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IN THE MATTER OF THE REGISTRATION OF ARIE PAPERICK

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. This settlement agreement (the **Settlement Agreement**) relates to the registration status of Arie Papernick (**Papernick**) as a dealing representative in the category of investment dealer under the *Securities Act*, R.S.O. 1990, c. S.5 (the “Act”).

2. As more particularly described in this Settlement Agreement, Papernick failed to demonstrate the requisite integrity of a registered individual when he participated in a course of conduct in which he was aware of the true nature of undisclosed and inappropriate compensation paid to another registered firm (**Firm M**), and when he made misrepresentations under oath about this compensation during a regulatory interview. Staff of the OSC (**Staff**) considers that it is appropriate that his registration be revoked. The parties have agreed to make a joint recommendation to the Director regarding Papernick’s registration.

II. AGREED STATEMENT OF FACTS

3. The parties agree to the facts as stated below.

A. The Registrant

4. Papernick has been registered under the Act as follows:

(a) as a salesperson sponsored by Credifinance Securities Limited, a Toronto Stock Exchange and Investment Dealers Association firm, from February 23, 1995 to January 12, 1996;

(b) as a salesperson in the category of broker and investment dealer, sponsored by TD Securities Inc., from January 29, 1996 to September 4, 1996;

(c) as a salesperson in the category of broker and investment dealer, sponsored by Deacon Capital Corporation, from September 5, 1996 to October 28, 1996;

(d) as a salesperson in the category of broker and investment dealer, sponsored by HSBC Securities (Canada) Inc., from November 4, 1996 to January 21, 2002;

(e) as a salesperson in the category of broker and investment dealer, sponsored by Canaccord Capital Corp. / Canaccord Genuity Corp. (**Canaccord**), from January 4, 2002 to May 24, 2006;

(f) as a salesperson in the category of broker and investment dealer, and subsequently as a dealing representative in the category of investment dealer, sponsored by Raymond James Ltd. (**Raymond James**), from May 26, 2006 to March 15, 2010;

(g) as a dealing representative in the category of investment dealer, sponsored by Secutor Capital Management Corporation (**Secutor**), from March 16, 2010 to July 31, 2018; and

(h) as a dealing representative in the category of investment dealer, sponsored by Acumen Capital Finance Partners Limited (**Acumen**), from August 1, 2018 to March 1, 2019.

5. Papernick's location of employment throughout his career as a registered individual has been in Toronto, Ontario.

6. Papernick was dismissed for cause by Canaccord on May 24, 2006 for allegedly misusing confidential information. Papernick accepted an employment offer from Raymond James and chose not to contest his dismissal from Canaccord. From June 6, 2006 to December 4, 2006, Papernick's registration was made subject to voluntary supervision by Raymond James, by agreement with the Investment Dealers Association of Canada.

7. On May 22, 2015, Papernick received a warning letter from the Investment Industry Regulatory Organization of Canada (**IIROC**) for making personal trades in 2011 in a security that was subject to a dealer-restricted period, although IIROC did not take further regulatory action as it noted that Papernick "may have relied on unclear legal advice and the trading activity did not appear to result in significant harm to the marketplace."

B. Papernick's Role in Improper Commission Payments

8. From late 2015 until February 2017 (the **Relevant Time**), Papernick acted as Secutor's dealing representative on a number of corporate finance transactions in which Secutor acted as broker in placements by issuers in the resource sector, and where investment funds managed by another registered firm (**Firm M**) invested in securities of these issuers. Among the investment funds managed by Firm M during the Relevant Time were flow-through prospectus-qualified funds (**FT Funds**). In many of these placements, the FT Funds managed by Firm M were the primary or only purchasers of the securities on offer.

9. During the Relevant Time, Papernick's primary contact at Firm M was JK, an associate of Firm M who held the title of Executive Vice President – Investment Banking. Papernick and JK worked closely together and frequently communicated with each other during the Relevant Time, including by e-mail.

10. Papernick and JK agreed orally to a split of fees on transactions where they worked together, in which Firm M would generally receive 80% of this fee revenue, and Secutor would receive the remaining 20%. Papernick would be paid approximately 50% of the revenue received by Secutor for transactions on which he worked involving Firm M.

11. Some of Firm M's investment funds during the Relevant Time were distributed pursuant to an offering memorandum, and in those cases there was no restriction on the ability of Firm M or its affiliated entities or individuals to collect fees or commissions from the issuer.

12. Generally, once the terms of the transaction were agreed, Papernick would:

(a) Settle placements, withhold commissions from gross proceeds, and remit the net proceeds to the issuer;

(b) Prepare "flow of funds" schedule calculating the commission split between Firm M and Secutor on the basis of the oral agreement with JK (namely, 80% to Firm M and 20% to Secutor); and

(c) Forward the "flow of funds" schedule to both JK and the chief financial officer of Secutor.

13. The prospectuses of the FT Funds specified that neither Firm M nor its associates or affiliates would receive fees or commissions in connection with any transactions in which the FT Funds invested (the **Restriction**). During the Relevant Time, JK was an associate of Firm M.

14. Papernick came to learn of the Restriction in the latter part of 2015.

15. For transactions in which Firm M participated that were subject to the Restriction during the Relevant Time, Secutor received most or all of the fee revenue directly from the issuers, and these issuers' press releases disclosed that Secutor would be receiving finders' fees or similar

commissions. Approximately 80% of this revenue was then paid to Firm M. Some of this revenue was prohibited by the Restriction, and therefore should not have been paid. Papernick accepted this arrangement and worked on these transactions with JK, and both were responsible for generating these investment opportunities. Papernick was paid approximately half of the 20% of the fee revenue retained by Secutor for transactions implicated by the Restriction. Papernick's role in transactions subject to the Restriction was the same as set out in paragraph 11 herein.

16. Firm M's management issued invoices to Secutor for "strategic advisory services" for these transactions (the **Advisory Invoices**) pursuant to which Secutor could make payments to Firm M.

17. In the latter half of 2015, Papernick received the first Advisory Invoice from Firm M. Papernick presented the Advisory Invoice to compliance staff at Secutor, who requested several edits. After Papernick communicated these proposed revisions to JK, Firm M reissued the amended Advisory Invoice, and Papernick forwarded it to compliance staff at Secutor. This Advisory Invoice was accepted and paid by Secutor's chief financial officer.

18. The Advisory Invoices were not for *bona fide* strategic advisory services. Instead, they were designed to capture aggregate fee revenue which Firm M was not entitled to because of the Restriction. Because the Advisory Invoices aggregated the fee revenue from a number of issuers, the connection was obscured between the prohibited revenue and the particular transactions in respect of which the revenue was paid. Secutor paid several Advisory Invoices in 2016.

19. In February 2016, Secutor underwent a financial audit. Secutor's auditor requested that Firm M sign off on certain fee revenue line items, and Papernick sent the request to JK for sign-off. JK refused to sign off on Secutor's audit letter as the letter showed all transactions, including those covered by the Restriction. Papernick indicated to JK in a series of e-mails that Secutor's

auditor would likely not accept the amount of the advisory fees, and suggested that JK or someone else with signing authority at Firm M sign off on the audit letter.

20. For the remainder of 2016, Secutor continued to account for transactions on the basis of 80% of the commissions being paid to Firm M, including some transactions subject to the Restriction. Press releases relating to these transactions listed Secutor as receiving finder's fee revenue, even though JK and Papernick assumed that most of the revenue received by Secutor would be directed to Firm M. In an e-mail to an industry executive discussing one of these press releases in December 2016, JK wrote "When you see Secutor in press releases it is [Firm M]."

21. Firm M did not issue Advisory Invoices for transactions in the fourth quarter of 2016 subject to the Restriction (the **Non-Invoiced Fee Revenue**). On a conference call in which Papernick was present, Secutor management and Firm M management agreed that the Non-Invoiced Fee Revenue could not be supported and would not be paid by Secutor. The Non-Invoiced Fee Revenue amounted to approximately \$1.6 million in the aggregate.

22. At JK's request, Papernick listed the name of a new corporation (**Firm T**) on "flow of funds" schedules in late 2016 as the entity to which commissions on transactions subject to the Restriction should be allocated. Firm T applied for registration as an exempt market dealer, but withdrew its application and Firm T was never registered. Secutor did not pay any Non-Invoiced Fee Revenue to Firm T.

23. JK advised Papernick that Secutor would be receiving an invoice from another registered dealer (**Firm E**) to invoice Secutor for approximately \$786,000, which represented a portion of the Non-Invoiced Fee Revenue (the **Firm E Invoice**). The Firm E Invoice, which was dated December 30, 2016, purported to reflect work carried out by Firm E on transactions from October 2016 to December 2016 involving Firm M and subject to the Restriction. Papernick was not

aware whether or not Firm E had performed any work on the transactions subject to the Restriction when he provided the Firm E Invoice to Secutor.

24. Secutor management paid Firm E the balance specified in the Firm E Invoice via cheque dated February 6, 2017. Later in 2017, JK left Firm M and joined Firm E in an unregistered role.

C. Misrepresentations and Material Omissions to OSC and IIROC Staff

25. On January 26, 2018, Papernick participated in a regulatory interview (the **Interview**) jointly conducted by OSC Staff and IIROC Staff. Papernick solemnly affirmed under oath that he would tell the truth at the Interview.

26. At the Interview, Papernick specifically denied any knowledge of the Restriction and specifically denied having had any discussions with anyone at Firm M about whether Firm M was allowed to receive finder's fees or commissions on placements taken by FT Funds in public companies.

27. These statements were false and misleading. Months after the Interview, Staff obtained e-mails between Papernick and JK from 2016 and 2017 in which they repeatedly and explicitly discussed the Restriction. For example, Papernick wrote in one e-mail to JK, "I understand that [Firm M] doesn't receive revenues on prospectus deals," and in another e-mail to JK, he wrote that a Firm M executive would be prepared to invest in an issuer, but that this executive would "rather not because if he did he can't take fees since he also bought in the prospectus."

28. In late December 2016, Papernick prepared and sent to JK a spreadsheet listing over \$2.17 million in commissions to be paid to Firm M for a series of offerings during calendar 2016, including a number of offerings subject to the Restriction. JK warned Papernick in an e-mail not to provide one of JK's superiors at Firm M with the spreadsheet as prepared, because it included a record of commissions payable that were prohibited by the Restriction.

29. At the Interview, Papernick was asked a number of questions about the Advisory Invoices. Papernick provided vague descriptions of the origin and nature of the Advisory Invoices that did not include any reference to the true basis for the Advisory Invoices: the aggregate fee revenue prohibited by the Restrictions. As such, Papernick made material omissions when he failed to state facts in his responses to these questions that were necessary to make his responses not misleading.

30. Neither OSC Staff nor IROC Staff were aware at the time that Papernick had made misrepresentations or material omissions during the Interview. It was not until months after the Interview, when Staff obtained e-mails between Papernick and JK, that it became apparent to Staff that Papernick had misled Staff about his knowledge of the Restriction and his role in Advisory Invoices.

III. ADMISSIONS AND REPRESENTATIONS BY PAPERINICK

31. Papernick admits that he failed to demonstrate the requisite integrity of a registered individual while he participated in transactions on behalf of Secutor while he was aware of the true nature of undisclosed and inappropriate compensation paid to Firm M.

32. Papernick admits that by making misrepresentations and material omissions to Staff during the Interview, he failed to demonstrate the requisite integrity of a registered individual.

33. Papernick admits his awareness that the true nature of the Advisory Invoices was not what was reflected on the face of the documents.

34. Papernick represents that he did not play any role in initiating the Advisory Invoice process. Notwithstanding the true nature of the Advisory Invoices, Firm M did send a detailed engagement letter to Secutor outlining specific advisory services to be provided to Secutor.

35. Papernick represents that once received, he presented all Firm M invoices, including the Advisory Invoices, to Secutor's compliance staff for review and approval. Papernick was not part of Secutor's compliance staff. Papernick represents that he had no authority to issue or pay invoices and had no signing authority at Secutor.

36. Papernick represents that after the initial Advisory Invoice was approved by Secutor, subsequent Advisory Invoices were routinely approved and paid by Secutor management.

37. Papernick represents that there is no evidence of any investors having suffered any losses as a result of his conduct, but admits that issuers in which FT Funds invested indirectly paid more commissions to Firm M, and less to Secutor, in light of the Restriction. Papernick further represents that he did not benefit personally from the issuance of the Advisory Invoices beyond being paid his customary share of approximately half of the 20% of the revenue retained by Secutor in transactions involving Firm M, in cases where Secutor paid the Advisory Invoices.

38. Papernick represents that he informed Secutor management that he would be participating in the Interview. Papernick further represents that he felt considerable pressure from Secutor management to provide answers to OSC and IIROC Staff that would not reveal the true nature of the Advisory Invoices. Papernick represents that he feared losing his job and unpaid commissions if he were to truthfully speak of the Advisory Invoices at the Interview.

39. Papernick represents that he voluntarily resigned from Secutor in July 2018.

40. Papernick has accepted full responsibility for his conduct and has expressed remorse. In attending a meeting with OSC and IIROC Staff to clarify the statements given at his Interview, Papernick represents that he set forth the truth of the matter and offered to assist OSC and IIROC Staff with further issues that may arise in the future related to this matter.

IV. JOINT RECOMMENDATION

41. The parties make the following joint recommendation to the Director regarding Papernick's registration status:

- (a) Papernick's registration shall be revoked pursuant to section 28 of the Act, effective immediately, and Papernick may not apply to reactivate his registration until two years have elapsed from the date of Papernick's resignation from Acumen on March 1, 2019;
- (b) Prior to applying for reactivation of registration, Papernick shall re-take, and successfully complete, the Conduct and Practices Handbook Course offered by the Canadian Securities Institute;
- (c) Prior to applying for reactivation of registration, Papernick shall take, and successfully complete, the Applied Investment Dealer Compliance Course offered by the Canadian Securities Institute; and
- (d) Subject to conditions (a), (b) and (c) being met, Staff will not recommend, either to the Director or to IIROC, that the reactivation of Papernick's registration be refused unless Staff becomes aware after the date of this Settlement Agreement of conduct impugning Papernick's suitability for registration or rendering his registration objectionable, and provided he meets all applicable criteria for registration at the time.

42. The parties submit that their joint recommendation is appropriate for the following reasons:

- (a) Papernick is remorseful for his conduct;
- (b) Papernick has corrected his misrepresentations and material omissions made during the Interview by subsequently providing truthful information to Staff upon request;

- (c) Papernick has agreed to co-operate with staff of securities regulatory authorities and self-regulatory organizations, as necessary, in any future proceedings relating to the subject matter referenced in the Agreed Statement of Facts set out herein;
- (d) By agreeing to this Settlement Agreement, Papernick has saved Staff and the Director the time and resources that would have been required for an opportunity to be heard (an “OTBH”) under s. 31 of the Act to consider a recommendation by Staff that Papernick’s registration should be revoked.

43. The parties acknowledge that if the Director does not accept this joint recommendation:

- (a) This settlement agreement and all related negotiations between the parties shall be without prejudice.
- (b) Papernick will be entitled to an OTBH in accordance with s. 31 of the Act in respect of Staff’s recommendation that his registration be revoked by the Director.

Arie Papernick

Elizabeth King
Deputy Director
Compliance and Registrant Regulation

Date

Date

I approve the settlement agreement reached by both parties.

Pat Chaukos

Deputy Director

February 24, 2020

