

**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S-5, as amended**

- and -

JAMES ANDERSON

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Hearing dated June 15, 2004, the Ontario Securities Commission announced that it proposed to hold a hearing to consider whether, pursuant to section 127 and 127.1 of the *Securities Act* (the “Act”), it is in the public interest for the Commission to make the following orders in respect of James Anderson (“Anderson” or the “Respondent”):
 - i) that Anderson’s registration be suspended or restricted for a specified period;
 - ii) that Anderson’s ability to trade in securities, or the ability to rely on certain exemptions, be prohibited for a specified period;
 - iii) that Anderson be reprimanded;
 - iv) that Anderson be prohibited from acting as a director or officer of an issuer for a specified period, and that he resign any such position he may currently hold; and
 - v) that Anderson be ordered to pay a portion of the costs related to the investigation and hearing.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission (“Staff”) recommends settlement of the allegations against Anderson in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order against him in the form attached as Schedule “A” on the basis of the facts set out in Part IV herein.

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

III ACKNOWLEDGEMENT

4. Staff and the Respondent agree with the facts set out in Part IV herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the Commission under the Act or any civil or other proceedings which may be brought by any other person or agency.

IV AGREED FACTS

i) The Respondent

5. Anderson is a partner and director at Savoy Capital Management Ltd. (“Savoy”), and is at present registered in Ontario as an extra-provincial investment counsel, junior portfolio manager and officer (non-advising, non-resident). During the material time Anderson, on behalf of Savoy, acted as an analyst/trader of Gladiator Offshore Fund Limited (“GOFL”) and Gladiator Limited Partnership (“GLP”).

ii) The Bioscrypt Offering

6. By letter dated October 11, 2001, Bioscrypt Inc. (“Bioscrypt”), a reporting issuer in Ontario, listed and posted for trading on the Toronto Stock Exchange (“TSX”), under the trading symbol “BYT” was advised by National Bank Financial Inc. (“NBF”) that a syndicate of agents would be formed to work with Bioscrypt in connection with a proposed private placement of special warrants (the “Offering”). NBF agreed to invite Paradigm Capital Inc. (“Paradigm”), as well as other securities dealers, to act as an agent. The letter specified that Paradigm was to be allocated 42.5% of the Offering and that the terms of the Offering were to include the following: that the special warrant would be exercisable for no additional consideration into a common share; that the Offering would be for gross proceeds of \$10 million; that the agents would market the Offering on a best efforts basis; that the Offering would close on November 13, 2001; and that the agents’ commission would be 6.5% of the gross proceeds of the Offering, as well as compensation options. On October 12, 2001 the President and CEO of Bioscrypt, Pierre Donaldson (“Donaldson”), accepted the terms and conditions set out in the October 11, 2001 letter, subject to a minor amendment specifying that only 5% commission would be paid in connection with gross proceeds received from insiders.

7. On October 17, 2001, a meeting was held at the offices of NBF attended by the members of the syndicate, including Paradigm, and management of Bioscript. At this meeting, a dry run was held of the presentation which was to be given during a cross country “road show” which was to commence on October 22, 2001. The dry run included the presentation of the Terms of the Issue (the “Terms”) which specified the nature of the security being offered (special warrants), the size of the Offering (approximately \$10 million, of which \$1 million had been committed to by Donaldson), the closing date (November 13, 2001), the escrow conditions, and the agents on the Offering.
8. By letter dated October 17, 2001, Bioscript made an initial request to the TSX to grant price protection in respect of the Offering, noting that the closing price of Bioscript’s common shares on October 16, 2001 was \$2.38. In a further letter to the TSX dated October 22, 2001, Bioscript provided additional details in respect of the terms of the proposed Offering including the fact that insiders of Bioscript intended to participate in the Offering. By letter dated October 26, 2001 the TSX confirmed that price protection had been granted by the TSX to yield a minimum issue price of \$2.12 per special warrant. A subsequent amendment of the price protection was sought by Bioscript on October 30, 2001 in order to reflect the closing price of Bioscript’s common shares of \$1.95 on October 29, 2001. The TSX granted the amendment, but only in respect of arm’s length purchasers of the Offering. As a result, the special warrants were ultimately issued to arm’s length purchasers at \$1.60, and to insiders (i.e. Donaldson) at \$1.74.
9. In the period October 22, 2001 to October 30, 2001 the road show was conducted. A series of presentations to market the Offering were made to various institutional investors in Montreal, Toronto, Winnipeg and Vancouver by senior officers of Bioscript, and representatives from the syndicate. At these meetings, the Terms of the Offering were discussed with the would-be investors. In addition to the formal “road show” presentations, during this same period, the members of the syndicate also solicited the interest of institutional investors via telephone communications.
10. On November 2, 2001 Bioscript issued a press release in respect of the Offering announcing that NBF, as lead agent, together with Paradigm as co-lead, and two other securities dealers, had agreed to act as agents on a “best efforts” basis in connection with a private placement of \$10 million of Special Warrants to be issued at \$1.60 each. The private placement closed on November 14, 2001.

iii) Anderson Purchases Special Warrants on Behalf of the GLP and GOFL

11. Savoy did not participate in a formal road show presentation in connection with the Offering. In the period between October 11, 2001 and November 2, 2001 there were several telephone communications between Anderson and Patrick McCarthy (“McCarthy”), an institutional salesperson at Paradigm, who was, among other things, soliciting expressions of interest in the Offering.

12. As of October 30, 2001, the Bioscrypt “Soft Book” maintained by Paradigm in respect of the Offering recorded that Savoy had expressed an intention to purchase 150,000 special warrants pursuant to the Offering. When the Offering closed, Savoy purchased a total of 125,000 special warrants: 95,000 on behalf of GLP and 30,000 on behalf of GOFL at a price of \$1.60 per special warrant.

iv) Anderson Sells Short Shares in Bioscrypt

13. In the period October 17, 2001 to November 2, 2001, at the same time that McCarthy was soliciting Anderson’s interest in the Offering, Anderson sold short 125,000 shares of Bioscrypt on behalf of two funds managed by Savoy (the GLP and the GOFL). These short sales were transacted in a Savoy account at TD Newcrest. The particulars respecting these short sales are as follows:

	Trade Date	Settlement Date	Quantity	Price
a) Re: GLP	October 17, 2001	October 22, 2001	56,000	\$2.37
	October 31, 2001	November 5, 2001	33,800	\$2.03
	November 2, 2001	November 7, 2001	5,200	\$1.70
b) Re: GOFL	October 17, 2001	October 22, 2001	19,000	\$2.37
	October 31, 2001	November 5, 2001	9,500	\$2.03
	November 2, 2001	November 7, 2001	1,500	\$1.70

14. Staff has advised Savoy that it does not intend to initiate proceedings against Savoy in connection with the conduct engaged in by Anderson as set out herein.

v) The Respondent’s Position

15. Other than being aware of the Offering, at the time of the short sales, Anderson had no knowledge of the facts set out in paragraphs 6 to 9, and 12 of the Settlement Agreement. McCarthy did not provide Anderson with a hard copy of the term sheet, nor did he warn Anderson of any restrictions on trading in shares of Bioscrypt as a result of their telephone communications. At the time of these transactions, Anderson was inexperienced in the marketplace, having graduated from University in the spring of 2000, and having been employed as an analyst/trader for sixth months. Anderson did not appreciate from the quality of the information provided to him by McCarthy that he was precluded from so trading. Anderson derived no direct benefit from these trades.

V. CONDUCT CONTRARY TO THE PUBLIC INTEREST

16. It is the position of Staff that Anderson acted contrary to the public interest by selling short shares of Bioscript with knowledge of a material fact which had not been generally disclosed, contrary to s.76(1) of the Act.

VI. TERMS OF SETTLEMENT

17. Anderson agrees to the following terms of settlement:
- i) that Anderson's registration be suspended for a period of six months from the date of this order;
 - ii) that Anderson cease trading in securities for a period of six months from the date of this order, with the exception of trading in his registered retirement savings account;
 - iii) that Anderson be reprimanded;
 - iv) that Anderson be prohibited from acting as a director or officer of an issuer for a period of six months, and that he resign any such position he may currently hold; and
 - v) that Anderson be ordered to pay \$15,000 as a portion of the costs related to the investigation and hearing.

VII. STAFF COMMITMENT

18. If this Settlement Agreement is approved by the Commission, Staff will not initiate any proceeding under Ontario securities law in respect of any conduct or alleged conduct of the Respondent in relation to the facts set out in Part IV of this Settlement Agreement, subject to the provisions of paragraph 22 and 23 below.

VIII. PROCEDURE FOR APPROVAL OF SETTLEMENT

19. Approval of this Settlement Agreement shall be sought at the public hearing of the Commission scheduled for June 22nd, 2004 or such other date as may be agreed to by Staff and the Respondent.
20. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the Settlement Hearing. Staff and the Respondent also agree that 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 his rights to a full hearing, judicial review or appeal of the matter under the Act.

21. Staff and the Respondent agree that if this Settlement Agreement is approved by the Commission, neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement.
22. If the Respondent fails to honour the agreement contained in paragraph 21 of this Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against the Respondent based on the facts set out in Part IV of this Settlement Agreement, as well as the breach of the Settlement Agreement.
23. If the Settlement Agreement is approved by the Commission, and at any subsequent time the Respondent fails to honour any of the Terms of Settlement set out in Part V herein, Staff reserve the right to bring proceedings under Ontario securities law against the Respondent based on the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement.
24. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or an Order in the form attached as Schedule "A" is not made by the Commission, each of Staff and the Respondent will be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations in the Notice of Hearing and Statement of Allegations, unaffected by this Settlement Agreement or the settlement negotiations.
25. Whether or not this Settlement Agreement is approved by the Commission, the Respondent agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

IX. DISCLOSURE OF AGREEMENT

26. The terms of this Settlement Agreement will be treated as confidential by all parties hereto until approved by the Commission, and forever if, for any reason whatsoever, this Settlement Agreement is not approved by the Commission, except with the written consent of both the Respondent and Staff or as may be
27. Any obligations of confidentiality shall terminate upon approval of this Settlement Agreement by the Commission.

X. EXECUTION OF SETTLEMENT AGREEMENT

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

Dated this 16th day of June, 2004.

"Marni Friesen"

Witness

"James Anderson"

James Anderson

Staff of the Ontario Securities
Commission
Per: "Michael Watson"
Director, Enforcement Branch

"Michael Watson"

Michael Watson

SCHEDULE "A"

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

- AND -

JAMES ANDERSON

**ORDER
(Sections 127 and 127.1)**

WHEREAS on June 15, 2004, the Commission issued a Notice of Hearing (the "Notice of Hearing") pursuant to sections 127 and 127.1 of the *Securities Act* (the "Act") in respect of James Anderson ("Anderson");

AND WHEREAS Anderson entered into a settlement agreement with Staff of the Commission (the "Settlement Agreement"), in which Anderson agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement and the Notice of Hearing and 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 HEREBY ORDERED THAT:

- (a) the Settlement Agreement dated _____, attached hereto, is hereby approved;

- (b) that pursuant to s.127(1) clause 1, the registration of Anderson be suspended for a period of six months from the date of this order;
- (c) that pursuant to s.127(1) clause 2, Anderson cease trading in securities for a period of six months from the date of this order, with the exception of trading in his registered retirement savings account;
- (d) that pursuant to s.127(1) clause 6, Anderson be reprimanded;
- (e) that pursuant to s.127(1) clauses 7 and 8, that Anderson is prohibited from acting as a director or officer of an issuer for a period of six months, and that he resign any such position he may currently hold; and
- (f) that pursuant to s.127.1(1) and (2), Anderson be ordered to pay \$15,000 as a portion of the costs related to the investigation and hearing.

DATED at Toronto this ____ day of _____, 2004
