003 to December 1, 2003, Mr. White caused IBK to sell a total of 5,002,022 shares of SAG, held in IBK's house account, on behalf of Stephen Houghton, the CEO of SAG, through seven separate sell orders.

31. On December 1, 2003, Mr. White sold 205,948 shares of SAG.

32. Mr. White used approximately 24% of the proceeds from the sale of his freely tradeable SAG shares referred to in paragraphs 28, 29 and 31 above at market prices averaging \$0.105 per share to purchase PP2 units for a purchase price of \$0.07875 per unit, each unit consisting of a share and one common share purchase warrant that were subject to a four month hold period.

Mr. White and IBK's conduct contrary to the public interest and contrary to section 76 of the Act

33. It is acknowledged that each of the facts referred to in paragraph 27 above constituted a material fact about SAG that was not generally disclosed to the public when Mr. White sold the SAG shares referred to in paragraphs 28 to 31 above and that the Respondents thereby breached subsection 76(1) of the Act and acted contrary to the public interest by trading in SAG shares during the period November 17, 2003 to December 1, 2003.

IBK's failure to maintain policies and procedures was contrary to the public interest

34. During the time of the trading referred to above, IBK did not have in place any internal lists, policies or procedures prohibiting trading in securities of a reporting issuer by IBK, its officers, directors or employees when IBK was in possession of a material fact in relation to the issuer.

35. It is acknowledged that this lack of internal lists, policies and procedures was contrary to the public interest.

36. In response to the publication of OSC Notice 11-758, IBK identified and retained ARA Compliance Support to review and augment IBK's existing policies and procedures manual for IBK and to generally assist IBK with compliance related matters. ARA Compliance Support completed a first draft of the manual in September, 2006. The Respondents advise Staff that the final version of the manual was completed and delivered to IBK's partners and employees in September, 2007. The Respondents advise Staff that the manual has since been updated to address the requirements of National Instrument 31-103 *Registration Requirements and Exemptions*.

Mr. White's failure to disclose the sale of SAG shares on TSX Private Placement Questionnaires was contrary to the public interest

37. In addition to the conduct referred to above, Mr. White filed six inaccurate questionnaires with the TSX in relation to his trading in SAG shares.

38. During the time of PP1, PP2 and PP3 referred to below, subsection 619(c) of Part VI of the TSX Manual entitled "Changes in Capital Structure of Listed Companies" required a listed company to file with the TSX, a Private Placement Questionnaire and Undertaking (the "TSX Questionnaire") completed by each proposed purchaser whereby the purchaser was required to disclose any dealings in the securities of the issuer, directly or indirectly, within the 60 days preceding the date of the TSX Questionnaire and to undertake not to trade the securities during the applicable hold period without the benefit of an exemption from the prospectus requirements.

39. On five occasions, Mr. White used the wrong dates in completing TSX questionnaires in relation to his purchase of PP2 and PP3 units. As a result, the five questionnaires erroneously indicated that Mr. White had no dealings in shares of SAG in the 60 days prior to his purchase of PP2 and PP3 units. In fact, in relation to each of the five questionnaires, Mr. White had sold SAG shares in the 60 day period prior to purchasing PP2 and PP3 units.

40. Mr. White signed a sixth TSX Questionnaire in relation to his purchase of PP3 units with a date of October 25, 2004 and again, represented that he had no dealings with the securities of SAG within the 60 days preceding the date of the questionnaire. In fact, Mr. White had sold over 1.6 million shares of SAG within the 60 days preceding October 25, 2004.

41. It is acknowledged that it was contrary to the public interest for Mr. White to declare in the six TSX questionnaires that he had not traded in SAG shares in the 60 days preceding his purchase of PP2 and PP3 units, when in fact, he had sold SAG shares in each of the 60 day periods preceding his purchase of PP2 and PP3 units.

IV. RESPONDENTS' POSITION

42. On November 17, 2003, in response to the increase in the price for gold described in paragraph 9 above, the daily trading volume for SAG common shares increased from 2,618,175 on Friday, November 14, 2003 to 10,559,887 which made SAG the sixth most actively traded stock on the TSX on this date. On November 18, 2003, SAG became the most actively traded stock on the TSX when the daily trading volume for its common shares increased again to 34,500,200. On November 19, 2003, even though the daily trading volume then declined to 11,363,800 common shares, SAG was still the third most actively traded stock on the TSX.

43. The sales of SAG common shares that are described in paragraphs 28 to 31 above were made in direct response to the increased liquidity for SAG common shares that is described in paragraph 42 above because the increased liquidity accommodated the orderly disposition of blocks of SAG common shares. Mr. White acknowledges that he did not pay sufficient attention to his obligations under subsection 76(1) of the Act at the time of the trading described in paragraphs 28 to 31 above.

V. TERMS OF SETTLEMENT

44. Mr. White agrees to the terms of settlement listed at paragraph 45 below.

45. 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. Mr. White is reprimanded;
- c. Trading in any securities by Mr. White cease for a period of two years subject to the following exceptions:

- (i) Mr. White be permitted to trade securities in registered retirement savings plans in which he, either alone or with his spouse, has sole beneficial interest (a “White RRSP”);
 - (ii) Mr. White be permitted to donate to registered charities any securities that he currently holds outside a White RRSP for a period of one hundred and twenty (120) days following the date the Settlement Agreement is approved; and
 - (iii) Mr. White be permitted to dispose of any securities that he currently holds outside a White RRSP for a period of ninety (90) days following the date the Settlement Agreement is approved and, to use the proceeds from such dispositions to acquire debt securities issued or guaranteed by the Government of Canada, the government of a jurisdiction of Canada or the government of a foreign jurisdiction, and to subsequently purchase and sell such debt securities.
- d. For the two year period commencing on the date this Settlement Agreement is approved, Mr. White’s registration under Ontario securities law shall be suspended, provided that:
- (i) Mr. White be permitted to communicate with any existing clients of IBK for a period of thirty (30) days following the date the Settlement Agreement is approved for the sole purpose of advising them of the terms and conditions of this Settlement Agreement and transitioning responsibility for such clients to one or more other registered employees of IBK and thereafter Mr. White be prohibited from communicating with clients of IBK for any purpose involving registerable activity during the remainder of the two year period; and

- (ii) Mr. White be permitted to communicate with employees at IBK for the sole purpose of assisting them with the administration of IBK's operations provided that Mr. White does not engage in any registerable activities.
 - e. Mr. White shall resign all positions that he holds as a director or officer of a registrant and shall not hold any position as a director or officer of a registrant for two years from the date the Settlement Agreement is approved;
 - f. Mr. White shall resign all positions that he holds as a director or officer of a reporting issuer and shall not hold any position as a director or officer of a reporting issuer for two years from the date the Settlement Agreement is approved;
 - g. Mr. White shall make a payment by certified cheque to this Commission in the amount of \$30,000 for allocation to or for the benefit of third parties pursuant to s. 3.4(2)(b) of the Act; and
 - h. Mr. White shall make a payment by certified cheque to this Commission in the amount of \$55,000 in respect of a portion of the costs of the investigation and proceeding in relation to this matter.
46. IBK agrees to the terms of settlement listed at paragraph 47 below.
47. The Commission will make an Order pursuant to section 127(1) of the Act that:
- a. The Settlement Agreement is Approved;
 - b. IBK be reprimanded; and

- c. IBK shall submit to a review of its compliance practices and procedures related to compliance with section 76 of the Act in accordance with the Terms of Reference attached as Schedule “B”.

VI – STAFF COMMITMENT

48. 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 49 below.

49. If the Commission approves this Settlement Agreement and one of the Respondents fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against that Respondent. 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.

VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

50. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for October 7, 2010, or on another date agreed to by Staff and the Respondents, according to the procedures set out in this Settlement Agreement and the Commission’s Rules of Practice.

51. Staff and the Respondents agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on the Respondents’ conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.

52. If the Commission approves this Settlement Agreement, the Respondents agree to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

53. If the Commission approves this Settlement Agreement, none of the parties will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

54. Whether or not the Commission approves this Settlement Agreement, the Respondents will not use, in any proceeding, 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, alleged unfairness, or any other remedies or challenges that may otherwise be available.

VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

55. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule “A” to this Settlement Agreement:

- a. this Settlement Agreement and all discussions and negotiations between Staff and the Respondents before the settlement hearing takes place will be without prejudice to Staff and the Respondents; and
- b. Staff and the Respondents 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 Settlement Agreement.

56. All 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.

IX - EXECUTION OF SETTLEMENT AGREEMENT

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

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

Dated this 5th day of October, 2010

"B. Prill"
Witness

"William F. White"
William F. White

IBK Capital Corp.

Per: "William F. White"

"William F. White"
Name of Authorized Signatory

President
Title:

"Tom Atkinson"
Director, Enforcement Branch

Schedule “A”

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

-and-

IN THE MATTER OF IBK CAPITAL CORP. and WILLIAM F. WHITE

**ORDER
(Sections 127 and 127.1)**

WHEREAS the Ontario Securities Commission (the “Commission”) issued a Notice of Hearing dated November 12, 2009 (the “Notice of Hearing”) pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S-5, as amended (the “Act”), in respect of IBK Capital Corp. (“IBK”) and William F. White (“White”);

AND WHEREAS on November 12, 2009, Staff of the Commission filed a Statement of Allegations in respect of IBK and White;

AND WHEREAS IBK and White entered into a settlement agreement dated October 5, 2010 (the “Settlement Agreement”) with Staff of the Commission in relation to the matters set out in the Statement of Allegations;

AND UPON reviewing the Settlement Agreement, the Notice of Hearing and the Statement of Allegations, and upon considering submissions of IBK, White and of 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:

1. the Settlement Agreement is approved;

2. White is reprimanded;
3. Trading in any securities by White cease for a period of two years subject to the following exceptions:
 - (a) White be permitted to trade securities in registered retirement savings plans in which he, either alone or with his spouse, has sole beneficial interest (a “White RRSP”);
 - (b) White be permitted to donate to registered charities any securities that he currently holds outside a White RRSP for a period of one hundred and twenty (120) days following the date the Settlement Agreement is approved; and
 - (c) White be permitted to dispose of any securities that he currently holds outside a White RRSP for a period of ninety (90) days following the date the Settlement Agreement is approved and to use the proceeds from such dispositions to acquire debt securities issued or guaranteed by the Government of Canada, the government of a jurisdiction of Canada or the government of a foreign jurisdiction, and to subsequently purchase and sell such debt securities.
4. For the two year period commencing on the date this Settlement Agreement is approved, White’s registration under Ontario securities law shall be suspended, provided that:
 - (a) White be permitted to communicate with any existing clients of IBK for a period of thirty (30) days following the date the Settlement Agreement is approved for the sole purpose of advising them of the terms and conditions of this Settlement Agreement and transitioning responsibility for such clients to one or more other registered employees of IBK and thereafter White be prohibited from communicating with clients of IBK for any purpose involving registerable activity during the remainder of the two year period; and

- (b) White be permitted to communicate with employees at IBK for the sole purpose of assisting them with the administration of IBK's operations provided that White does not engage in any registerable activities.
5. White shall resign all positions that he holds as a director or officer of a registrant and shall not hold any position as a director or officer of a registrant for two years from the date the Settlement Agreement is approved;
 6. White shall resign all positions that he holds as a director or officer of a reporting issuer and shall not hold any position as a director or officer of a reporting issuer for two years from the date the Settlement Agreement is approved;
 7. White shall pay make a payment by certified cheque to this Commission in the amount of \$30,000 for allocation to or for the benefit of third parties pursuant to s. 3.4(2)(b) of the Act;
 8. White shall make a payment by certified cheque to this Commission in the amount of \$55,000 in respect of a portion of the costs of the investigation and proceeding in relation to this matter;
 9. IBK is reprimanded; and
 10. IBK shall submit to a review of its compliance practices and procedures related to compliance with section 76 of the Act in accordance with the Terms of Reference attached as Schedule "B".

DATED at Toronto this day of October, 2010.

Schedule "B"

TERMS OF REFERENCE FOR COMPLIANCE REVIEW

- A. Retention of Stephanie McManus, Compliance Support Services (the "Consultant")
- (a) The Consultant's reasonable compensation and expenses shall be borne exclusively by IBK Capital Corp. (the "Respondent").
 - (b) The agreement with the Consultant ("Agreement") shall provide that the Consultant examine and assess the effectiveness of:
 - (a) the Respondent's internal policies and procedures (the "section 76 Procedures") that are devoted to ensuring compliance with section 76 of the Act (the "section 76 Prohibition");
 - (b) adherence by the Respondent, its officers, directors and employees to IBK's section 76 Procedures; and
 - (c) the training programme that has been developed by the Respondent for the purpose of apprising its staff of the section 76 Prohibition, the section 76 Procedures and the potential consequences of any contravention thereof.(collectively, the "Review").
- B. The Consultant's Reporting Obligations
- (a) The Consultant shall issue a draft report to the Respondent within 3 months of its appointment.
 - (b) The Consultant shall engage with the Respondent in discussions regarding the draft report with a view to reaching a consensus and finalizing the report within 1 month of the delivery of the draft report. If requested by the Consultant, the Consultant may explain any areas of disagreement with management of the Respondent.
 - (c) The Consultant will deliver the final report to the Respondent.
 - (d) Staff with prior notice may attend at the premises of the Respondent and review the draft and final versions of the Consultant's report.
 - (e) The Consultant's draft and final reports shall include a description of the review performed, the conclusions reached, and the Consultant's recommendations for

any changes or improvements to the Respondent's policies and procedures as the Consultant reasonably deems necessary to conform to regulatory requirements.

- (f) The Respondent will, within 60 days after receipt of the Consultant's report, advise the Staff of the OSC ("OSC Staff") of a timetable to implement the recommendations contained in the report; however, in the event the Respondent disagrees with any of the recommendations, the Respondent shall so advise OSC Staff and provide to the Consultant reasons for such position and, if applicable, any alternative actions, policies or procedures the Respondent intends to adopt.
- (g) Staff may attend at the premises of the Respondent and may review the Consultant's report with respect to the implementation of the Consultant's recommendations.
- (h) The Respondent shall certify to the Commission, by certificate executed on its behalf by the President of the Respondent, that the Respondent has implemented those recommendations of the Consultant which it had agreed upon, and will do so promptly following such implementation.
- (i) For greater certainty, the terms of this compliance review do not limit in any respect the authority of the Commission to undertake, as part of its normal course audit activities, a review of all matters within the scope of the Review or any other aspect of the business of the Respondent.

C. Terms of the Consultant's Retention

- (a) The appointment of the Consultant shall be made promptly following the approval of the Settlement Agreement, but in any event by no later than thirty (30) days following the date the Settlement Agreement is approved,
- (b) The Consultant shall have reasonable access to all of the Respondent's books and records and the ability to meet privately with the Respondent's personnel. The Respondent shall instruct and otherwise encourage its officers, directors, and employees to cooperate fully with the review conducted by the Consultant, and inform its officers, directors, and employees that failure to cooperate with the Review may be grounds for disciplinary action.
- (c) The Consultant shall have the right, as reasonable and necessary in his or her judgment, to retain, at the Respondent's expense, lawyers, accountants, and other persons or firms, other than officers, directors, or employees of the Respondent, to assist in the discharge of the Consultant's obligations. The Respondent shall pay all reasonable fees and expenses (as reasonably documented) of any persons or firms so retained by the Consultant.

- (d) The Consultant shall make and keep notes of interviews conducted, and keep a copy of documents gathered, in connection with the performance of his or her responsibilities.