



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 STEPHEN CAMPBELL

SETTLEMENT AGREEMENT

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 sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “*Securities Act*”) it is in the public interest for the Commission to make certain orders in respect of Stephen Campbell (the “**Respondent**”).

PART II - JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission (“**Staff**”) agree to recommend settlement of the proceeding commenced by Notice of Hearing dated March 25, 2013 (the “**Proceeding**”) against the Respondent according to the terms and conditions set out in Part VII of this settlement agreement (the “**Settlement Agreement**”). The Respondent agrees 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. The Respondent agrees with the facts set out in this Part III.
4. Staff and the Respondent agree that the facts set out in this Part III for the purpose of this settlement are without prejudice to the Respondent in any other proceedings of any kind including, but without limiting the generality of the foregoing, any other proceedings

brought by the Commission under the *Securities Act* (subject to paragraph 46 below) or any civil or other proceedings currently pending or which may be brought by any other person, corporation or agency.

Overview

5. Between January 1, 2010 and December 31, 2011 (the “**Material Time**”), the Respondent knowingly executed trades in the class A common shares and 8.75% convertible debentures of Discovery Air Inc. (“**Discovery Air**”) where:
 - (a) he had knowledge of and/or control over another order on the opposite side of the market with substantially the same terms and conditions (price, size and time of entry) and used that knowledge and/or control to match orders (“**Match Trades**”); and at other times
 - (b) he knew or reasonably ought to have known that his order entry would result in trades involving no change in beneficial or economic ownership (“**Wash Trades**”).
6. Also during the Material Time, the Respondent sometimes executed trades with third parties at better prices in the marketplace in order to enable Match Trades and/or Wash Trades (“**Facilitation Trades**”).
7. The Respondent was aware throughout the Material Time that Match Trades and Wash Trades are prohibited by Ontario securities law. During the Material Time the Respondent executed Facilitation Trades without regard to whether such trades are prohibited by Ontario securities law.
8. The Respondent was aware throughout the Material Time that the volume from all of his trading, including his Match Trades, Wash Trades and Facilitation Trades, would be and was included in and reported as part of the daily volume for those securities.
9. The Respondent’s Match Trades, Wash Trades and Facilitation Trades together increased the monthly trading volume for the class A common shares of Discovery Air by as much as 24.27% in December 2010, and increased the monthly trading volume for the debentures by as much as 29.32% in February 2011.

10. The Respondent's Match Trades, Wash Trades and Facilitation Trades appear not to have resulted in artificial prices for the traded securities.

The Respondent

11. The Respondent is an individual residing in Ontario. He has been a Chartered Accountant since 1983 and has been a Chartered Financial Analyst charter holder since 2002. Throughout the Material Time the Respondent was employed as a senior finance executive in a not-for-profit organization (he retired from this position in August 2012). The Respondent is a sophisticated investor with over 20 years of personal investing experience.

The Subject Securities

12. According to Discovery Air's 2012 Annual Information Form:
 - a. Discovery Air is a TSX listed company based out of the Northwest Territories that provides specialty aviation services across Canada and in select international locations.
 - b. Throughout the Material Time, Discovery Air had two classes of common shares: Class A common voting shares (the "**Class A Shares**"; trading on the TSX under the symbol DA.A) and Class B common variable voting shares (the "**Class B Shares**"; not listed on any marketplace).
 - c. On September 23, 2011, all of the issued and outstanding Class A Shares and Class B Shares were consolidated on the basis of one post-consolidated Class A Share or Class B Share, as applicable, for every ten pre-consolidation Class A Shares or Class B Shares, as applicable. The Class A Shares commenced trading on a post-consolidation basis on September 29, 2011. All Class A share volumes referenced in this Settlement Agreement are shown on an equivalent post-consolidation basis.

- d. During the Material Time until June 16, 2011, when they were repaid, Discovery Air had outstanding approximately \$28.75 million aggregate principal amount of 8.75% convertible unsecured debentures listed on the TSX (symbol: DA.DB). The DA.DB debentures are referred to in this Settlement Agreement as the “**Debentures**”.
13. During the Material Time, the Respondent bought and sold Class A Shares on a pre-consolidation and post-consolidation basis, and the Debentures (together the “**Subject Securities**”), but not the Class B Shares.
14. The Respondent has no connection to Discovery Air other than a long history of trading in the Subject Securities.

The Subject Accounts

15. During the Material Time, the Respondent operated three brokerage accounts in his name with two Canadian discount brokerage firms (two margin accounts and one TFSA), and had trading authority over three brokerage accounts in his wife’s name (margin account, RRSP and TFSA) and trading authority over four brokerage accounts in his children’s names (one RRSP and three TFSA’s). During the Material Time the Respondent executed trades in the Subject Securities in these ten accounts (the “**Subject Accounts**”).
16. Throughout the Material Time the Respondent managed the Subject Accounts on his own behalf and on a voluntary unpaid basis on behalf of the family members who were the beneficial owners of the Subject Accounts.
17. All of the trades in the Subject Accounts during the Material Time were initiated based on decisions made solely by the Respondent and did not involve the beneficial owners of those accounts.
18. All of the trade orders in the Subject Accounts during the Material Time were entered by the Respondent using the discount brokerage firms’ online order screens, accessed using access codes that only he had, or placed by telephone by the Respondent alone with a registered broker at the discount brokerage firm.

The Investment Strategy

19. Having decided that Discovery Air appeared to present a good long term investment opportunity, the Respondent implemented a dual investment strategy during the Material Time: first to gradually accumulate the Subject Securities so as to increase the Respondent's family's overall holdings of these securities over time, and second, to trade a portion of those holdings so as to reduce the cumulative book value of the holdings, particularly in the family's non-taxable accounts where there are inherent tax efficiencies and limits to the amount of capital that can be contributed each year (e.g., RRSP, RESP and TFSA accounts).
20. While the overall objective of the Respondent's investment strategy was to buy and hold the Subject Securities in the expectation of long term price appreciation, it also recognized that the Subject Securities exhibited both short term price volatility and wider bid-ask spreads that might be repeatedly traded during the longer term hold period to produce, over time, an accumulation of small gains.
21. The fact that the discount brokerages used by the Respondent charged relatively low, flat-rate commission fees, enabled the Respondent to implement the second element of the investment strategy to realize gains in the Subject Accounts even on small incremental increases in the price of the Subject Securities bought and sold.
22. When there appeared to be a limited volume of orders in the marketplace for the Subject Securities at the prices required by the Respondent to execute the trading component of his investment strategy, he would sometimes use a taxable Subject Account to enter orders on the opposite side of the market with substantially the same terms (desired price, amount and time of entry), or with terms intended to trade with better priced existing open orders in the marketplace (i.e., Facilitation Trades) in order to execute the desired trade(s) between Subject Accounts (i.e., Match Trades or Wash Trades).
23. The bid or ask prices entered by the Respondent to implement the trading component of the investment strategy were typically within the then market spread. However, due to the illiquidity of the Subject Securities and especially the Debentures, the market spreads could be wide, sometimes as great as \$3 in the case of the Debentures. These wide

spreads and the overall illiquidity of the Subject Securities were conducive to the execution of the trading component of the Respondent's investment strategy.

24. Where the Respondent's trading strategy resulted in Facilitation Trades, Match Trades and Wash Trades, the Respondent created market activity that would not have otherwise existed in the Subject Securities, and thereby was able to buy the Subject Securities at low prices in the non-taxable Subject Accounts, and sell these same securities at higher prices from these same accounts more often than the natural order flow for the Subject Securities would allow. Over time, the non-taxable Subject Accounts increased in value from this trading, even if at times losses were created in the taxable Subject Accounts in order to complete the Match Trades and Wash Trades.
25. The Subject Accounts were net accumulators of the Subject Securities over the Material Time, with most realized gains reinvested in the same Subject Securities such that the cumulative net gain or loss on these investments is unrealized.

Trading Analysis

26. Staff reviewed the Respondent's trading throughout the Material Time and prepared a daily trading analysis for a representative period of December 1, 2010 to April 30, 2011 (the "**Analysis Period**").
27. With respect to the Class A Shares, during the Analysis Period:
 - a. a total of 1,882,850 Class A Shares were traded in the marketplace;
 - b. the Respondent traded 160,700 Class A Shares that were Match Trades or Wash Trades (8.53% of the total volume in that period), and traded another 40,400 Class A Shares as a result of Facilitation Trades (2.15% of the total volume in that period);
 - c. altogether the Respondent's Match Trades, Wash Trades and Facilitation Trades represented 10.68% of the total volume of Class A Shares traded in that period;

- d. altogether the Respondent executed 207 Match Trades, Wash Trades and Facilitation Trades in Class A Shares in the period;
 - e. approximately 43% of the Respondent's trades in Class A Shares in the Subject Accounts in the Analysis Period were Match Trades, Wash Trades or Facilitation Trades;
 - f. the Respondent's Match Trades, Wash Trades and Facilitation Trades together increased the monthly trading volume for the Class A Shares by as much as 24.27% in December 2010 and by as little as 1.95% in March 2011.
28. With respect to the Debentures, during the Analysis Period:
- a. a total face value of \$2,721,000 of Debentures were traded in the marketplace;
 - b. the Respondent traded a total face value of \$155,000 of Debentures using Match Trades or Wash Trades (5.70% of the total volume in that period), and did not execute any Facilitation Trades;
 - c. altogether the Respondent executed 14 Match Trades and Wash Trades in Debentures in the period;
 - d. approximately 88.57% of the Respondent's trades in Debentures in the Subject Accounts in the Analysis Period were Match Trades or Wash Trades;
 - e. the Respondent's Match Trades and Wash Trades together increased the monthly trading volume in the Debentures by as much as 29.32% in February 2011 and by as little as 0% in March 2011.

First Contact from discount broker

29. On February 10, 2011, a representative of one of the discount brokerage firms spoke with the Respondent by telephone, explained to him that some of his online orders had

resulted in Match Trades between Subject Accounts, informed him that this type of trade is prohibited under Ontario securities law, and explained that the brokerage firm cannot and would not accept orders for this type of trade. The Respondent acknowledged his understanding and agreed not to enter any more Match Trades.

30. Despite the telephone conversation noted above, the Respondent continued to enter and execute Match Trades in the Subject Accounts (and Wash Trades and Facilitation Trades), including the next day when he traded 4,400 Class A Shares between one of his wife's accounts at the brokerage firm that had called him and one of his sons' accounts at a second discount brokerage firm.
31. Subsequent to being contacted by the first discount brokerage firm on February 10, 2011, the Respondent reduced the execution of Match Trades, Wash Trades and Facilitation Trades through that firm. Between February 10, 2011 and March 31, 2011, the Respondent executed eight Match Trades/Wash Trades, of which seven were split between the two discount brokerage firms, which had the effect of concealing those trades.

Second Contact from discount broker

32. On July 5, 2011, another representative of the brokerage firm that had called in February 2011 spoke with the Respondent by telephone, explained to him what Match Trades and Wash Trades are, informed him that these types of trades are prohibited under Ontario securities law, and explained that the firm could not accept orders for this type of trade. The Respondent acknowledged his understanding of the rules against Match Trades and Wash Trades.
33. The Respondent executed Match Trades and Wash Trades in the Subject Securities in the Subject Accounts after this date.

Third Contact from discount broker

34. On August 9, 2011, a third representative of the discount brokerage firm that had called in February and July 2011 contacted the Respondent with respect to a Match Trade between Subject Accounts that was executed on July 25, 2011. The representative

informed the Respondent that there had been a repeating pattern of similar Match Trades occurring in the client's accounts and gave the Respondent "a stern warning" to stop this type of activity or the next step would be to remove the Respondent's trading authorization over the account.

Second discount broker exits two accounts

35. The second discount brokerage firm forced the closure of two of the Subject Accounts in February and September 2011.

Misleading appearance of trading activity

36. The Respondent was aware throughout the Material Time that Match Trades and Wash Trades are prohibited by Ontario securities law, and disregarded whether Facilitation Trades are also prohibited by Ontario securities law.
37. The Respondent was aware throughout the Material Time that the volume from his Match Trades, Wash Trades and Facilitation Trades would be and was included in and reported as part of the daily volume for those securities.
38. The Respondent chose to ignore the fact that his Match Trades, Wash Trades and Facilitation Trades would create and did create a misleading appearance of trading activity in the Subject Securities.

Credit for Co-operation

39. The Respondent has fully co-operated with Staff in the investigation of this matter.

PART IV – RESPONDENT'S POSITION

40. The Respondent requests that the settlement hearing panel consider the following mitigating circumstances:
- a. the Respondent states that it was not his intention to create a false or misleading appearance of trading activity in the Subject Securities, rather, in the pursuit of his investment strategy he disregarded that impact;

- b. the Respondent's conduct has not previously been the subject of any enforcement proceeding by Staff;
- c. as of the date of this Settlement Agreement, the Respondent states that the Subject Securities in the Subject Accounts are carrying an unrealized net loss of approximately \$157,000; and
- d. the Respondent has fully co-operated with Staff in its investigation.

**PART V - CONDUCT CONTRARY TO SUBSECTION 126.1(a)
OF THE *SECURITIES ACT***

- 41. The Respondent's activities described above regarding Wash Trades, Match Trades and Facilitation Trades were contrary to subsection 126.1(a) of the *Securities Act* in that they created a misleading appearance of trading activity in the Subject Securities.

PART VI - CONDUCT CONTRARY TO THE PUBLIC INTEREST

- 42. The above described conduct and breaches of Ontario securities law constitute conduct contrary to the public interest.

PART VII - TERMS OF SETTLEMENT

- 43. The Respondent agrees to the terms of settlement set out below.
- 44. The Commission will make an order pursuant to subsection 127(1) and section 127.1 of the *Securities Act* that:
 - (a) this Settlement Agreement shall be approved;
 - (b) the Respondent shall be reprimanded;
 - (c) the Respondent shall be prohibited from trading in any securities for a period of two years commencing from the date this Settlement Agreement is approved; and

- (d) the Respondent shall within thirty days of this Settlement Agreement being approved pay \$25,000 towards the costs of Staff's investigation.

PART VIII - STAFF COMMITMENT

45. If this Settlement Agreement is approved by the Commission, Staff will not commence any other proceeding under the *Securities Act* against the Respondent under Ontario securities law respecting the facts set out in Part III of the Settlement Agreement, subject to the provisions of paragraph 46 below.
46. If the Commission approves this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against the 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.

PART IX - PROCEDURE FOR APPROVAL OF SETTLEMENT

47. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission according to the procedures set out in this Settlement Agreement and the Commission's Rules of Procedure.
48. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on the Respondent's conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.
49. If the Settlement Agreement is approved by the Commission, the Respondent agrees to waive all of his rights to a full hearing, judicial review or appeal of the matter under the *Securities Act*.
50. 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.

51. Whether or not the Commission approves this Settlement Agreement, the Respondent 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 X - DISCLOSURE OF SETTLEMENT AGREEMENT

52. 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 Respondent before the settlement hearing takes place will be without prejudice to Staff and the Respondent; and
 - b. Staff and the Respondent will 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.
53. 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, all 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 XI - EXECUTION OF SETTLEMENT AGREEMENT

54. The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

55. A facsimile or electronic copy of any signature shall be as effective as an original signature.

DATED this 25th day of March, 2013.

“Gail Pepler”

Witness

“S. Campbell”

Stephen Campbell

“Tom Atkinson”

Tom Atkinson
Director, Enforcement Branch
Ontario Securities Commission



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SCHEDULE "A"

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

- AND -

IN THE MATTER OF STEPHEN CAMPBELL

**ORDER
(Subsections 127(1) and Section 127.1)**

WHEREAS on March 26, 2013, Staff of the Ontario Securities Commission ("**Staff**" and the "**Commission**") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "*Securities Act*") in respect of Mr. Stephen Campbell (the "**Respondent**") in respect of conduct that occurred between January 1, 2010 and December 31, 2011 (the "**Material Time**");

AND WHEREAS the Respondent and Staff entered into a settlement agreement (the "**Settlement Agreement**") in which they agreed to a settlement of the proceeding commenced by the Notice of Hearing dated March 26, 2013, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement and the Notice of Hearing, and upon hearing submissions from the Respondent and from counsel for Staff;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS ORDERED THAT:

1. the Settlement Agreement is hereby approved;
2. pursuant to paragraph 127(1)(6) of the *Securities Act*, the Respondent is hereby reprimanded;

3. pursuant to paragraph 127(1)(2) of the *Securities Act*, the Respondent is hereby prohibited from trading in any securities for a period of two years commencing from the date of this Order; and
4. pursuant to subsection 127.1(1) of the *Securities Act*, the Respondent shall within thirty days of this Order pay \$25,000 towards the costs of Staff's investigation.

DATED at Toronto this _____ day of March, 2013.
