



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Toronto ON M5H 3S8

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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 NEWER TECHNOLOGIES LIMITED, RYAN PICKERING
AND RODGER FREY**

- and -

**IN THE MATTER OF A
SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND NEWER TECHNOLOGIES LIMITED,
AND RYAN PICKERING**

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 “**Act**”), it is in the public interest for the Commission to approve this Settlement Agreement and to make certain orders in respect of Newer Technologies Limited (“**NTL**”) and Ryan Pickering (“**Pickering Respondents**”) (collectively, the “**Pickering Respondents**”).

PART II - JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission (“**Staff**”) agree to recommend settlement of the proceeding commenced against the Pickering Respondents by Notice of Hearing dated December 4, 2012 (the “**Proceeding**”) according to the terms and conditions set out in Part V of this Settlement Agreement (this “**Settlement Agreement**”). The Pickering Respondents agree

to the making of an order in the form attached as Schedule "A", based on the facts set out below.

3. For the purposes of the Proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, the Pickering Respondents agree with the facts as set out in Part III and the conclusion in Part IV of this Settlement Agreement.

PART III - AGREED FACTS

A. OVERVIEW

4. Between 2006 and 2010 (the "**Material Time**"), NTL borrowed \$11,921,895 from approximately 140 lenders, at interest rates ranging from 8% to 15%. NTL provided demand promissory notes (each an "**NTL Promissory Note**") to each lender as evidence of its indebtedness. The sale of NTL Promissory Notes were trades in securities not previously issued and were therefore distributions. NTL has never filed a preliminary prospectus or a prospectus with the Commission, and no prospectus receipt has ever been issued to qualify the sale of these securities. The Pickering Respondents have never been registered with the Commission, and exemptions from registration were, for most of these trades, not available to them under the Act when they traded these securities.
5. The Pickering Respondents have repaid \$6,845,895 in principal, plus interest, to its lenders, and have agreed to repay all lenders who do not qualify for any registration/prospectus exemptions.

B. THE RESPONDENTS

6. NTL is an automated teller machine ("**ATM**") management company that was incorporated in Ontario in 2003. NTL owns, sells, operates and services ATMs in Ontario. NTL currently processes transactions for approximately 900 ATMs, of which it owns approximately 250. NTL earns fees in differing amounts in respect of all of the transactions that it processes, as well as certain fees for services provided.

7. Pickering is a resident of Conestogo, Ontario. He is the president, director and the only signing officer of NTL.
8. Rodger Frey (“**Frey**”) is a resident of Elmira, Ontario.
9. NTL, Pickering and Frey have never been registered to trade in securities in Ontario and were not registered with the Commission in any capacity during the Material Time or at any other time.

C. CONDUCT AT ISSUE

10. During the Material Time, NTL borrowed \$11,921,895 from approximately one hundred and forty (140) lenders at interest rates ranging from 8% to 15%. Each lender received an NTL Promissory Note in respect of its loan. The NTL Promissory Notes state that the lenders are loaning cash to NTL to use as vault cash in its ATM network in Canada, or for the operation of its ATM network in Canada. The NTL Promissory Notes are payable on demand, generally stating that NTL is required to repay the loan within one to three months of notice given by the lender. No disclosure about the risks associated with the loans was made at the time of the loans.
11. The Pickering Respondents have represented to Staff that NTL never marketed or advertised for lenders, but rather found lenders through family, friends and business associates. Some of the loans were sourced by the respondent, Frey, who was paid a fee based on the amount of the loans he referred to NTL.
12. As the number of ATMs owned, operated and/or serviced by NTL grew over the years, NTL's cash flow requirements increased. The funds provided pursuant to the NTL Promissory Notes, along with cash generated by its operations, were needed as NTL is required to have a large amount of cash on hand and cash in ATMs. Cash represents NTL's most significant liquid asset. The Pickering Respondents have represented to Staff (and provided to Staff NTL's (unaudited) 2010, 2011 and 2013 financial statements in support) that the money borrowed from lenders was used as cash to supply the ATMs, for NTL's day to day operating expenses, to fund NTL's own ATM purchases and to purchase armoured vehicles for the business.

D. REPAYMENT BY NEWER AND PICKERING OF INVESTMENTS

13. Over time, many of NTL's lenders have requested the repayment of their loans and NTL has repaid \$6,845,895 in principal, plus interest, to those lenders.
14. As of July 10, 2014, NTL had \$5,076,000 in outstanding loans owing to sixty-one (61) separate lenders.
15. Throughout, the Pickering Respondents have been making interest payments and repaying loans on request. The Pickering Respondents have represented to Staff that at all times NTL has been current on all of its loans and has never defaulted on a loan, and that repayments have been made from revenue earned from NTL's operations and by reducing the amount of cash on hand.

E. COOPERATION WITH STAFF AND OTHER MITIGATING FACTORS

16. The Pickering Respondents had no experience in the securities industry and were not aware that their conduct was contrary to securities law or even that securities laws could apply to loans. Upon being put on notice of Staff's investigation, at all times, the Pickering Respondents cooperated fully with Staff.
17. NTL has represented to Staff that since approximately January 2011, upon being put on notice of Staff's investigation, it has not borrowed any money and it has undertaken a review of its outstanding loans. Notwithstanding that NTL has not raised any money during this period, NTL has continued to pay its lenders interest and principal on demand.
18. As set out more fully below, the Pickering Respondents have agreed to repay all lenders who do not qualify for any registration/prospectus exemptions. To assist with this process, NTL has retained an Exempt Market Dealer ("EMD") registered with the Commission to determine whether certain lenders are eligible for exemptions, and if so, if the investment would pass a suitability analysis.
19. The Pickering Respondents agree that forty nine (49) existing lenders with loans in the aggregate amount of \$2,261,000 would not qualify as accredited investors or meet applicable exemptions from the prospectus requirement ("Non-Exempt Lenders"). The

Pickering Respondents expect to repay the Non-Exempt Lenders using cash on hand, capital raised through the limited circumstances permitted in this Settlement Agreement, cash generated from the sale of some of NTL's capital assets and/or the liquidation of some of NTL's location agreements. The Pickering Respondents have represented to Staff that NTL's current assets could cover the payment owed to the Non-Exempt Lenders, and that NTL has operated profitably for at least the last 18 months, presenting a recent Balance Sheet and Profit and Loss statements in support.

20. The EMD has confirmed to Staff that twelve (12) of the existing lenders with loans in the aggregate amount of \$2,815,000 would qualify as accredited investors or meet applicable exemptions from the prospectus requirement ("Exempt Lenders"), but has advised that the loans are not suitable for ten (10) of those lenders with loans in the aggregate amount of \$2,675,000 ("Unsuitable Lenders"). The EMD has advised that the securities are suitable for the remaining two (2) lenders with loans in the aggregate amount of \$140,000.
21. Despite being advised by the EMD that the NTL Promissory Notes are not suitable, all of the Unsuitable Lenders with loans in the aggregate amount of \$2,675,000 have signed acknowledgements indicating that they have had a meaningful discussion with the EMD about the unsuitability of the investment, and that they have been specifically advised of the investment's concentration risk, the speculative nature of the NTL Promissory Notes, and the reporting and liquidity risks associated with the investment. All of the Unsuitable Lenders have been offered the opportunity to be repaid, but they have nevertheless instructed the EMD, in accordance with subsection 13.3(2) of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* that they wish to remain invested. The two (2) lenders with loans in the aggregate amount of \$140,000 have also signed acknowledgements that they wish to remain invested.
22. In these circumstances in which each of the Exempt Lenders has specifically considered whether to maintain their investment with NTL regardless of the suitability of the investment, and has advised the Pickering Respondents not to return the moneys previously loaned to NTL, Staff have agreed that in the unique circumstances presented by this matter, the date of approval of this Settlement Agreement will be deemed to be the date of

distribution of securities to the Exempt Lenders under a prospectus exemption. In accordance with National Instrument 45-106- *Prospectus and Registration Exemptions*, NTL is required, as an issuer of securities to the Exempt Lenders under a prospectus exemption, to file a report of exempt distribution with the OSC no later than 10 days after the date of distribution.

23. The Pickering Respondents have given a joint and several undertaking to the Commission, in the form attached as Schedule “B” to this Settlement Agreement (the “**Undertaking**”), that if this Settlement Agreement is approved, they will repay all moneys loaned to NTL by Non-Exempt Lenders (\$2,261,000) within twelve (12) months of the date of the order approving this Settlement Agreement. All payments made to Non-Exempt Lenders pursuant to this Undertaking will be made on a pro-rata basis, but nothing shall prevent NTL from repaying an outstanding NTL Promissory Note in full or in part if a lender makes demand under the terms of its NTL Promissory Note. Further, the Pickering Respondents undertake to file with the Commission on behalf of NTL, no later than ten (10) days after the date of approval of this Settlement Agreement, Form 45-106F1 in respect of the Exempt Lenders, and to pay the applicable activity fee of \$500.00 concurrently with the filing. The Pickering Respondents acknowledge that if they fail to file Form 45-106F1 within ten (10) days of the date of approval of this Settlement Agreement, late fees in accordance with OSC Rule 13-502 will accrue from the tenth day following the date of approval of this Settlement Agreement.

PART IV - CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST

24. Each NTL Promissory Note evidenced indebtedness and the NTL Promissory Notes were therefore securities under the Act.
25. The sale of NTL Promissory Notes were trades in securities not previously issued and were therefore distributions. NTL has never filed a preliminary prospectus or a prospectus with the Commission, and no prospectus receipt has ever been issued to qualify the sale of these securities.

26. Not all of the 140 investors qualified as accredited investors or met applicable exemptions from the prospectus requirement. Further, NTL, Pickering and Frey failed to make any appropriate inquiries relating to the investors' financial condition.
27. The Pickering Respondents traded in NTL Promissory Notes when they were not registered with the Commission and when no exemptions from the registration and prospectus requirements were available to them under the Act.
28. By engaging in the conduct described above, the Pickering Respondents admit and acknowledge that they have breached Ontario securities law and engaged in conduct contrary to the public interest. In particular:
 - a. The Pickering Respondents traded and engaged in, or held themselves out as engaging in, the business of trading in securities without being registered to do so in circumstances in which no exemption was available, contrary to subsection 25(1)(a) of the Act as that section existed at the time the conduct at issue commenced in 2006, and, after September 28, 2009, contrary to subsection 25(1) of the Act;
 - b. The Pickering Respondents distributed securities where no preliminary prospectus and prospectus were issued nor received by the Director under the Act, and where no exemptions were available, contrary to section 53 of the Act; and
 - c. Pickering, as a director and officer of NTL, authorized, permitted or acquiesced in the commission of the violations of sections 25 and 53 of the Act, as set out above, contrary to section 129.2 of the Act.

PART V - TERMS OF SETTLEMENT

29. Subject to paragraph 30, the Pickering Respondents agree to the following terms of settlement listed below and to the Order attached hereto, made by the Commission pursuant to section 127(1) and section 127.1 of the Act:
 - a. this Settlement Agreement is approved;

- b. the Pickering Respondents be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
- c. trading in any securities by or of NTL shall cease for a period of one year commencing on the date of the Commission’s order approving this Settlement Agreement pursuant to paragraph 2 of subsection 127(1) of the Act except that this prohibition does not apply with respect to trades in any securities by or of NTL through an appropriately registered dealer with (a) an “accredited investor” (as that term is defined in section 1.1 of National Instrument 45-106 – *Prospectus and Registration Exemptions*) that is not an individual, or (b) an individual who is a “permitted client” (as that term is defined in section 1.1 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*);
- d. acquisition of any securities by NTL is prohibited for a period of one year commencing on the date of the Commission’s order approving this Settlement Agreement pursuant to paragraph 2.1 of subsection 127(1) of the Act except that this prohibition does not apply with respect to the acquisition of any securities as a result of the incorporation of a corporation that is a wholly owned subsidiary of NTL;
- e. any exemptions contained in Ontario securities law do not apply to NTL for a period of one year commencing on the date of the Commission’s order approving this Settlement Agreement pursuant to paragraph 3 of subsection 127(1) of the Act, except that this prohibition does not apply with respect to trades in any securities by or of NTL through an appropriately registered dealer with (a) an “accredited investor” (as that term is defined in section 1.1 of National Instrument 45-106 – *Prospectus and Registration Exemptions*) that is not an individual or (b) an individual who is a “permitted client” (as that term is defined in section 1.1 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*);

- f. trading in any securities by Pickering shall cease for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement pursuant to paragraph 2 of subsection 127(1) of the Act, except that Pickering may trade in the account of any registered retirement savings plan, registered pension plan, tax free savings accounts, self-directed retirement savings plans as defined in the Income Tax Act, R.S.C. 1985, c.1, as amended, and/or for any registered education savings plan ("RESP") accounts for which Pickering and/or his spouse have sole legal and beneficial ownership or are a sponsor, and such trading shall be carried out solely through an appropriately registered dealer in Canada (which dealer must be given a copy of this Order);
- g. acquisition of any securities by Pickering is prohibited for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement pursuant to paragraph 2.1 of subsection 127(1) of the Act;
- h. any exemptions contained in Ontario securities law do not apply to Pickering for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement pursuant to paragraph 3 of subsection 127(1) of the Act;
- i. Pickering shall immediately resign all positions that he holds as a director or officer of any reporting issuer, registrant or investment fund manager, pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act;
- j. Pickering shall immediately resign any position he holds as a director or officer of any issuer other than NTL pursuant to paragraph 7 of subsection 127(1) of the Act, with the exception that Pickering is permitted to act or continue to act as a director and officer of any company through which he carries on business, so long as there are no more than 5 holders of the securities of the corporation;
- k. Pickering is prohibited from becoming or acting as a director or officer of any reporting issuer, registrant or investment fund manager, for a period of one year

commencing on the date of the Commission's order approving this Settlement Agreement pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act;

1. Pickering is prohibited from becoming or acting as a director or officer of any issuer other than NTL or a wholly owned subsidiary of NTL, for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement pursuant to paragraph 8 of subsection 127(1) of the Act, with the exception that Pickering is permitted to act or continue to act as a director and officer of any company through which he carries on business, so long as there are no more than 5 holders of the securities of the corporation;
- m. the Pickering Respondents are prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter, for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to paragraph 8.5 of subsection 127(1) of the Act;
- n. the Pickering Respondents shall have delivered to the Commission the Undertaking, in the form attached as Schedule "B" to this Settlement Agreement, whereby the Pickering Respondents jointly and severally undertake to repay all moneys loaned to NTL by Non-Exempt Lenders (\$2,261,000) within twelve (12) months of the date of the Commission's order approving this Settlement Agreement. All payments made to Non-Exempt Lenders pursuant to this Undertaking will be made on a pro-rata basis, but nothing shall prevent NTL from repaying an outstanding NTL Promissory Note in full or in part if a lender makes demand under the terms of its NTL Promissory Note. The Pickering Respondents also undertake to file with the Commission, on behalf of NTL, no later than ten (10) days after the date of approval of this Settlement Agreement, Form 45-106F1 in respect of the Exempt Lenders, and to pay the applicable activity fee of \$500.00 concurrently with the filing. The Pickering Respondents acknowledge that if they fail to file Form 45-106F1 within ten (10) days of the date of approval of this Settlement Agreement, late fees in accordance with OSC Rule 13-502 will accrue from the tenth day following the date of approval of this Settlement Agreement;

- o. in the event that the Pickering Respondents do not fully comply with the Undertaking, then pursuant to paragraph 10 of subsection 127(1) of the Act, the Pickering Respondents shall disgorge to the Commission the unpaid balance arising from the Undertaking, up to the amount of \$2,261,000 obtained as a result of non-compliance with Ontario securities law. The amount of \$2,261,000 to be disgorged to the Commission pursuant to this paragraph 29(o) shall be reduced by the same amount as any funds paid back to the Non-Exempt Lenders in accordance with the Undertaking, provided that satisfactory supporting evidence of such payments is provided by the Pickering Respondents to Staff. This disgorgement amount shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;
- p. the Pickering Respondents, jointly and severally, shall pay costs in the amount of \$25,000 payable within one year commencing on the date of the Commission's order approving this Settlement Agreement, pursuant to section 127.1 of the Act;,
- q. after the payments set out in paragraphs 29 (n), (o), and (p) are made in full, as an exception to the provisions of paragraphs 29 (f), (g), (h), (k) and (l), Pickering is permitted to acquire for the account of any registered retirement savings plan, registered pension plan, tax free savings accounts, self-directed retirement savings plans as defined in the Income Tax Act, R.S.C. 1985, c.1, as amended, and/or for any RESP accounts for which Pickering and/or his spouse have sole legal and beneficial ownership or are a sponsor, and such trading shall be carried out solely through an appropriately registered dealer in Canada (which dealer must be given a copy of this Order):
 - i. any "exchange-traded security" or "foreign exchange-traded security" within the meaning of National Instrument 21-101- *Marketplace Operation* provided that he does not own beneficially or exercise control or direction over more than 5 percent of the voting or equity securities of the issuer(s) of any such securities, or
 - ii. any security issued by a mutual fund that is a reporting issuer;

and exemptions are permitted for the purpose of trades described in this subparagraph;

- r. until the entire amount of the payments set out in subparagraphs 29 (n), (o), and (p) are paid in full, the provisions of paragraphs 29 (c), (d), (e), (f), (g), (h), (k) and (l), shall continue in force without any limitation as to time period.
30. Nothing in paragraph 29 shall prevent NTL from repaying an NTL Promissory Note outstanding as at the date of this Settlement Agreement.
31. Pickering, on his own behalf and on behalf of NTL, hereby consents 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 29 (b) to (m) above. These prohibitions and orders 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 or continue any proceeding against the Pickering Respondents 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 the Pickering Respondents fail to comply with any of the terms of this Settlement Agreement, Staff may bring proceedings under Ontario securities law against the Pickering Respondents. These proceedings may be based on, but will not be limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement. In addition, if this Settlement Agreement is approved by the Commission, and the Pickering Respondents fail to comply with its terms, the Commission is entitled to bring any proceedings necessary to recover the amounts set out in sub-paragraphs 29 (n), (o), and (p) above.

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 September 3, 2014, or on another date agreed to by Staff and the Pickering Respondents, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Procedure.
35. This Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on the Pickering Respondents' conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.
36. If the Commission approves this Settlement Agreement, the Pickering Respondents irrevocably waive all right to a full hearing, judicial review or appeal of this matter under the Act.
37. If the Commission approves this Settlement Agreement, neither Staff nor the Pickering Respondents 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, the Pickering Respondents 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

39. 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 Pickering Respondents before the settlement hearing takes place will be without prejudice to Staff and the Pickering Respondents; and

- b. Staff and the Pickering 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 of Staff dated December 4, 2012. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.
40. Both Staff and the Pickering Respondents will keep the terms of this Settlement Agreement confidential until the Commission approves this Settlement Agreement. Any obligations of confidentiality shall terminate upon the commencement of the public settlement hearing. If, for whatever reason, the Commission does not approve this Settlement Agreement, the terms of this Settlement Agreement shall remain confidential indefinitely, unless Staff and the Respondent otherwise agree or if required by law.

PART X - EXECUTION OF SETTLEMENT AGREEMENT

41. This agreement may be signed in one or more counterparts which, together, constitute a binding agreement.
42. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

Dated this 2nd day of September, 2014.

“Tom Atkinson”

Director, Enforcement Branch

Dated this 29th day of August, 2014.

“Ryan Pickering”

Ryan Pickering

“Michele Pickering”

[Name] Michele Pickering

Witness

Dated this 29th day of August, 2014.

Newer Technologies Limited

“Ryan Pickering”

Ryan Pickering, President

“Michele Pickering”

[Name] Michele Pickering

Witness

SCHEDULE "A"



Ontario Securities Commission	Commission des valeurs mobilières de l'Ontario	22 nd Floor 20 Queen Street West Toronto ON M5H 3S8	22e étage 20, rue queen ouest Toronto ON M5H 3S8
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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 NEWER TECHNOLOGIES LIMITED, RYAN PICKERING AND RODGER FREY

- AND -

IN THE MATTER OF A SETTLEMENT AGREEMENT BETWEEN STAFF OF THE ONTARIO SECURITIES COMMISSION AND NEWER TECHNOLOGIES LIMITED, AND RYAN PICKERING

ORDER

(Sections 127 and 127.1 of the *Securities Act*)

WHEREAS on December 4, 2012, the Ontario Securities Commission (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 "**Act**") to consider whether it is in the public interest to make orders, as specified therein, against and in respect of Newer Technologies Limited ("**NTL**"), Ryan Pickering ("**Pickering**") and Rodger Frey ("**Frey**"). The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission ("**Staff**") dated December 4, 2012;

AND WHEREAS NTL and Pickering (collectively, the "**Pickering Respondents**") have entered into a Settlement Agreement with Staff of the Commission dated , 2014 (the "**Settlement Agreement**") in which the Pickering Respondents agreed to a proposed

settlement of the proceeding commenced by the Notice of Hearing dated December 4, 2012, subject to the approval of the Commission;

AND WHEREAS pursuant to the Settlement Agreement, the Pickering Respondents have given a joint and several undertaking to the Commission, in the form attached as Schedule “B” to the Settlement Agreement (the “**Undertaking**”):

1. to repay all moneys loaned to NTL by forty nine (49) existing lenders in the aggregate amount of \$2,261,000, which lenders do not qualify as accredited investors or meet applicable exemptions from the prospectus requirement (the “**Non-Exempt Lenders**”), within twelve (12) months of the date of the Commission’s order approving the Settlement Agreement. All payments made to Non-Exempt Lenders pursuant to this Undertaking will be made on a pro-rata basis, but nothing shall prevent NTL from repaying an outstanding NTL Promissory Note in full or in part if a lender makes demand under the terms of its NTL Promissory Note; and
2. to file with the Commission, on behalf of NTL, no later than ten (10) days after the date of approval of the Settlement Agreement, Form 45-106F1 in respect of the twelve (12) existing lenders who made loans in the aggregate amount of \$2,815,000 and who qualify as accredited investors or meet applicable exemptions from the prospectus requirement (“**Exempt Lenders**”) that are remaining lenders to NTL, and to pay the applicable activity fee of \$500.00 concurrently with the filing. The Pickering Respondents acknowledge that if they fail to file Form 45-106F1 within ten (10) days of the date of approval of the Settlement Agreement, late fees in accordance with OSC Rule 13-502 will accrue from the tenth day following the date of approval of the Settlement Agreement;

AND WHEREAS on August 29, 2014, the Commission issued a Notice of Hearing pursuant to section 127 of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve a Settlement Agreement entered into between Staff and the Pickering Respondents;

AND UPON reviewing the Settlement Agreement, the Notices of Hearing, and the Statement of Allegations of Staff of the Commission, and upon hearing submissions from counsel for the Pickering Respondents, 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:

- (a) The Settlement Agreement is approved;
- (b) pursuant to paragraph 6 of subsection 127(1) of the Act, the Pickering Respondents are reprimanded;
- (c) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by or of NTL shall cease for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement, except that this prohibition does not apply with respect to trades in any securities by or of NTL through an appropriately registered dealer with (a) an "accredited investor" (as that term is defined in section 1.1 of National Instrument 45-106 – *Prospectus and Registration Exemptions*) that is not an individual, or (b) an individual who is a "permitted client" (as that term is defined in section 1.1 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*);
- (d) pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by NTL is prohibited for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement, except that this prohibition does not apply with respect to the acquisition of any securities as a result of the incorporation of a corporation that is a wholly owned subsidiary of NTL;
- (e) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to NTL for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement, except that this prohibition does not apply with respect to trades in any securities by or of NTL

through an appropriately registered dealer with (a) an “accredited investor” (as that term is defined in section 1.1 of National Instrument 45-106 – *Prospectus and Registration Exemptions*) that is not an individual or (b) an individual who is a “permitted client” (as that term is defined in section 1.1 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*);

- (f) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Pickering shall cease for a period of one year commencing on the date of the Commission’s order approving this Settlement Agreement, except that Pickering may trade in the account of any registered retirement savings plan, registered pension plan, tax free savings accounts, self-directed retirement savings plans as defined in the Income Tax Act, R.S.C. 1985, c.1, as amended, and/or for any registered education savings plan (“RESP”) accounts for which Pickering and/or his spouse have sole legal and beneficial ownership or are a sponsor, and such trading shall be carried out solely through an appropriately registered dealer in Canada (which dealer must be given a copy of this Order);
- (g) pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by Pickering is prohibited for a period of one year commencing on the date of the Commission’s order approving this Settlement Agreement;
- (h) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Pickering for a period of one year commencing on the date of the Commission’s order approving this Settlement Agreement;
- (i) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Pickering shall immediately resign all positions that he holds as a director or officer of any reporting issuer, registrant or investment fund manager;
- (j) pursuant to paragraph 7 of subsection 127(1) of the Act, Pickering shall immediately resign any position that he holds as a director or officer of any issuer other than NTL, with the exception that Pickering is permitted to act or continue to act as a director

and officer of any company through which he carries on business, so long as there are no more than 5 holders of the securities of the corporation;

- (k) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Pickering is prohibited for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement from becoming or acting as a director or officer of any reporting issuer, registrant or investment fund manager;
- (l) pursuant to paragraph 8 of subsection 127(1) of the Act, Pickering is prohibited for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement from becoming or acting as a director or officer of any issuer other than NTL or a wholly owned subsidiary of NTL, with the exception that Pickering is permitted to act or continue to act as a director and officer of any company through which he carries on business, so long as there are no more than 5 holders of the securities of the corporation;
- (m) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Pickering is prohibited for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement, from becoming or acting as a registrant, as an investment fund manager or as a promoter;
- (n) in the event that the Pickering Respondents do not fully comply with the Undertaking, then pursuant to paragraph 10 of subsection 127(1) of the Act, the Pickering Respondents shall disgorge to the Commission the unpaid balance arising from the Undertaking, up to the amount of \$2,261,000 obtained as a result of non-compliance with Ontario securities law. The amount of \$2,261,000 to be disgorged to the Commission pursuant to this paragraph (n) shall be reduced by the same amount as any funds paid back to the Non-Exempt Lenders in accordance with the Undertaking, provided that satisfactory supporting evidence of such payments is provided by the Pickering Respondents to Staff. This disgorgement amount shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;

- (o) pursuant to section 127.1 of the Act, the Pickering Respondents, jointly and severally, shall within one year commencing on the date of the Commission's order approving this Settlement Agreement, pay to the Commission the amount of \$25,000.00, representing a portion of Staff's costs in this matter;
- (p) After the payments set out in paragraphs (n) and (o) are made in full, as an exception to the provisions of paragraphs (f), (g), (h), (k) and (l), of this Order above, Pickering is permitted to acquire for the account of any registered retirement savings plan, registered pension plan, tax free savings accounts, self-directed retirement savings plans as defined in the Income Tax Act, R.S.C. 1985, c.1, as amended, and/or for any RESP accounts for which Pickering and/or his spouse have sole legal and beneficial ownership or are a sponsor, and such trading shall be carried out solely through an appropriately registered dealer in Canada (which dealer must be given a copy of this Order):
 - i. any "exchange-traded security" or "foreign exchange-traded security" within the meaning of National Instrument 21-101- *Marketplace Operation* provided that he does not own beneficially or exercise control or direction over more than 5 percent of the voting or equity securities of the issuer(s) of any such securities, or
 - ii. any security issued by a mutual fund that is a reporting issuer;and exemptions are permitted for the purpose of trades described in this subparagraph;
- (q) Until the entire amount of the payments set out in subparagraphs (n) and (o) of this Order above, are paid in full, the prohibitions set out in subparagraphs (c), (d), (e), (f), (g), (h), (k) and (l), shall continue in force without any limitation as to time period;
- (r) The Pickering Respondents shall file with the Commission, on behalf of NTL, no later than ten (10) days after the date of approval of this Settlement Agreement, Form 45-106F1 in respect of the Exempt Lenders, and to pay the applicable activity fee of

\$500.00 concurrently with the filing. The Pickering Respondents acknowledge that if they fail to file Form 45-106F1 within ten (10) days of the date of approval of this Settlement Agreement, late fees in accordance with OSC Rule 13-502 will accrue from the tenth day following the date of approval of this Settlement Agreement; and

- (s) Nothing in this Order shall prevent NTL from repaying, in full or in part, an NTL Promissory Note outstanding as at the date of this Settlement Agreement.

DATED at Toronto this 3rd day of September, 2014.

SCHEDULE “B”



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l’Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e 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 NEWER TECHNOLOGIES LIMITED, RYAN PICKERING AND RODGER FREY

- and -

IN THE MATTER OF A SETTLEMENT AGREEMENT BETWEEN STAFF OF THE ONTARIO SECURITIES COMMISSION AND NEWER TECHNOLOGIES LIMITED, AND RYAN PICKERING

UNDERTAKING TO THE ONTARIO SECURITIES COMMISSION

This Undertaking is given in connection with a settlement agreement dated , 2014 (the “Settlement Agreement”) between the Respondents Newer Technologies Limited (“NTL”) and Ryan Pickering (“Pickering”) (collectively, the “Pickering Respondents”) and Staff of the Commission (“Staff”), and all terms shall have the same meaning herein as therein unless otherwise defined herein.

Pickering and NTL hereby jointly and severally undertake to the Commission:

1. to repay all moneys loaned to NTL by forty nine (49) Non-Exempt Lenders in the aggregate amount of \$2,261,000, within twelve (12) months of the date of the Commission’s order approving the Settlement Agreement. All payments made to Non-Exempt Lenders pursuant to this Undertaking will be made on a pro-rata basis, but nothing shall prevent NTL from repaying an outstanding NTL Promissory Note in full or in part if a lender makes demand under the terms of its NTL Promissory Note; and

2. to file with the Commission, on behalf of NTL, no later than ten (10) days after the date of approval of the Settlement Agreement, Form 45-106F1 in respect of the twelve (12) Exempt Lenders who made loans in the aggregate amount of \$2,815,000, and to pay the applicable activity fee of \$500.00 concurrently with the filing. The Pickering Respondents acknowledge that if they fail to file Form 45-106F1 within ten (10) days of the date of approval of the Settlement Agreement, late fees in accordance with OSC Rule 13-502 will accrue from the tenth day following the date of approval of the Settlement Agreement.

DATED this 29th day of August, 2014.

“Michele Pickering” Witness))))	“Ryan Pickering” RYAN PICKERING
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DATED this 29th day of August, 2014.

“Michele Pickering” Witness))))	“Ryan Pickering” NEWER TECHNOLOGIES LIMITED Per: RYAN PICKERING Authorized Signatory
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