

IN THE MATTER OF THE SECURITIES ACT,
SNB 2004, c. S-5.5, as amended

AND

IN THE MATTER OF

SANG H. PARK

(Respondent)

SETTLEMENT AGREEMENT

1. STAFF TO RECOMMEND SETTLEMENT

Staff of the New Brunswick Securities Commission ("Staff") agree to recommend approval of settlement of this matter with respect to Sang H. Park (Park) to a panel of the New Brunswick Securities Commission pursuant to section 191(1)(a) of the *Securities Act*, in accordance with the following terms and conditions:

- a. Park agrees to the Agreed Statement of Facts set out in Part II hereof, and consents to the making of an order on the basis of those facts, as set out in Schedule "A"; and
- b. The terms of any settlement will become public information only if, and when, the settlement is approved by the Commission.

2. PARK'S OBLIGATIONS IF SETTLEMENT APPROVED

If the Settlement Agreement is approved, Park undertakes:

- a. Not to make any statement which is inconsistent with the Agreed Statement of Facts herein;
- b. Not to make an assignment in bankruptcy while his financial obligations under this settlement remain outstanding. If Park fails to comply with this undertaking, for any reason, Staff's Commitment under section 5 of this Settlement Agreement shall not be applicable and Staff may either or both,
 - i. commence proceedings with respect to the facts set out in the Agreed Statement of Facts herein and/or any additional facts and seek an order for administrative penalties with an

appropriate set off for any amounts paid under this Settlement Agreement;

- ii. apply for an order under section 178 of the *Bankruptcy and Insolvency Act*, that Park's financial obligations under this Settlement Agreement are not discharged by the bankruptcy, in which case Park agrees to consent to the making of such an order.
- c. Pursuant to the Order as set out in Schedule "A", to cease trading in all securities, other than those beneficially owned directly by him, for a period of 10 (ten) years from the date of approval of this settlement;
- d. Pursuant to the Order as set out in Schedule "A", not to seek to rely on any exemptions available under New Brunswick securities law, for a period of 10 (ten) years from the date of approval of this settlement;
- e. Pursuant to the Order as set out in Schedule "A", to pay an administrative penalty in the amount of \$15,000 by ten monthly installments of \$1,500 payable on the first day of the month, commencing August 2008; and
- f. Pursuant to the Order as set out in Schedule "A", to immediately pay the amount of \$3,000 for the costs of the investigation.

3. PROCEDURE FOR APPROVAL OF SETTLEMENT

- a. Upon execution of the Settlement Agreement by Staff and by Park, Staff will apply to the Commission for an order approving the Settlement Agreement.
- b. Immediately after execution of the Settlement Agreement and in any event prior to the hearing to seek approval of the Settlement Agreement, Park will provide the sum of \$3,000 to the Commission in escrow as well as 10 post dated cheques in the amount of \$1,500 each dated the first of the month for 10 months, commencing with August 2008. If the Settlement Agreement is approved, these funds will be retained by the Commission and the cheques cashed when due. If the Settlement Agreement is not approved, these funds and the cheques will be returned to Park.
- c. If the Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted respecting Park in this matter and Park agrees to waive any right to a hearing and/or appeal with respect to this matter.
- d. If, for any reason whatsoever, this settlement is not approved by the Commission, or the order set forth in Schedule "A" is not made by the Commission:

- i. Staff and Park will be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing, unaffected by the Settlement Agreement or the settlement negotiations;
- ii. The terms of this agreement will not be referred to in any subsequent proceeding or disclosed to any person, except with the written consent of both Staff and Park or as may be required by law; and
- iii. Park further agrees that he will not raise, in any proceeding, the Settlement Agreement or the negotiation or process of approval thereof, as a basis for any attack on the jurisdiction of the Commission.

4. DISCLOSURE OF SETTLEMENT AGREEMENT

- a. The terms of the Settlement Agreement will be treated as confidential by the parties thereto until approved by the Commission and forever if, for any reason, the Settlement Agreement is not approved by the Commission; and
- b. Upon the approval of the Settlement Agreement by the Commission, any obligation as to confidentiality shall terminate and the Settlement Agreement will become public information.

5. STAFF COMMITMENT

If this settlement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Park in relation to the facts set out in Part II of this Settlement Agreement.

6. EXECUTION OF SETTLEMENT AGREEMENT

The Settlement Agreement shall constitute a binding agreement and a facsimile copy of any signature shall be as effective as an original signature.

DATED at the City of Saint John this 13 day of August, 2008.

"original signed by"

Jake van der Laan
Director – Enforcement NBSC

DATED at the City of Toronto this 7th day of August, 2008.

 "original signed by"
Sang H. Park

 "original signed by"
Witness:

Part II
AGREED STATEMENT OF FACTS

The respondent

1. Sang H. Park (Park) is an individual resident at Toronto, Ontario, Canada.
2. Park is 47 years old and obtained a Bachelor of Commerce degree from York University, Toronto, Ontario, in 1986. Park also pursued a law degree in Korea but did not complete it. Park completed the Canadian Securities Course in 2007.
3. Park became employed with Walton International Ltd. (Walton), on June 2004 as a Sales Consultant. At the time Walton was selling interests in land. In or about July 2005 changed its approach by seeking to offer to sell securities, based on interests in land (Walton securities), under the exemption provisions set out in National Instrument 45-106 (NI 45-106).
4. Park worked for Walton until April 2007 Park when he became employed with Walton Capital Management Inc. (Walton Capital), an affiliated company of Walton, as a Senior Sales Account Manager, reporting to the President of Walton Capital.
5. While employed with Walton, Park also served as acting Vice President Sales for Ontario for a 6 month period ending in October 2006. In this capacity he managed the sales staff and sales operations of Walton in Ontario.
6. While employed as a Sales Consultant and Senior Sales Account Manager, Park did not receive a salary but was paid purely on the basis of commissions, at the rate of 3% of gross sales.
7. In order to effect sales of Walton securities, Walton and Walton Capital rely in part on referrals from entities with whom they have established a referral arrangement.

New Brunswick activities and violations of securities law

8. In or about September 2006, a referral arrangement was reached by Walton with Estate Financial (Estate), an insurance brokerage firm based in Moncton, New Brunswick. Under this arrangement Estate would be paid a commission of 13.25% of any amounts invested by clients they referred to Walton Capital. Estate representatives were to only refer clients and not sell Walton securities.
9. Park was assigned the responsibility of cultivating the relationship with Estate on behalf of Walton Capital, and was the sole Walton employee responsible for sales in New Brunswick and the person who interacted with Estate and the clients referred by Estate. Park also continued to conduct sales activities in Ontario as well.

10. Park was fully aware of the requirements of NI 45-106 and specifically was fully conversant with the "accredited investor" definition set out therein, as this was the exclusive basis upon which sales of Walton securities were effected in Ontario.
11. In furtherance of achieving sales in New Brunswick, Park directed Estate representatives to make their clients aware of Walton securities and to arrange meetings where Park would make a detailed presentation with respect to investing in Walton securities.
12. Numerous such meetings were subsequently arranged by Estate at a restaurant in Moncton, New Brunswick.
13. Between September 2006 and May 2007 Park traveled to New Brunswick on at least ten occasions to make presentations to Estate clients after dinner at this restaurant, with the view to seeking their investment in Walton securities. Park made multiple such presentations at each of these ten visits.
14. Park did not review the accredited investor definition set out in 45-106 as part of the presentations made.
15. After the presentations, Park on many occasions met with individual clients and completed the required documentation to effect investments in Walton securities, which included completion of a Know Your Client (KYC) form, a NI 45-106 declaration permitting Walton to make an exempt claim under NI 45-106, and a risk acknowledgement form, among other documents.
16. Park made an insufficient effort, in most cases, to ascertain that persons investing in fact fell within the requirements of the accredited investor definition set out in NI 45-106.
17. On other cases, he downplayed the requirements of NI 45-106.
18. Park acknowledges that it is the person claiming the exemption – not the investor – who must ensure that an exemption under NI 45-106 is in fact available, and that he is a "person trading" as contemplated in the Companion Policy to NI 45-106 and had an obligation to ensure compliance with NI 45-106.
19. As a result of Park's presentations approximately two million dollars was invested in Walton securities by 53 (fifty three) New Brunswick residents.
20. 22 (twenty two) of these investors completed documentation and attested to the fact that they were an "accredited investor" when they in fact clearly did not fit within any of the enumerated provisions of that definition.
21. On or about 1 February 2007, Park forged a witness signature on an

acknowledgement of receipt of an offering memorandum document by signing the document with a fictitious name and signature.

22. The investments made by investors on the basis of improper accredited investor claims were subsequently made compliant by either refunding the investment or effecting the investment under the Offering Memorandum exemption available under NI 45-106.
23. Given that commissions were not payable when an Offering Memorandum claim was made, Estate paid Walton back its commissions earned on these referrals. Park's commissions earned on these sales were also clawed back by Walton.
24. Walton Capital dismissed Park from their employment with cause on 22 March 2008.

Cooperation and other mitigating factors

25. Park has fully cooperated with Staff's investigation in this matter including appearing voluntarily to be examined by staff under oath.
26. Park is remorseful about having failed to comply with New Brunswick securities law and particularly about having forged a material document.
27. Park has no prior history of regulatory non compliance.
28. No investors have suffered a financial loss as a result of Park's violations.