

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

- AND -

**IN THE MATTER OF
BENJAMIN EMILE POIRIER**

SETTLEMENT AGREEMENT

I INTRODUCTION

1. By Notice of Hearing dated October 13, 1999 (the “Notice of Hearing”), the Ontario Securities Commission (the “Commission”) announced that it proposed to hold a hearing to consider whether, pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”), in the opinion of the Commission, it is in the public interest for the Commission:
 - (a) to make an order pursuant to section 127(1) clause 2 of the Act that trading in securities by Benjamin Emile Poirier (“Poirier”) cease permanently or for such other period as specified by the Commission;
 - (b) to make an order pursuant to section 127(1) clause 3 of the Act that any exemptions contained in Ontario securities law do not apply to Poirier;
 - (c) to make an order pursuant to section 127(1) clause 6 of the Act that Poirier be reprimanded; and
 - (d) to make such other order as the Commission considers appropriate.

II JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission (“Staff”) agree to recommend settlement of the proceedings initiated in respect of the respondent by the Notice of Hearing in accordance with the terms and conditions set out below. The respondent agrees to the settlement on the basis

of the facts agreed to as hereinafter provided and the respondent consents to the making of an Order in the form attached as Schedule "A" on the basis of the facts set out below.

3. This settlement agreement, including the attached Schedule "A" and Schedule "B" (collectively, the "Settlement Agreement"), will be released to the public only if and when the settlement is approved by the Commission.

III SETTLEMENT OF FACTS AND CONCLUSIONS

Acknowledgement

4. Staff and the respondent agree with the facts and conclusions set out in Part III of the Settlement Agreement.

Introduction

5. Poirer was registered as a salesperson from January 16, 1991 to May 31, 1999 with W.H. Stuart Mutual Ltd. ("W.H. Stuart"), a mutual fund dealer and limited market dealer, pursuant to section 26(1) of the Act.

Trading by Poirier Contrary to the Requirements of Ontario Securities Law

6. During the period from October, 1994 to December, 1996 (the "Material Time"), Poirier traded in securities, namely units (the "Units") of Dual Capital Limited Partnership, where such trading was a distribution of such securities, without having filed a preliminary prospectus and a prospectus and obtaining receipts therefor from the Director as required by section 53(1) of the Act.
7. The Units were purportedly offered for sale pursuant to the "seed capital" prospectus exemption set out in section 72(1)(p) of the Act. The requirements of the "seed capital" exemption from the prospectus requirements in Ontario securities law were not satisfied. An offering memorandum dated October 18, 1994 as amended on December 19, 1994 for the Limited Partnership (the "Offering Memorandum") was provided to some of the investors who purchased the Units.

8. On October 26, 2000, in a related prosecution under section 122 of the Act before the Honourable Mr. Justice Douglas, Dual Capital Management Limited (“Dual Capital”), the limited partner of Dual Capital Limited Partnership, and the two officers of Dual Capital Management Limited, Warren Wall and Shirley Joan Wall (collectively, the “Walls”), entered pleas of guilty in relation to trading by Dual Capital in securities, namely, Units in the Dual Capital Limited Partnership, without being registered to trade in such securities as required by section 25(1) of the Ontario Securities Act and distributing securities without having filed a prospectus in contravention of section 53(1) of the Ontario Securities Act.
9. In the course of delivering his Reasons for Sentence on October 30, 2000, [cited at (2001) 24 OSCB 763, February 2, 2001], Mr. Justice Douglas stated the following in relation to the description of the investment scheme in the Dual Capital Limited Partnership (also referred to as the “Roll Programme” and the “International Lending Programme”):

I find that the Roll Programme as conceived, was and remains utter nonsense. The programme, considered in and of itself, is a fraudulent means....

...I find that the Roll Programme was per se dishonest.

...Indeed, the evidence is conclusive and nearly complete that all of the investors were neither sophisticated (but naïve), nor rich (but poor) or, at least, dependent upon the little money they had.
10. During the Material Time, Poirier sold Units to ten investors, as well as to his spouse. The ten investors paid approximately \$325,000 for the purchase of the Units through Poirier. Poirier’s spouse paid \$15,000 for the purchase of the Units. Poirier earned commissions of approximately \$4,449.96 in respect of the sale of the Units.
11. During the Material Time, Poirier traded in securities, namely the Units, without the knowledge or consent of W.H. Stuart and accordingly, did not trade in accordance with his registration under section 26(1) of the Act.

12. Further, W.H. Stuart refused to participate in the sale of the Units, and communicated the firm's position to its salespersons, including Poirier, prior to the sale of the Units by Poirier to some of his clients. As stated above, Poirier accepted commissions from Dual Capital in respect of the sale of the Units, which commissions he did not disclose to W.H. Stuart.
13. Poirier represents to Staff of the Commission that he relied on the representations made by the principal of the promoter of the offering, DJL Capital Corp., as well as the Walls, the officers of Dual Capital Management Limited, that the sale of the securities complied with Ontario securities law and that the Units in Dual Capital Limited Partnership were a legitimate investment. However, Poirier acknowledges that he should not have recommended or sold the Units to his clients, having been told by his firm that its salespeople should not sell the Units.
14. Further, Poirier failed to conduct the appropriate due diligence concerning both the nature and quality of the investments in the Dual Capital Limited Partnership, and compliance with the requirements of Ontario securities law relating to the distribution of the Units. In particular, Poirier took the representations of the principals at face value notwithstanding significant discrepancies in the Offering Memorandum, including,
 - (i) the lack of any logical and meaningful explanation as to how the investment worked and why it was able to generate significant rates of return;
 - (ii) a logical inconsistency between a "no risk" investment and high rates of return; and
 - (iii) the nonsensical nature of the investment proposal set out in the Offering Memorandum.
15. Further, contrary to Ontario Securities Commission Rule 31-505 s.1(5), Poirier failed to ascertain the suitability of the Units to the needs of the investors, the general investment needs and objectives of his clients and the suitability of the purchase of the Units for his clients. Some of Mr. Poirier's clients were charitable organizations. Other clients were unsophisticated, elderly and in ill health, or lived upon fixed incomes. Additionally, Mr.

Poirier's clients suffered detrimental financial and emotional losses arising from his recommendation that they purchase the Units.

Conduct Contrary To The Public Interest

16. In summary, during the Material Time, Poirier violated Ontario securities law and engaged in conduct contrary to the public interest, by reason of the following:
- (a) Poirier traded in securities, as outlined above, where such trading constituted a distribution of such securities, without filing and obtaining a receipt for a prospectus and without an exemption to the prospectus requirement, contrary to section 53(1) of the Act;
 - (b) Poirier failed to deal fairly and in the best interests of his clients, as described above;
 - (c) Poirier traded in the Units without the knowledge or consent of his firm, W.H. Stuart;
 - (d) Poirier failed to disclose to his firm that he accepted commission payments from Dual Capital in relation to the sale of the Units; and
 - (e) Poirier failed to assess the suitability of Units to the needs of his clients.

IV POSITION OF THE RESPONDENT, POIRIER

17. Poirier is deeply saddened by the losses his clients have sustained and apologizes for being in any way connected to these investments.

V TERMS OF SETTLEMENT

18. The respondent, Poirier, agrees to the following terms of settlement:
- (a) pursuant to clause 2 of subsection 127(1) of the Act, Poirier will cease trading securities (which term includes, for the purpose of this settlement, a purchase of a security) for a period of 10 years effective the date of the Order of the

Commission approving the proposed settlement agreement herein, with the exception that after one year from the date of the Order, Poirier is permitted to purchase or sell securities which are beneficially owned by him in his personal accounts in his name;

- (b) Poirier undertakes never to apply for registration in any capacity under Ontario securities law, and agrees to execute the undertaking to the Commission in the form attached as Schedule “B” to this settlement agreement;
- (c) Poirier agrees to be reprimanded by the Commission under clause 6 of subsection 127(1) of the Act;
- (d) Poirier will attend, in person, at the hearing before the Commission to consider the proposed settlement.

VI STAFF COMMITMENT

- 19. If this Settlement Agreement is approved by the Commission, Staff will not initiate any complaint to the Commission or request the Commission to hold a hearing or issue any order in respect of any conduct or alleged conduct of the respondent in relation to the facts set out in Part III of this Settlement Agreement.

VII PROCEDURE FOR APPROVAL OF SETTLEMENT

- 20. The approval of the settlement as set out in the Settlement Agreement shall be sought at a public hearing before the Commission in accordance with the procedures described herein and such further procedures as may be agreed upon between Staff and the respondent.
- 21. If this Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted respecting the respondent in this matter and the respondent agrees to waive any right to a full hearing and appeal of this matter under the Act.

22. If this Settlement Agreement is approved by the Commission, the parties to this Settlement Agreement will not make any statement that is inconsistent with this Settlement Agreement.
23. 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:
- (a) each of Staff and the respondent will be entitled to proceed to a hearing of the allegations in the Notice of Hearing and related Statement of Allegations unaffected by the Settlement Agreement or the settlement negotiations;
 - (b) the terms of the Settlement Agreement will not be raised in any other proceeding or disclosed to any person except with the written consent of Staff and the respondent or as may be otherwise required by law; and
 - (c) the respondent 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 Commission’s jurisdiction, alleged bias, appearance of bias, alleged unfairness or any other challenge that may otherwise be available.
24. If, prior to the approval of this Settlement Agreement by the Commission, there are new facts or issues of substantial concern, in the view of Staff, regarding the facts set out in Part III of this Settlement Agreement, Staff will be at liberty to withdraw from this Settlement Agreement. Notice of such intention will be provided to the respondent in writing. In the event of such notice being given, the provisions of paragraph 23 in this part will apply as if this Settlement Agreement had not been approved in accordance with the procedures set out herein.

VIII DISCLOSURE OF SETTLEMENT AGREEMENT

25. Staff or the respondent may refer to any part or all of this Settlement Agreement in the course of the hearing convened to consider this agreement. Otherwise, this Settlement Agreement and its terms will be treated as confidential by all parties to the Settlement

Agreement until approved by the Commission, and forever if, for any reason whatsoever, this settlement is not approved by the Commission.

- 26. Any obligation as to confidentiality shall terminate upon the approval of this Settlement Agreement by the Commission.

IX EXECUTION OF SETTLEMENT AGREEMENT

- 27. This Settlement Agreement may be signed in one or more counterparts that together shall constitute a binding agreement and a facsimile copy of any signature shall be as effective as an original signature.

DATED this 21st day of January, 2003.

Signed in the presence of:

"Owen Bury"
Owen Bury

Benjamin Emile Poirier

DATED this 21st day of January, 2003

Staff of the Ontario Securities Commission

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
BENJAMIN EMILE POIRIER**

**ORDER
(Sections 127)**

WHEREAS on October 13, 1999 the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act* (the "Act") in respect of Benjamin Emile Poirier ("Poirier");

AND WHEREAS Poirier entered into a settlement agreement dated January 21, 2003 (the "Settlement Agreement") wherein he agreed to a proposed settlement of the proceeding, subject to the approval of the Commission, and wherein he provided to the Commission a written undertaking never to apply for registration in any capacity under Ontario securities law;

AND UPON reviewing the Settlement Agreement and the Statement of Allegations of Staff of the Commission, and upon hearing submissions from the respondent 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 ORDERED THAT:

- (1) the Settlement Agreement dated January 21, 2003, attached to this Order, is hereby approved;
- (2) pursuant to clause 2 of subsection 127(1) of the Act, Poirier will cease trading securities for a period of ten years effective the date of this Order, with the exception that after one

year from the date of this Order, Poirier is permitted to purchase or sell securities which are beneficially owned by him in his personal accounts in his name; and

- (3) pursuant to clause 6 of subsection 127(1) of the Act, Poirier is reprimanded.

DATED at Toronto this day of January, 2003

SCHEDULE “B”

**IN THE MATTER OF
BENJAMIN EMILE POIRIER**

**UNDERTAKING TO THE
ONTARIO SECURITIES COMMISSION**

I, Benjamin Emile Poirier, am a Respondent to a Notice of Hearing dated October 13, 1999 issued by the Ontario Securities Commission. I undertake to the Ontario Securities Commission that I will never apply for registration in any capacity under Ontario securities law. I have agreed to this term of the settlement between Staff of the Commission and me dated January 21, 2003.

“Owen Bury”

Witness:

Benjamin Emile Poirier

Date: January 21, 2003

Date: January 21, 2003

Acknowledgement as Received by,

John Stevenson
the Secretary to the
Ontario Securities Commission

Date: January 28, 2003