

SCHEDULE “1”

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

- and -

**IN THE MATTER OF
JAMES PATRICK BOYLE, LAWRENCE MELNICK
AND JOHN MICHAEL MALONE**

**SETTLEMENT AGREEMENT
RE: JOHN MICHAEL MALONE**

I. INTRODUCTION

1. By Notice of Hearing dated August 5, 2005, the Ontario Securities Commission (the “Commission”) announced that it would hold a hearing to consider whether pursuant to sections 127 and 127.1 of the Ontario *Securities Act*, R.S.O. 1990, c.S.5, as amended (the “Act”) it is in the public interest to make an order that:

- (a) pursuant to section 127(1) clause 2, trading in any securities by John Michael Malone (“Malone”) cease permanently or for such other period as specified by the Commission;
- (b) pursuant to section 127(1) clause 3, any exemptions contained in Ontario securities law do not apply to Malone permanently or for such other period as specified by the Commission;
- (c) pursuant to section 127(1) clause 8, Malone be prohibited from becoming or acting as a director or officer of any issuer;
- (d) pursuant to section 127(1) clause 7, Malone resign one or more positions he holds as a director or officer of an issuer;
- (e) pursuant to section 127(1) clause 6, Malone be reprimanded;

(f) pursuant to section 127.1, Malone be ordered to pay the costs of the investigation and the costs of or related to the hearing incurred by or on behalf of the Commission; and

(g) such other order as the Commission may consider appropriate.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission (“Staff”) recommend settlement with Malone in accordance with the terms and conditions set out below. Malone agrees to the settlement on the basis of the facts set out at Part III herein and consents to the making of an order against him in the form attached as Schedule “A” on the basis of the facts set out at Part III herein.

III. STATEMENT OF FACTS

3. For the purposes of this Settlement Agreement, Malone agrees with the facts set out in Part III.

4. Malone is currently the Chief Operating Officer of the Canadian Trading and Quotation System Inc. (“CNQ”). Malone commenced his employment on May 1, 2001. Malone became involved with CNQ at the invitation of the respondent James Patrick Boyle (“Boyle”), who was the controlling shareholder and an officer and director of CNQ.

5. Malone is not and has never been registered. He has not previously been the subject of any investigation or proceeding by Staff.

6. The conduct at issue involved the securities of two reporting issuers, Complex Minerals Corp. (“Complex”) and Nucanolan Resources Ltd. (“Nucanolan”). At the material time, the common shares of each of Complex and Nucanolan traded on the Canadian Dealing Network.

7. Malone was a high school friend of Boyle’s. Commencing in 1995, Boyle asked Malone to take on director and officer roles for corporations which were to become involved in certain transactions, including transactions involving securities. At Boyle’s

invitation, Malone signed the documents described herein to effect these transactions. Boyle, a securities lawyer, explained to Malone that the transactions were intended to minimize the tax consequences relating to certain other parties and that there was a possibility that Malone might benefit in the long term.

Complex Minerals Corp.

8. On or about October 17, 1995, at the request of Boyle, Malone became the president, a director and the sole shareholder of Saxby Gale Management Corp. (“Saxby Gale”), an Ontario private company. Malone later understood from Boyle that Saxby Gale would own shares in Complex.

9. On or about October 31, 1995, Malone signed a resolution by which he authorized the execution by Saxby Gale of a trust conveyance. Pursuant to the terms of the trust conveyance, Saxby Gale agreed to act as trustee in respect of the “equity of redemption” of 1,700,008 Complex shares held by Gordon Love (“Love”).

10. On or about November 8, 1995, Malone signed a resolution by which he authorized the execution by Saxby Gale of an asset purchase agreement and promissory note. Pursuant to the asset purchase agreement, Saxby Gale purchased the “economic potential” of 1,700,008 Complex shares from First Mulmur Corp. (“FMC”). FMC was described in the asset purchase agreement as “a corporation pursuant to the laws of the State of Antigua and Barbuda.” Love had sold the “economic potential” of the 1,700,008 Complex shares to FMC on or about October 20, 1995 for \$85,000.40. The November 8, 1995 promissory note provided that Saxby Gale promised to pay FMC, upon written demand, \$493,002.32.

11. On or about March 13 and September 25, 1996, Malone signed resolutions by which he authorized the execution by Saxby Gale of option agreements. Pursuant to these option agreements, Saxby Gale granted irrevocable options with respect to 1.7 million Complex shares to the dealer, A.C. MacPherson & Co. Inc. (“A.C. MacPherson”).

12. On or about March 21, April 9, April 23 and October 1, 1996, Malone signed directions on behalf of Saxby Gale. Pursuant to the directions, Saxby Gale directed Boyle's law firm, Boyle, Hobart, to pay funds held by Boyle, Hobart from the proceeds of the sale of Complex shares to Christopher DeGeer ("DeGeer") in trust. The funds totalled \$448,000.00.

13. Malone was not aware of how the purchase price of the "economic potential" was arrived at in respect of the Saxby Gale purchase of November 1995 nor in respect of the Love sale of October 1995. Malone was not aware of what developments, if any, justified Saxby Gale purchasing the "economic potential" of the Complex shares for \$493,002.32. Malone was not aware of how the exercise price was arrived at in respect of the option agreements. Malone understood that the funds received from the sale of the Complex shares were paid toward the satisfaction of the outstanding promissory note held by FMC.

14. In October 2001, Saxby Gale amalgamated with another private Ontario company, Darius Vase Equity Corp. ("Darius"). Malone was the director, officer and sole shareholder of Darius from October 2001 until July 2002. On or about July 17, 2002, Malone signed an agreement pursuant to which he sold his shares of Darius to Gar Rankin for \$12.00, and agreed to resign as a director and officer of Darius.

Nucanolan Resources Ltd.

15. At the request of Boyle, Malone became an officer and director of Tupper Shields Copper Corp. ("Tupper"), which positions he held from January 1996 to April 1997. At the request of Boyle, Malone became the sole officer, a director and a shareholder of Tupper's sole shareholder, Welkin Cohort Trade Corp. ("Welkin"), which positions he held from October 1996 to November 2000. Tupper and Welkin were both private Ontario companies.

16. Kenner Ames ("Ames"), with whom Malone was acquainted socially, was the other officer and director of Tupper. Malone and Ames each owned 50 per cent of Welkin.

17. On or about January 26, 1996, on behalf of Tupper, Malone signed a mining claim acquisition agreement, pursuant to which Tupper acquired certain mining claims from Richard Sutcliffe.

18. On or about October 29, 1996 and February 21, 1997, on behalf of Welkin, Malone signed special resolutions regarding the number of directors within the range established by the articles of incorporation.

19. On or about March 4, 1997, on behalf of Welkin, Malone signed a takeover agreement pursuant to which Welkin agreed to sell 160,000 Tupper shares to Nucanolan. Pursuant to the takeover agreement, Nucanolan agreed to satisfy the \$200,000.00 purchase price by delivering to Welkin 4 million units of Nucanolan, comprised of 4 million Nucanolan shares and 4 million Nucanolan warrants.

20. On or about April 18, 1997:

- (a) on behalf of Welkin, Malone signed an escrow agreement pursuant to which Boyle's law firm, Boyle, Hobart, became the escrow agent of the 4 million Nucanolan shares held by Welkin, which shares were deposited with Boyle, Hobart;
- (b) on behalf of Welkin, Malone signed a certificate by which Welkin certified that all of the representations and warranties in Article III of the March 4, 1997 takeover agreement remained true and correct in all material respects;
- (c) on behalf of Welkin, Malone signed a resolution by which Welkin approved the transfer of 160,000 Tupper shares to Nucanolan, in accordance with the takeover agreement of March 4, 1997;
- (d) Malone and Ames signed a certificate of incumbency certifying to Nucanolan that each of them were duly elected to their respective positions with Tupper; and

(e) Malone and Ames each signed a resignation and release by which they each resigned as a director and/or officer of Tupper.

21. On or about November 20, 2000, Malone and Ames each signed a takeover agreement pursuant to which Malone and Ames agreed to sell 25,000 Welkin shares to Champion Natural Health.Com Inc. ("Champion Natural"). Welkin's sole asset was the 4 million Nucanolan shares which, to the best of Malone's knowledge, had remained deposited with Boyle's law firm since April 1997 pursuant to the terms of the escrow agreement described at paragraph 20. As consideration, each of Malone and Ames received 240,000 shares of Champion Natural. Malone continues to hold these shares. The respondent Lawrence Melnick ("Melnick") was at all material times the President of Champion Natural.

22. On or about November 20, 2000, Malone and Ames each signed documents by which they resigned as officers and directors of Welkin.

23. Throughout the material time, Boyle acted as counsel to Malone, Saxby Gale, Darius, Welkin and Tupper. Malone did not personally pay legal fees to Boyle.

24. During the material time, Malone received \$6,500.00. In April 1996, at a dinner hosted by Boyle at the University Club of Toronto, Malone received \$2,000.00 cash from Boyle. In October 1997, Malone received a cheque in the amount of \$4,500.00. The payor on the cheque was DeGeer.

25. Malone has cooperated with Staff during the investigation and throughout the settlement negotiations.

Position of Malone

26. Malone represents to Staff that at the relevant time, he was the executive director of a charitable organization and had no background or experience in the securities industry. Malone represents to Staff that he had no experience with the type of transactions at issue and relied on explanations and advice from Boyle before signing any

documents or authorizing any transactions on behalf of the above corporations for which he was a director or officer.

Conduct Contrary to the Public Interest

27. Malone acted contrary to the public interest by taking on officer and director roles and participating in transactions without appreciating fully or having due regard to the implications of his conduct. Malone failed to exercise due care and diligence in his role as an officer and director, and failed to adhere to and act in accordance with high standards of responsible business conduct.

IV. TERMS OF SETTLEMENT

28. Malone agrees to the following terms of settlement:

- (a) The Commission will make an order pursuant to section 127(1) clause 7 of the Act that Malone resign as an officer of the CNQ immediately upon approval of this Settlement Agreement;
- (b) The Commission will make an order pursuant to section 127(1) clause 8 of the Act that Malone be prohibited from acting as a director or officer of a reporting issuer for three years;
- (c) The Commission's order will include a term that after the expiry of three years, in the event Malone wishes to become an officer or director of a reporting issuer, he may do so only after successful completion of the Director Education Program offered by the Institute of Corporate Directors and Rotman School of Business; and
- (d) Malone will sign an undertaking to the Commission in the form attached as Schedule "B" to never become an employee, officer or director of the CNQ or any successor or affiliate thereof.

V. STAFF COMMITMENT

29. If this Settlement Agreement is approved by the Commission, Staff will not initiate any proceeding under Ontario securities law in respect of any conduct or alleged conduct of Malone in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 33 below.

VI. PROCEDURE FOR APPROVAL OF SETTLEMENT

30. Approval of this Settlement Agreement shall be sought at the public hearing of the Commission scheduled for December 22, 2005, or such other date as may be agreed to by Staff and Malone in accordance with the procedures described in this Settlement Agreement.

31. Staff and Malone agree that if this Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted respecting Malone in this matter, and Malone agrees to waive his rights to a full hearing, judicial review, or appeal of the matter under the Act.

32. Staff and Malone agree that if this Settlement Agreement is approved by the Commission, neither Staff nor Malone will make any public statement inconsistent with this Settlement Agreement.

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

34. Whether or not this Settlement Agreement is approved by the Commission, Malone agrees that he will not, in any proceeding, refer to or rely upon 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, appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

VII. DISCLOSURE OF SETTLEMENT AGREEMENT

35. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or an order in the form attached as Schedule "A" is not made by the Commission, each of Staff and Malone will be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations in the Notice of Hearing and Statement of Allegations, unaffected by this Settlement Agreement or the settlement negotiations.

36. The terms of this Settlement Agreement will be treated as confidential by all parties hereto until approved by the Commission, and forever if, for any reason whatsoever, this Settlement Agreement is not approved by the Commission, except with the written consent of both Malone and Staff or as may be required by law.

37. Any obligations of confidentiality shall terminate upon approval of this Settlement Agreement by the Commission.

VIII. EXECUTION OF SETTLEMENT AGREEMENT

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

39. A facsimile copy of any signature shall be as effective as an original signature.

DATED this 19th day of December, 2005.

Signed in the presence of:

"Wendy Berman"
Witness

"John Michael Malone"
John Michael Malone

DATED this 19th day of December, 2005.

STAFF OF THE ONTARIO SECURITIES

Per:

"Michael Watson"

Michael Watson
Director, Enforcement Branch

SCHEDULE “A”

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

- and-

**IN THE MATTER OF
JAMES PATRICK BOYLE, LAWRENCE MELNICK
AND JOHN MICHAEL MALONE**

**O R D E R
(Sections 127 and 127.1)**

WHEREAS on August 5, 2005, the Ontario Securities 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”) in respect of John Michael Malone (“Malone”);

AND WHEREAS Malone entered into a Settlement Agreement with Staff of the Commission dated December 19, 2005 (the “Settlement Agreement”) in which he agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission and wherein Malone provided to the Commission a written undertaking never to become an employee, officer or director of the Canadian Trading and Quotation System Inc. (“CNQ”) or any successor or affiliate thereof;

AND UPON reviewing the Settlement Agreement and the Notice of Hearing and Statement of Allegations of Staff of the Commission, and upon hearing submissions from counsel for Malone 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 attached to this order as Schedule “1” is hereby approved;

- (b) pursuant to section 127(1) clause 7 of the Act Malone resign as an officer of the CNQ forthwith;
- (c) pursuant to section 127(1) clause 8 Malone be prohibited from acting as a director or officer of a reporting issuer for three years; and
- (d) after the expiry of three years, in the event Malone wishes to become an officer or director of a reporting issuer, he do so only after successful completion of the Director Education Program offered by the Institute of Corporate Directors and Rotman School of Business.

Dated at Toronto, Ontario this day of December, 2005.

SCHEDULE "B"

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

- and -

**IN THE MATTER OF
JAMES PATRICK BOYLE, LAWRENCE MELNICK
AND JOHN MICHAEL MALONE**

**UNDERTAKING TO THE
ONTARIO SECURITIES COMMISSION**

I, John Michael Malone, am a respondent to a Notice of Hearing dated August 5, 2005 issued by the Ontario Securities Commission. I undertake to the Ontario Securities Commission that I will never become an employee, officer or director of the Canadian Trading and Quotation System Inc. or any successor or affiliate thereof. I have agreed to such terms as set out in the settlement agreement between Staff of the Ontario Securities Commission and me dated December 19, 2005.

DATED this 22nd day of December, 2005.

Signed in the presence of:

"Wendy Berman"
Witness

"John Malone"
John Michael Malone

DATED this 22nd of December, 2005.

Acknowledgement as received by:

"Daisy Aranha"
per: John Stevenson
Secretary to the Ontario
Securities Commission