



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

P.O. Box 55, 19th Floor CP 55, 19^e étage
20 Queen Street West 20, rue queenouest
Toronto ON M5H 3S8 Toronto ON M5H 3S8

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

- AND -

**IN THE MATTER OF
QUANTFX ASSET MANAGEMENT INC., VADIM TSATSKIN,
LUCIEN SHTROMVASER and ROSTISLAV ZEMLINSKY**

**SETTLEMENT AGREEMENT
BETWEEN STAFF AND ROSTISLAV ZEMLINSKY**

PART I - INTRODUCTION

1. By Notice of Hearing dated November 10, 2010 and an Amended Notice of Hearing dated November 17, 2010 the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing, commencing on June 14, 2010, pursuant to sections 37, 127, and 127.1 of the *Securities Act*, R.S.O. 1990, c. S. 5, as amended (the "Act"), to consider whether it is in the public interest to make orders, as specified therein, against QuantFX Asset Management Inc. ("QuantFX") and its directors, Vadim Tsatskin ("Tstaskin"), Lucien Shtromvaser ("Shtromvaser") and Rostislav Zemlinsky ("Zemlinsky") (collectively the "Respondents"). The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission dated November 10, 2010.

2. The Statements of Allegations alleged breaches of the Act and conduct contrary to the public interest for a time period from September 6, 2009 until April 13, 2010 (the "Material Time").

3. The Commission will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to sections 37 and 127 of the Act, it is in the public interest for the Commission to approve this Settlement Agreement and to make certain orders in respect of Zemlinsky.

PART II – JOINT SETTLEMENT RECOMMENDATION

4. Staff agree to recommend settlement of the proceeding initiated by the Notice of Hearing dated November 10, 2010 against Zemlinsky (the “Proceeding”) in accordance with the terms and conditions set out below. Zemlinsky consents to the making of an order in the form attached as Schedule “A”, based on the facts set out below.

PART III – AGREED FACTS

i) The Business of Quant FX

5. QuantFX was federally incorporated on August 4, 2009 and had its offices at an address located in Toronto, Ontario. Its founding directors were Tsatskin, Shtromvaser and Zemlinsky who continued as directors during the Material Time.

6. During the Material Time, Zemlinsky was not registered in any capacity with the Commission.

7. QuantFX has never been registered with the Commission in any capacity.

8. Tsatskin signed documents on behalf of QuantFX as its ‘vice-president’ and its “chairman”.

9. Shtromvaser and Tsatskin were responsible for the development of the business infrastructure of QuantFX and its marketing and development, including the solicitation of clients. Zemlinsky was responsible for the trading on behalf of QuantFX clients.

10. From offices in Vaughan, Ontario, the agents of QuantFX solicited clients through its website and over the internet to invest in the currency market through accounts at GAIN Capital – Forex.com UK Ltd. (“Forex.com UK”).
11. Agents of QuantFX also solicited potential clients over the telephone. The operations of Forex.com UK and its clients’ accounts are located in the UK.
12. QuantFX also promoted its investment services on a website. This website contained misleading and/or inaccurate statements about the historical trading performance of QuantFX, the QuantFX management and its client base.
13. Clients of QuantFX, some of whom resided in Ontario, were instructed by QuantFX to deposit funds (the “Client Funds”) directly with Forex.com UK in accounts in their names (the “Managed Accounts”).
14. QuantFX and its agents then directed these clients to sign a limited power of attorney over the Managed Accounts allowing Zemlinsky to trade foreign exchange contracts on their behalf through Forex.com UK. This trading in foreign exchange contracts constituted trading in securities.
15. The Client Funds were then pooled by Zemlinsky and used to conduct trading in currency contracts through accounts in his name at Forex.com UK (the “Master Accounts”). He performed the foreign exchange contract trading from locations in Toronto, Ontario. Zemlinsky also allowed other traders in Russia to conduct trades in foreign exchange contracts from the Master Accounts using his password information.
16. Profits and losses in the Master Accounts were then distributed back to the Managed Accounts. Zemlinsky only had access to the Client Funds to permit him to trade in the Master

Accounts. He could not instruct Forex.com UK to withdraw any funds from the Managed Accounts.

17. Clients of QuantFX also entered into a profit sharing agreement with QuantFX whereby QuantFX would receive 42.5% of any trading profits realized.

18. During the Material Time, clients placed a total of approximately \$680,000 U.S. in the Managed Accounts.

19. Tsatskin, Shtromvaser and Zemlinsky all discussed and considered whether their activities in relation to QuantFX required registration with the Commission. All reached the conclusion that they were not required to be registered with the Commission.

ii) The Unregistered Trading of Securities by Zemlinsky

20. Zemlinsky, individually and through QuantFX, engaged in the trading of securities and held himself out as engaging in the business of trading securities without the proper registration contrary to section 25(1) of the Act.

21. Further, Zemlinsky, individually and through QuantFX engaged in the business of advising members of the public with respect to the investing in, buying or selling securities of securities and by holding himself out as engaging in the business of advising members of the public with respect to the investing in, buying or selling securities of securities contrary to section 25(3) of the Act.

22. Zemlinsky was the individual at QuantFX who traded almost all of the Client Funds and controlled the Master Accounts.

23. The trading of foreign exchange contracts or advising regarding the trading of foreign exchange contracts by persons or companies in Ontario requires registration under section 25 of the Act.

iii) The Illegal Distribution of Securities by Zemlinsky

24. Forex.com UK has never filed a prospectus or a preliminary prospectus with the Commission or obtained receipts for them from the Director regarding the trading of foreign exchange contracts in its accounts by account holders situated in Ontario. Further, these foreign exchanges contracts did not qualify for any exemption under Ontario securities law which would otherwise permit their trading.

25. The business of QuantFX, of which Zemlinsky was a director during the Material Time, was to persuade investors in Ontario and elsewhere to open trading accounts at Forex.com UK to allow QuantFX, primarily through Zemlinsky, to conduct foreign exchange contract trading on behalf of these investors.

26. From locations in Ontario, Zemlinsky conducted trades of foreign exchange contracts on behalf of residents of Ontario and elsewhere.

27. The trading of foreign exchange contracts by persons or companies in Ontario must meet the prospectus requirements under section 53(1) of the Act or qualify for an exemption.

PART IV - CONDUCT CONTRARY TO THE PUBLIC INTEREST

28. By engaging in the conduct described above, Zemlinsky admits and acknowledges that he contravened Ontario securities law during the Material Time in the following ways:

- (a) During the Material Time, Zemlinsky engaged in the trading of securities and held himself out as engaging in the business of trading securities without being

registered in accordance with Ontario securities law, contrary to section 25(1) of the Act and contrary to the public interest;

- (b) During the Material Time, Zemlinsky engaged in the business of advising members of the public with respect to the investing in, buying or selling securities of securities and by holding himself out as engaging in the business of advising members of the public with respect to the investing in, buying or selling securities of securities without being registered in accordance with Ontario securities law, contrary to section 25(3) of the Act and contrary to the public interest and
- (c) During the Material Time, Zemlinsky traded in foreign exchange contracts when a preliminary prospectus and a prospectus had not been filed and receipts had not been issued for these foreign exchange contracts by the Director, contrary to section 53(1) of the Act and contrary to the public interest;

29. Zemlinsky admits and acknowledges that he acted contrary to the public interest by contravening Ontario securities law as set out in sub-paragraphs 28 (a), (b) and (c).

PART V –MITIGATING FACTORS

30. Zemlinsky requests that the settlement hearing panel consider the following mitigating circumstance.

31. Upon learning that his trading activities contravened Ontario securities law, Zemlinsky immediately cooperated fully and completely with Staff.

PART VI - TERMS OF SETTLEMENT

32. Zemlinsky agrees to the terms of settlement listed below.

33. The Commission will make an order, pursuant to sections 37 and 127(1) of the Act, that:

(a) the Settlement Agreement is approved;

(b) trading in any securities by Zemlinsky cease for 2 years from the date of the approval of the Settlement Agreement, subject to a carve-out to allow him to trade securities for the account of any registered retirement savings plans and/or any registered retirement income funds (as defined in the Income Tax Act (Canada)) in which he and/or his spouse have sole legal and beneficial ownership, provided that:

- i) the securities traded are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges), are issued by a mutual fund that is a reporting issuer or are debt securities;
- ii) he does not own legally or beneficially (in the aggregate, together with his spouse) more than one percent of the outstanding securities of the class or series of the class in question; and
- iii) he carries out any permitted trading through a registered dealer (which dealer must be given a copy of this order) and through accounts opened in his name only (and he must close any trading accounts that are not in his name only);

(c) the acquisition of any securities by Zemlinsky is prohibited for 2 years from the date of the approval of the Settlement Agreement, subject to a carve-out to allow him to trade securities for the account of any registered retirement savings plans and/or any registered retirement income funds (as defined in the Income Tax Act (Canada)) in which he and/or his spouse have sole legal and beneficial ownership, provided that:

- i) the securities traded are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges), are issued by a mutual fund that is a reporting issuer or are debt securities;
- ii) he does not own legally or beneficially (in the aggregate, together with his spouse) more than one percent of the outstanding securities of the class or series of the class in question; and
- iii) he carries out any permitted trading through a registered dealer (which dealer must be given a copy of this order) and through accounts opened in his name only (and he must close any trading accounts that are not in his name only);

(d) any exemptions contained in Ontario securities law do not apply to Zemlinsky for 5 years from the date of the approval of the Settlement Agreement;

(e) Zemlinsky is reprimanded;

(f) Zemlinsky is prohibited for 5 years from the date of this Order from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager;

(g) Zemlinsky is prohibited for 5 years from the date of this Order from becoming or acting as a registrant, as an investment fund manager or as a promoter; and,

(h) Zemlinsky shall disgorge to the Commission \$5,427 obtained as a result of his non-compliance with Ontario securities law, to be paid to or for the benefit of third parties designated by the Commission, pursuant to s.3.4(2) of the Act;;

(i) Zemlinsky shall pay an administrative penalty of \$7,500 for his failure to comply with Ontario securities law, to be paid to or for the benefit of third parties designated by the Commission, pursuant to s.3.4(2) of the Act; and

(j) Zemlinsky shall cease for 5 years, from the date of the approval of the Settlement Agreement, to telephone from within Ontario to any residence within or outside Ontario for the purpose of trading in any security or any class of securities.

34. Zemlinsky undertakes 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 34. (b) to (j) above.

PART VII - STAFF COMMITMENT

35. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Zemlinsky in relation to the facts set out in Part III herein, subject to the provisions of paragraph 36 below.

36. If this Settlement Agreement is approved by the Commission, and at any subsequent time Zemlinsky fails to honour the terms of the Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against Zemlinsky based on, but not limited to, the facts set out in Part III herein as well as the breach of the Settlement Agreement.

PART VIII- PROCEDURE FOR APPROVAL OF SETTLEMENT

37. Approval of this Settlement Agreement will be sought at a hearing of the Commission scheduled on a date to be determined by the Secretary to the Commission, or such other date as may be agreed to by Staff and Zemlinsky for the scheduling of the hearing to consider the Settlement Agreement.

38. Staff and Zemlinsky agree that this Settlement Agreement will constitute the entirety of the agreed facts to be submitted at the settlement hearing regarding Zemlinsky's conduct in this matter, unless the parties agree that further facts should be submitted at the settlement hearing.

39. If this Settlement Agreement is approved by the Commission, Zemlinsky agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

40. If this Settlement Agreement is approved by the Commission, neither party will make any public statement that is inconsistent with this Settlement Agreement or inconsistent with any additional agreed facts submitted at the settlement hearing.

41. Whether or not this Settlement Agreement is approved by the Commission, Zemlinsky agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the settlement negotiations as the basis of 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.

PART IX – DISCLOSURE OF SETTLEMENT AGREEMENT

42. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the order attached as Schedule "A" is not made by the Commission:

- (a) this Settlement Agreement and its terms, including all settlement negotiations between Staff and Zemlinsky leading up to its presentation at the settlement hearing, shall be without prejudice to Staff and Zemlinsky; and
- (b) Staff and Zemlinsky shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by the Settlement Agreement or the settlement discussions/negotiations.

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

PART X. - EXECUTION OF SETTLEMENT AGREEMENT

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

45. A facsimile copy of any signature will be as effective as an original signature.

Dated this 23rd day of March, 2011.

Signed in the presence of:

Taras Kulish

Rostislav Zemlinsky

Witness:

Rostislav Zemlinsky

Dated this 23rd day of March, 2011

Tom Atkinson

STAFF OF THE ONTARIO SECURITIES COMMISSION
per Tom Atkinson
Director, Enforcement Branch

Dated this 22nd day of March, 2011

SCHEDULE "A"



Ontario

Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

P.O. Box 55, 19th Floor
20 Queen Street West
Toronto ON M5H 3S8

CP 55, 19^e étage
20, rue queen ouest
Toronto ON M5H 3S8

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

- AND -

IN THE MATTER OF ROSTISLAV ZEMLINSKY

**ORDER
(Sections 37 and 127(1))**

WHEREAS on _____, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 37 and 127 of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the "Act") in respect of Rostislav Zemlinsky ("Zemlinsky");

AND WHEREAS Zemlinsky entered into a Settlement Agreement with Staff of the Commission dated _____, 2011 (the "Settlement Agreement") in which Zemlinsky 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, the Notice of Hearing, and the Statement of Allegations of Staff of the Commission, and upon hearing submissions from counsel for Zemlinsky 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:

SCHEDULE "A"

- (a) the Settlement Agreement is approved;
- (b) trading in any securities by Zemlinsky cease for 2 years from the date of the approval of the Settlement Agreement, subject to a carve-out to allow him to trade securities for the account of any registered retirement savings plans and/or any registered retirement income funds (as defined in the Income Tax Act (Canada)) in which he and/or his spouse have sole legal and beneficial ownership, provided that:
- i) the securities traded are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges), are issued by a mutual fund that is a reporting issuer or are debt securities;
 - ii) he does not own legally or beneficially (in the aggregate, together with his spouse) more than one percent of the outstanding securities of the class or series of the class in question; and
 - iii) he carries out any permitted trading through a registered dealer (which dealer must be given a copy of this order) and through accounts opened in his name only (and he must close any trading accounts that are not in his name only).
- (c) the acquisition of any securities by Zemlinsky is prohibited for 2 years from the date of the approval of the Settlement Agreement, subject to a carve-out to allow him to trade securities for the account of any registered retirement savings plans and/or any registered retirement income funds (as defined in the Income Tax Act (Canada)) in which he and/or his spouse have sole legal and beneficial ownership, provided that:
- i) the securities traded are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges), are issued by a mutual fund that is a reporting issuer or are debt securities;
 - ii) he does not own legally or beneficially (in the aggregate, together with his spouse) more than one percent of the outstanding securities of the class or series of the class in question; and
 - iii) he carries out any permitted trading through a registered dealer (which dealer must be given a copy of this order) and through accounts opened in his name only (and he must close any trading accounts that are not in his name only);

SCHEDULE "A"

- (d) any exemptions contained in Ontario securities law do not apply to Zemlinsky for 5 years from the date of the approval of the Settlement Agreement;
- (e) Zemlinsky is reprimanded;
- (f) Zemlinsky is prohibited for 5 years from the date of this Order from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager;
- (g) Zemlinsky is prohibited for 5 years from the date of this Order from becoming or acting as a registrant, as an investment fund manager or as a promoter;
- (h) Zemlinsky shall pay an administrative penalty of \$7,500 for his failure to comply with Ontario securities law, to be paid to or for the benefit of third parties designated by the Commission, pursuant to s.3.4(2) of the Act;
- (i) Zemlinsky shall disgorge to the Commission \$5,427 obtained as a result of his non-compliance with Ontario securities law, to be paid to or for the benefit of third parties designated by the Commission, pursuant to s.3.4(2) of the Act; and
- (j) Zemlinsky shall cease for 5 years, from the date of the approval of the Settlement Agreement, to telephone from within Ontario to any residence within or outside Ontario for the purpose of trading in any security or any class of securities.

DATED AT TORONTO this day of , 2011.
