



Ontario  
Securities  
Commission  
3S8

Commission des  
valeurs mobilières  
de l'Ontario

22<sup>nd</sup> Floor  
20 Queen Street West  
Toronto ON M5H 3S8

22e étage  
20, rue queen ouest  
Toronto ON M5H

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## IN THE MATTER OF DENNIS WING

### SETTLEMENT AGREEMENT

#### PART I – INTRODUCTION

##### A. Regulatory Message

1. This is a case of breach of a Commission order. If Ontario securities law is to be enforced, respondents must comply with Commission orders. When a respondent breaches a Commission order, a sanction must be imposed which deters respondents from breaching Commission orders and acts as a reminder that Commission orders must be complied with strictly.

##### B. Notice of Hearing

2. The parties will jointly file a request that the Ontario Securities Commission (the "**Commission**") issue a Notice of Hearing (the "**Notice of Hearing**") to announce that it will hold a hearing (the "**Settlement Hearing**") to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5 as amended (the "**Act**"), it is in the public interest for the Commission to make certain orders against Dennis Wing ("**Wing**") or (the "**Respondent**").

#### PART II - JOINT SETTLEMENT RECOMMENDATION

3. Staff of the Commission ("**Staff**") recommend settlement of the proceeding (the "**Proceeding**") against the Respondent commenced by the Notice of Hearing, in accordance with the terms and conditions set out in Part V of this Settlement Agreement. Staff and the Respondent consent to the making of an order (the "**Order**") substantially with the terms in the form attached as Schedule "A" to this Settlement Agreement based on the facts set out herein.

4. For the purposes of the Proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, the Respondent agrees with the facts set out in Part III of this Settlement Agreement and the conclusion in Part IV of this Settlement Agreement.

### **PART III - AGREED FACTS**

#### **A. Background**

5. On February 11, 2015, a hearing panel of the Commission (the "**Hearing Panel**") found that Wing:

- (a) committed insider trading contrary to subsection 76(1) of the Act with respect to two reporting issuers;
- (b) authorized, permitted or acquiesced, as a director and officer of Pollen Services Limited ("**Pollen**"), in respect of Pollen's four breaches of subsection 76(1) of the Act such that Wing was deemed to have not complied with Ontario securities law contrary to section 129.2 of the Act; and
- (c) misled Staff during the course of their investigation contrary to subsection 122(1) of the Act and acted contrary to the public interest.

6. On June 24, 2015, the Hearing Panel made a sanctions order that provided, among other things, that Wing permanently cease trading, pay administrative penalties totaling \$1.75 million composed of \$1.5 million for six instances of insider trading and \$250,000 for misleading Staff, pay disgorgement of \$520,916 and pay costs of \$300,000 for a total of \$2,570,916.

#### **B. Wing's BMO account and trade**

7. At the time the sanctions order was made by the Hearing Panel, Wing held 130,000 shares of Just Energy Group Inc. ("**Just Energy**") in account # 225-43929 ("**Acct. # 225**") with BMO InvestorLine ("**BMO IL**"). Acct. # 225 was a pledge account.

8. On June 30, 2015, a representative of BMO's IL, contacted Wing. Wing confirmed to BMO IL that he was the individual named in the cease trade order made by the Hearing Panel on June 24, 2015. BMO IL blocked Wing from trading on the account and placed a note on the file "No buys/sells, non-issuer CTO."

9. On July 23, 2015, Wing appealed the findings of insider trading and the sanctions order made by the Hearing Panel on June 24, 2015 to the Divisional Court.

10. On or about August 25, 2015, Wing contacted his personal banking representative at BMO Private Banking ("**BMO PB**"). He told her that he wanted to sell his Just Energy shares valued at approximately \$1 million to pay off his \$1.5 million pledge loan with

BMO PB. He said that the balance of the loan would be paid out of his RRSP account held at BMO IL.

11. Wing did not tell anyone at BMO PB that he was the subject of the Hearing Panel's cease trade order.

12. As Wing's Just Energy shares were held in a pledge account, the shares could only be sold through contact with a BMO IL employee. Before BMO IL could sell the shares, they had to receive a Pledged Account Activity Authorization Form ("the **Authorization Form**") signed by the client and approved by BMO PB.

13. On August 28, 2015, a BMO IL Trade Support Specialist (the "**Specialist**") received a signed Authorization Form from Wing to sell the shares. She obtained approval from BMO PB to proceed with the sale. She gave the Authorization Form to her supervisor who signed off on the transaction. Although Wing's account was blocked from trading, she believed he was blocked because this was a pledge account. Neither she nor her manager checked the comments on the electronic files.

14. The Specialist contacted Wing who confirmed he wanted to sell the Just Energy shares. She proceeded to sell the shares as instructed for proceeds of \$1,040,417 net of commission.

15. Wing did not tell the Specialist that he was subject to a cease trade order.

16. On September 8, 2015, Enforcement Staff ("**Staff**") contacted BMO IL Compliance to ask why Wing had been able to sell his Just Energy shares while subject to a cease trade order.

17. On September 11, 2015, the Commission issued a direction freezing all Wing's BMO IL accounts including Acct # 225.

18. As the Commission direction only froze assets up to the amount of the sanctions (approximately \$2.5 million) and Wing held other accounts at BMO IL which equaled up to \$3.6 million, Staff consented to the release of funds in excess of \$2.5 million. Wing directed BMO IL to release funds from Acct # 225. The other accounts at BMO IL included an RRSP account which held approximately \$1.8 million and a LIRA account which held approximately \$250,000. The assets in these accounts had been under deposit for more than one year.

19. On November 19, 2015, Wing transferred \$1,072,770 from Acct # 225 to BMO PB chequing acct # 0002-7367-996 where \$750,000 was applied to the loan acct # 0002-

6431-968-3213, \$200,000 was paid to a law firm in Toronto in Trust, and \$122,770 was used for personal purposes.

20. On October 26, 2016, the Divisional Court heard Wing's appeal of the Hearing Panel's findings of insider trading and their sanctions order.

21. On December 21, 2016, Wing filed a Notice of intention to Make a Proposal to Creditors.

22. On March 2, 2017, Wing's appeal of the Hearing Panel's findings of insider trading and their sanctions order was dismissed.

23. On July 28, 2017, Wing was deemed to have made an assignment in bankruptcy.

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

24. By engaging in this conduct, Wing admits and acknowledges that he breached Ontario securities law contrary to subsection 122(1)(c) of the Act.

**PART V - TERMS OF SETTLEMENT**

25. The Respondent agrees to the terms of settlement set out below.

26. The Respondent consents to the Order, pursuant to which it is ordered that:

- (a) this Settlement Agreement is approved;
- (b) the Respondent be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;
- (c) the Respondent pay an administrative penalty of \$120,000, pursuant to paragraph 9 of subsection 127(1) of the Act, which amount is designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b)(i) or (ii) of the Act; and
- (d) the Respondent pay costs of the Commission's investigation, in the amount of \$5,000, pursuant to section 127.1 of the Act.

27. For greater certainty, nothing in this Settlement Agreement affects Wing's or the Commission's rights to bring a motion for a determination of whether the amounts set out in sub-paragraphs 26(c) and (d) (collectively, the "**Monetary Penalty**") are claims provable in bankruptcy and are otherwise subject to the Bankruptcy and Insolvency Act (the "**Claims Motion**"). The Commission and Wing agree that the Claims Motion shall be brought before the Ontario Superior Court of Justice (Commercial List) (the "**Court**"). The Commission and Wing further agree that if the Court determines that the Monetary

Penalty is not a claim provable in bankruptcy, Wing shall pay the Monetary Penalty within 30 days of the Court issuing its decision. If the Court determines that the Monetary Penalty is a claim provable in bankruptcy, the Commission's claim for the Monetary Penalty shall be dealt with in Wing's bankruptcy proceeding.

28. The Respondent acknowledges that this Settlement Agreement and the Order may form the basis for orders of parallel effect in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions allow orders made in this matter to take effect in those other jurisdictions automatically, without further notice to the Respondent. The Respondent should contact the securities regulator of any other jurisdiction in which the Respondent intends to engage in any securities - or derivatives - related activities, prior to undertaking such activities.

#### **PART VI - FURTHER PROCEEDINGS**

29. If the Commission approves this Settlement Agreement, Staff will not commence or continue any proceeding against the Respondent under Ontario securities law based on the misconduct described in Part III of this Settlement Agreement, unless the Respondent fails to comply with any term in this Settlement Agreement, in which case Staff may bring proceedings under Ontario securities law against the Respondent that may be based on, among other things, the facts set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement.

30. The Respondent acknowledges that, if the Commission approves this Settlement Agreement and the Respondent fails to comply with any term in it, the Commission is entitled to bring any proceedings necessary.

31. The Respondent waives any defences to a proceeding that are based on the limitation period in the Act, provided that no such proceeding shall be commenced later than six years from the date of the occurrence of the last failure to comply with this Settlement Agreement.

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

32. The parties will seek approval of this Settlement Agreement at the Settlement Hearing before the Commission, which shall be held on a date determined by the Secretary to the Commission in accordance with this Settlement Agreement and the Commission's Rules of Procedure, adopted October 31, 2017.

33. The Respondent will attend the Settlement Hearing in person or by video-conference.

34. The parties confirm that this Settlement Agreement sets forth all of the agreed facts that will be submitted at the Settlement Hearing, unless the parties agree that additional facts should be submitted at the Settlement Hearing.

35. If the Commission approves this Settlement Agreement:

- (a) the Respondent irrevocably waives all rights to a full hearing, judicial review or appeal of this matter under the Act; and
- (b) the parties will not make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing.

36. 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 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 be available.

#### **PART VIII - DISCLOSURE OF SETTLEMENT AGREEMENT**

37. If the Commission does not make the Order:

- (a) this Settlement Agreement and all discussions and negotiations between Staff and the Respondent before the Settlement Hearing will be without prejudice to Staff and the Respondent; and
- (b) Staff and the Respondent will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations contained in the Statement of Allegations in respect of the Proceeding. Any such proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.

38. The parties will keep the terms of this Settlement Agreement confidential until the Settlement Hearing, unless they agree in writing not to do so or unless otherwise required by law.

**PART IX - EXECUTION OF SETTLEMENT AGREEMENT**

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

40. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

**DATED** at Toronto this 17th day of May, 2018.

"Maria Wing" "Dennis Wing"

Witness: (print name): *Maria Wing*

Dennis Wing

**DATED** at Toronto, Ontario, this 18th day of May, 2018.

**STAFF OF THE ONTARIO SECURITIES  
COMMISSION**

By: "Jeff Kehoe"  
Name: Jeff Kehoe  
Title: Director, Enforcement Branch

## SCHEDULE "A"



Ontario	Commission des	22 <sup>nd</sup> Floor	22e étage
Securities valeurs	mobilières	20 Queen Street West	20, rue queen ouest
Commission	de l'Ontario	Toronto ON M5H 3S8	Toronto ON M5H 3S8

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### IN THE MATTER OF DENNIS WING

[INSERT COMMISSIONERS OF THE PANEL]

\_\_\_\_, 2018

#### ORDER

Subsection 127(1) and section 127.1 of the  
*Securities Act*, RSO 1990, c S.5 (the **Act**)

WHEREAS on \_\_\_\_, 2018, the Ontario Securities Commission held a hearing at the offices of the Commission located at 20 Queen Street West, 17th Floor, Toronto, Ontario, to consider the approval of a settlement agreement dated \_\_\_\_, 2018 (the **Settlement Agreement**) between Dennis Wing (the **Respondent**) and Staff of the Commission (**Staff**);

ON READING the Statement of Allegations dated May 4, 2017 and the Settlement Agreement and on hearing the submissions of representatives of Staff and the Respondent;

IT IS ORDERED THAT:

1. the Settlement Agreement is approved;
2. the Respondent is reprimanded;
3. the Respondent shall pay an administrative penalty of \$120,000, which amount is designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b)(i) or (ii) of the Act;
4. the Respondent shall pay costs in the amount of \$5,000; and
5. the previously ordered hearing dates of June 6 and July 3, 4 and 5, 2018 are vacated.

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Philip Anisman