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

AND

IN THE MATTER OF
MARK BONHAM AND BONHAM & CO. INC.

Hearing:	**August 20, 2002**		
Panel:	**Paul M. Moore, Q.C.**	**-**	**Vice-Chair (Panel Chair)**
	Kerry D. Adams, FCA	**-**	**Commissioner**
	Harold P. Hands	**-**	**Commissioner**
Appearances:	**Melissa Kennedy**	**-**	**For the Staff of the Ontario**
	Alexandra Clark	**-**	**Securities Commission**
	Stephanie Collins		
	R. Nairn Waterman	**-**	**For Mark Bonham and**
	John Contini		**Bonham & Co. Inc.**

EXCERPT FROM THE SETTLEMENT HEARING
CONTAINING THE ORAL REASONS FOR DECISION

The following statement has been prepared for purposes of publication in the Ontario Securities Commission Bulletin and is based on the transcript of the hearing, including oral reasons delivered at the hearing, in the matter of Mark Bonham and Bonham & Co. Inc. The transcript has been edited, supplemented and approved by the panel for the purpose of providing a public record of the panel's decision in the matter. This decision should be read together with the settlement agreement and the order attached.

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Vice-Chair Moore:

We approve the proposed settlement as being appropriate in the public interest.

Facts

[1] The facts in this case are set out in the settlement agreement, dated July 25, 2002. By way of background, I should point out that this matter was initially launched against three respondents: Mark Bonham, SVC O'Donnell Funds Management Inc. and Bonham & Co. Inc. In July, 2000, SVC changed its name to StrategicNova Funds Management Inc. In October, 2000, StrategicNova entered into a settlement agreement with staff of the Commission. That settlement agreement was approved by the Commission in an order dated November 6, 2000. The contentions and allegations against the two remaining respondents were continued in the present case.

[2] In the settlement agreement before us today, Bonham admits that he failed to act in good faith and in the best interests of certain mutual funds, and failed to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances, contrary to section 116(1) of the *Securities Act*.

[3] Bonham & Co. admits that it failed to properly supervise Bonham's activities, contrary to section 3.1 of OSC Rule 31-505.

[4] As I mentioned, we have determined that it is appropriate in the public interest for the Commission to approve the settlement agreement and to make the proposed order for the reasons that I will now give.

Reasons

Manual Pricing

[5] This issue of manual pricing of securities held in a mutual fund is an issue of first impression before this Commission as well as before other Canadian securities regulators. There are, therefore, no other decisions or orders which would be of assistance in assessing the proposed sanctions in similar cases. We accept staff's submission that sanctions contained in the settlement agreement are in keeping with the purposes of the *Act*, set out in section 1.1, and the principles which the Commission must have regard to in pursuing those purposes, set out in section 2.1.

[6] While manual pricing of securities may be appropriate in limited circumstances, the manual pricing of securities without proper supervision or documentation or a consistent and proper methodology poses risks to the investing public.

Reduction of the Risk that the Conduct will be Repeated

[7] Significant steps have been taken to eliminate the risk that the conduct complained of will be repeated. The respondents no longer have any involvement with StrategicNova and its affairs. StrategicNova has submitted to a full review of its valuation practices and procedures and has made full restitution of the effects of any overvaluation to the unit holders of the funds. Investors have thus been fully compensated for any losses. The respondents have also undertaken not to be involved either directly or indirectly in the pricing or valuation of a mutual fund for a period of three years. If, during this period, the respondents are involved in initiating a mutual fund, the material terms of the settlement agreement must be disclosed in any disclosure document provided to investors. Further, if at the end of this three-year period, the respondents are ever involved in the pricing or valuation of a mutual fund at any time in the future, they agree to be supervised by another registrant with regard to such pricing.

[8] Taken together, these undertakings will help to protect the investing public both during the duration of the present sanctions and well into the future.

The Proposed Sanctions

[9] In the present settlement agreement, it is proposed that, for a period of three years: first, the respondents surrender their registrations as investment counsel and portfolio managers; second, Mark Bonham not be permitted to act as an officer or director of a registrant; and third, Mark Bonham not be permitted to trade in securities

except in his personal accounts. It is also proposed that both respondents be reprimanded by the Commission.

[10] These sanctions reflect the Commission's censure of the respondent's failure to implement and supervise proper valuation procedures and send a message to other participants in the mutual fund industry.

Voluntary Payment and Commission Costs

[11] The respondents have agreed to make a voluntary payment to the Commission in the amount of $50,000, and have agreed that these funds will be used for purposes that will benefit Ontario investors.

[12] It is also proposed that the respondents be ordered to pay the sum of $150,000 to the Commission in respect of the costs of its investigation and hearing of this matter. When we approve the settlement agreement, those costs will be paid. This order regarding costs helps to ensure that these costs do not have to be borne by the Commission or subsidized by other market participants through fees.

Implications for the Mutual Fund Industry

[13] We accept as appropriate for determining a breach of the *Act*, and for measuring the level of restitution that was made in this case, as reflected in the settlement agreement, a materiality threshold that uses a 0.5% of assets benchmark. This is a benchmark applied by members of the International Organization of Securities Commissions for the purposes of measuring errors that require adjustments to be made.

We understand that the investment funds industry has had guidelines in this regard, at least since the year 2000, and, generally, the market has looked to a threshold of 0.5%.

[14] The settlement agreement and the agreed facts that it contains highlight the need to apply a specific and consistent methodology when pricing securities held in a mutual fund, as well as the need to maintain adequate records with respect to the determination of such prices.

[15] There is another benefit to this settlement agreement. By making these admissions and agreeing to settle the case, the respondents have avoided the necessity of the Commission conducting a lengthy hearing in respect of their conduct. The Commission accepts that the sanctions proposed are commensurate with the seriousness of the respondents' misconduct.

Reprimand

[16] Mr. Bonham, you are hereby reprimanded.

Conclusion

[17] We would like to thank both counsel. We found the materials to be clear, comprehensive and well-presented. This is an excellent settlement agreement. The sanctions truly were well-crafted and are appropriate. The settlement agreement is fair to both the public and to the respondents. We would also like to thank both counsel for the presentations they made. They were clear, lucid and very helpful.

Dated at Toronto this 20th day of August, 2002.

"Paul M. Moore" "Kerry D. Adams"

"Harold P. Hands"