



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

- AND -

**IN THE MATTER OF NEWER TECHNOLOGIES LIMITED, RYAN PICKERING
AND RODGER FREY**

- AND -

**IN THE MATTER OF A
SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND NEWER TECHNOLOGIES LIMITED,
AND RYAN PICKERING**

ORDER

(Sections 127 and 127.1 of the *Securities Act*)

WHEREAS on December 4, 2012, the Ontario Securities Commission (the "**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**") to consider whether it is in the public interest to make orders, as specified therein, against and in respect of Newer Technologies Limited ("**NTL**"), Ryan Pickering ("**Pickering**") and Rodger Frey ("**Frey**"). The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission ("**Staff**") dated December 4, 2012;

AND WHEREAS NTL and Pickering (collectively, the "**Pickering Respondents**") have entered into a Settlement Agreement with Staff of the Commission dated September 2, 2014 (the "**Settlement Agreement**") in which the Pickering Respondents agreed to a proposed

settlement of the proceeding commenced by the Notice of Hearing dated December 4, 2012, subject to the approval of the Commission;

AND WHEREAS pursuant to the Settlement Agreement, the Pickering Respondents have given a joint and several undertaking to the Commission, in the form attached as Schedule “**B**” to the Settlement Agreement (the “**Undertaking**”):

1. to repay all moneys loaned to NTL by forty nine (49) existing lenders in the aggregate amount of \$2,261,000, which lenders do not qualify as accredited investors or meet applicable exemptions from the prospectus requirement (the “**Non-Exempt Lenders**”), within twelve (12) months of the date of the Commission’s order approving the Settlement Agreement. All payments made to Non-Exempt Lenders pursuant to this Undertaking will be made on a pro-rata basis, but nothing shall prevent NTL from repaying an outstanding NTL Promissory Note in full or in part if a lender makes demand under the terms of its NTL Promissory Note; and
2. to file with the Commission, on behalf of NTL, no later than ten (10) days after the date of approval of the Settlement Agreement, Form 45-106F1 in respect of the twelve (12) existing lenders who made loans in the aggregate amount of \$2,815,000 and who qualify as accredited investors or meet applicable exemptions from the prospectus requirement (“**Exempt Lenders**”) that are remaining lenders to NTL, and to pay the applicable activity fee of \$500.00 concurrently with the filing. The Pickering Respondents acknowledge that if they fail to file Form 45-106F1 within ten (10) days of the date of approval of the Settlement Agreement, late fees in accordance with OSC Rule 13-502 will accrue from the tenth day following the date of approval of the Settlement Agreement;

AND WHEREAS on August 29, 2014, the Commission issued a Notice of Hearing pursuant to section 127 of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve a Settlement Agreement entered into between Staff and the Pickering Respondents;

AND UPON reviewing the Settlement Agreement, the Notices of Hearing, and the Statement of Allegations of Staff of the Commission, and upon hearing submissions from counsel for the Pickering Respondents, 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 is approved;
- (b) pursuant to paragraph 6 of subsection 127(1) of the Act, the Pickering Respondents are reprimanded;
- (c) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by or of NTL shall cease for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement, except that this prohibition does not apply with respect to trades in any securities by or of NTL through an appropriately registered dealer with (a) an "accredited investor" (as that term is defined in section 1.1 of National Instrument 45-106 – *Prospectus and Registration Exemptions*) that is not an individual, or (b) an individual who is a "permitted client" (as that term is defined in section 1.1 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*);
- (d) pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by NTL is prohibited for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement, except that this prohibition does not apply with respect to the acquisition of any securities as a result of the incorporation of a corporation that is a wholly owned subsidiary of NTL;
- (e) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to NTL for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement, except that this prohibition does not apply with respect to trades in any securities by or of NTL

through an appropriately registered dealer with (a) an “accredited investor” (as that term is defined in section 1.1 of National Instrument 45-106 – *Prospectus and Registration Exemptions*) that is not an individual or (b) an individual who is a “permitted client” (as that term is defined in section 1.1 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*);

- (f) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Pickering shall cease for a period of one year commencing on the date of the Commission’s order approving this Settlement Agreement, except that Pickering may trade in the account of any registered retirement savings plan, registered pension plan, tax free savings accounts, self-directed retirement savings plans as defined in the Income Tax Act, R.S.C. 1985, c.1, as amended, and/or for any registered education savings plan (“**RESP**”) accounts for which Pickering and/or his spouse have sole legal and beneficial ownership or are a sponsor, and such trading shall be carried out solely through an appropriately registered dealer in Canada (which dealer must be given a copy of this Order);
- (g) pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by Pickering is prohibited for a period of one year commencing on the date of the Commission’s order approving this Settlement Agreement;
- (h) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Pickering for a period of one year commencing on the date of the Commission’s order approving this Settlement Agreement;
- (i) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Pickering shall immediately resign all positions that he holds as a director or officer of any reporting issuer, registrant or investment fund manager;
- (j) pursuant to paragraph 7 of subsection 127(1) of the Act, Pickering shall immediately resign any position that he holds as a director or officer of any issuer other than NTL, with the exception that Pickering is permitted to act or continue to act as a director

and officer of any company through which he carries on business, so long as there are no more than 5 holders of the securities of the corporation;

- (k) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Pickering is prohibited for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement from becoming or acting as a director or officer of any reporting issuer, registrant or investment fund manager;
- (l) pursuant to paragraph 8 of subsection 127(1) of the Act, Pickering is prohibited for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement from becoming or acting as a director or officer of any issuer other than NTL or a wholly owned subsidiary of NTL, with the exception that Pickering is permitted to act or continue to act as a director and officer of any company through which he carries on business, so long as there are no more than 5 holders of the securities of the corporation;
- (m) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Pickering is prohibited for a period of one year commencing on the date of the Commission's order approving this Settlement Agreement, from becoming or acting as a registrant, as an investment fund manager or as a promoter;
- (n) in the event that the Pickering Respondents do not fully comply with the Undertaking, then pursuant to paragraph 10 of subsection 127(1) of the Act, the Pickering Respondents shall disgorge to the Commission the unpaid balance arising from the Undertaking, up to the amount of \$2,261,000 obtained as a result of non-compliance with Ontario securities law. The amount of \$2,261,000 to be disgorged to the Commission pursuant to this paragraph (n) shall be reduced by the same amount as any funds paid back to the Non-Exempt Lenders in accordance with the Undertaking, provided that satisfactory supporting evidence of such payments is provided by the Pickering Respondents to Staff. This disgorgement amount shall be designated for allocation or for use by the Commission in accordance with subsections 3.4(2)(b)(i) or (ii) of the Act;

- (o) pursuant to section 127.1 of the Act, the Pickering Respondents, jointly and severally, shall within one year commencing on the date of the Commission's order approving this Settlement Agreement, pay to the Commission the amount of \$25,000.00, representing a portion of Staff's costs in this matter;
- (p) After the payments set out in paragraphs (n) and (o) are made in full, as an exception to the provisions of paragraphs (f), (g), (h), (k) and (l), of this Order above, Pickering is permitted to acquire for the account of any registered retirement savings plan, registered pension plan, tax free savings accounts, self-directed retirement savings plans as defined in the Income Tax Act, R.S.C. 1985, c.1, as amended, and/or for any RESP accounts for which Pickering and/or his spouse have sole legal and beneficial ownership or are a sponsor, and such trading shall be carried out solely through an appropriately registered dealer in Canada (which dealer must be given a copy of this Order):
- i. any "exchange-traded security" or "foreign exchange-traded security" within the meaning of National Instrument 21-101- *Marketplace Operation* provided that he does not own beneficially or exercise control or direction over more than 5 percent of the voting or equity securities of the issuer(s) of any such securities, or
 - ii. any security issued by a mutual fund that is a reporting issuer;
- and exemptions are permitted for the purpose of trades described in this subparagraph;
- (q) Until the entire amount of the payments set out in subparagraphs (n) and (o) of this Order above, are paid in full, the prohibitions set out in subparagraphs (c), (d), (e), (f), (g), (h), (k) and (l), shall continue in force without any limitation as to time period;
- (r) The Pickering Respondents shall file with the Commission, on behalf of NTL, no later than ten (10) days after the date of approval of this Settlement Agreement, Form 45-106F1 in respect of the Exempt Lenders, and to pay the applicable activity fee of

\$500.00 concurrently with the filing. The Pickering Respondents acknowledge that if they fail to file Form 45-106F1 within ten (10) days of the date of approval of this Settlement Agreement, late fees in accordance with OSC Rule 13-502 will accrue from the tenth day following the date of approval of this Settlement Agreement; and

- (s) Nothing in this Order shall prevent NTL from repaying, in full or in part, an NTL Promissory Note outstanding as at the date of this Settlement Agreement.

DATED at Toronto this 3rd day of September, 2014.

“Christopher Portner”

Christopher Portner