

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

**-and-**

**IN THE MATTER OF ALLAN EIZENGA, RICHARD JULES FANGEAT,  
MICHAEL HERSEY, LUKE JOHN MCGEE AND ROBERT LOUIS RIZZUTO**

**SETTLEMENT AGREEMENT BETWEEN STAFF OF THE  
ONTARIO SECURITIES COMMISSION AND  
ROBERT LOUIS RIZZUTO**

**I. INTRODUCTION**

1. By Notice of Hearing dated September 24, 1998, amended February 7, 2003 and May 21, 2004 (the "Notice of Hearing"), the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing to consider, among other things:

- (a) whether, pursuant to subsection 127(1) and section 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act"), it is in the public interest for the Commission to make an order:
  - (i) that the registration of Robert Louis Rizzuto ("Rizzuto") be terminated or suspended or restricted for such period as specified by the Commission or that terms and conditions be imposed on his registration;
  - (ii) that trading in any securities by Rizzuto cease permanently or for such period as is specified by the Commission;
  - (iii) that any exemptions contained in Ontario securities law do not apply to Rizzuto permanently or for such period as is specified by the Commission;

- (iv) prohibiting Rizzuto from becoming or acting as a director or officer of any issuer permanently or for such period as specified by the Commission;
- (v) reprimanding Rizzuto; and
- (vi) requiring Rizzuto to pay the costs of the Commission's investigation and the hearing and/or any such other orders as the Commission deems appropriate.

2. By Temporary Order dated September 24, 1998, the Commission ordered that trading in securities by Rizzuto cease immediately except for trades in mutual fund securities and trades for his personal account (the "Temporary Order"). The Temporary Order was extended by Commission Orders dated October 9, 1998 and February 4, 1999.

## **II. JOINT SETTLEMENT RECOMMENDATION**

3. Staff of the Commission ("Staff") agrees to recommend settlement of the proceeding respecting Rizzuto initiated by the Notice of Hearing in accordance with the terms and conditions set out below. Rizzuto consents to the making of an order against him in the form attached as Schedule "A" based on the facts set out in Part III of this Settlement Agreement.

## **III. STATEMENT OF FACTS**

### **Acknowledgement**

4. Solely for the purposes of this proceeding, and of any other proceeding commenced by a securities regulatory agency, Staff and Rizzuto agree with the facts set out in paragraphs 5 through 23 of this Settlement Agreement.

### **The Saxton Securities**

5. Saxton Investments Ltd. ("Saxton") was incorporated on January 13, 1995. Allan Eizenga ("Eizenga") was an officer and director of Saxton. Saxton and Eizenga established numerous offering corporations, as listed below (the "Offering Corporations"). Eizenga was the president and a director of each of these companies.

The Saxton Trading Corp.  
The Saxton Export Corp.  
The Saxton Export (II) Corp.  
The Saxton Export (III) Corp.  
The Saxton Export (IV) Corp.  
The Saxton Export (V) Corp.  
The Saxton Export (VI) Corp.  
The Saxton Export (VII) Corp.  
The Saxton Export (VIII) Corp.

The Saxton Export (IX) Corp.  
The Saxton Export (X) Corp.  
The Saxton Export (XI) Corp.  
The Saxton Export (XII) Corp.  
The Saxton Export (XIII) Corp.  
The Saxton Export (XIV) Corp.  
The Saxton Export (XV) Corp.  
The Saxton Export (XVI) Corp.  
The Saxton Export (XVII) Corp.  
The Saxton Export (XVIII) Corp.  
The Saxton Export (XIX) Corp.  
The Saxton Export (XX) Corp.  
The Saxton Export (XXI) Corp.  
The Saxton Export (XXII) Corp.  
The Saxton Export (XXIII) Corp.  
The Saxton Export (XXIV) Corp.  
The Saxton Export (XXV) Corp.  
The Saxton Export (XXVI) Corp.  
The Saxton Export (XXVII) Corp.  
The Saxton Export (XXVIII) Corp.  
The Saxton Export (XXIX) Corp.  
The Saxton Export (XXX) Corp.  
The Saxton Export (XXXI) Corp.  
The Saxton Export (XXXII) Corp.  
The Saxton Export (XXXIII) Corp.  
The Saxton Export (XXXIV) Corp.  
The Saxton Export (XXXV) Corp.  
The Saxton Export (XXXVI) Corp.  
The Saxton Export (XXXVII) Corp.  
The Saxton Export (XXXVIII) Corp.

6. Saxton and the Offering Corporations represented to the public that they were investing principally in businesses relating to the development and manufacture of beverage and food products for the hospitality and tourist industries in Cuba and elsewhere in the Caribbean.

7. The primary function of every Offering Corporation was to raise investment capital for the businesses in Cuba and elsewhere by the sale of shares (the “Saxton Securities”). Investors associated their investments with “Saxton”, not the Offering Corporations.

8. The Offering Corporations prepared Offering Memoranda. These Memoranda were virtually identical and provided little information about the Cuban and other operations (into which funds invested in the Offering Corporations would flow) other than their geographic locations. The Offering Memoranda described the Saxton Securities as “speculative” and stated that there was no market for the shares.

9. Although, in fact, investors purchased shares, the Saxton Securities were marketed and sold as a “GIC”, a “Fixed Dividend Account” product and an “Equity Dividend Account” product. Such Securities were sold as RRSP-eligible.

10. The Fixed Dividend Account product promised investors either a 10.25% annual return for a three year term compounded or a 12% annual return for a five year term compounded.

Investors in the Equity Dividend Account product were told to expect 25% to 30% annual growth in their investment.

11. On or about October 7, 1998, the Court appointed KPMG Inc. (“KPMG”) as the custodian of Saxton’s assets. In early 1999, KPMG reported that the Offering Corporations had raised approximately \$37 million from investors. All funds invested in the Offering Corporations had been transferred to Saxton. At that time, KPMG held the view that the value of the Saxton assets, at its highest (as reported by a related company, Sussex Group Ltd. (“Sussex”)) was approximately \$5.5 million. Sussex currently is being wound down by a court-appointed manager.

### **Rizzuto’s Conduct**

12. During the material time, Rizzuto was registered with the Commission under the Act to sell mutual fund securities and limited market products. Rizzuto was first registered with the Commission in September 1992.

13. Between April 1997 and April 1998, Rizzuto sold the Saxton Securities to seven Ontario investors for a total amount sold of approximately \$750,000. Two of the seven investors were business associates of Rizzuto. One of such associates was registered with the Commission. Another investor purchased approximately \$500,000 worth of the Saxton Securities.

14. The Offering Corporations were incorporated pursuant to the laws of Ontario. Rizzuto’s sales of the Saxton Securities constituted trades in securities of an issuer that had not been previously issued.

15. The distributions of the Saxton Securities contravened Ontario securities law. None of the Offering Corporations filed a preliminary prospectus or prospectus with the Commission. None of the Offering Corporations filed an Offering Memorandum or a Form 20 with the Commission. By selling the Saxton Securities to his clients, Rizzuto traded in securities, which trades were distributions, without a prospectus being filed or receipted by the Commission and with no exemption from the prospectus requirements of Ontario securities law being available.

16. Rizzuto failed to provide his clients with access to substantially the same information concerning the Saxton Securities that a prospectus filed under the Act would provide. Among other things, none of Rizzuto’s clients received an Offering Memorandum prior to purchasing the Saxton Securities.

17. Rizzuto told certain clients that he had investigated Saxton and that it looked like a good investment that offered a high return. He also told clients that they could redeem their investment at any time. Rizzuto told clients that he had invested his personal funds in the venture.

18. Rizzuto failed to assess adequately the suitability of his clients’ purchases of the Saxton Securities.

19. Rizzuto received commissions of approximately \$24,000 on the sales described in paragraph 13 above.
20. In addition, Rizzuto received a further commission of \$20,000, relating to a client's investment in Sussex International Limited ("Sussex International"). Sussex International raised funds to finance the same Cuban businesses supported by sales of the Saxton Securities. The distribution of the Sussex International securities also contravened Ontario securities law.
21. Rizzuto failed to inform his sponsoring firm that he was selling the Saxton Securities or the Sussex International securities, or that he received the commissions referred to in paragraphs 19 and 20 above.
22. Rizzuto co-operated with the Commission's investigation respecting the Saxton matter.
23. Rizzuto's conduct was contrary to Ontario securities law and the public interest.

#### **IV. RIZZUTO'S POSITION**

24. Rizzuto takes the position and informs Staff that:
  - (i) His client that was a large investor in the Saxton Securities (referenced in paragraph 13) requested an off-shore investment and spoke extensively with Eizenga prior to purchasing the Securities; and
  - (ii) He invested approximately \$55,000 of his own funds in the Saxton Securities, of which he lost his entire investment.

#### **V. TERMS OF SETTLEMENT**

25. Rizzuto agrees to the following terms of settlement:
  - (a) The making of an Order:
    - (i) approving this settlement;
    - (ii) suspending Rizzuto's registration with the Commission for six months;
    - (iii) that trading in any securities by Rizzuto cease for six months;
    - (iv) that, prior to his registration being reinstated after the suspension referred to in paragraph 25(a)(ii), Rizzuto must write and pass the Canadian Securities Course as a term and condition of his registration;
    - (v) reprimanding Rizzuto;

- (vi) that the Temporary Order no longer has any force or effect; and
- (vii) that Rizzuto will pay costs to the Commission in the amount of \$8,000.00; and

(b) Rizzuto will make a voluntary payment to the Commission in the amount of \$9,000.00, such payment to be allocated to or for the benefit of third parties as may be approved by the Minister under subsection 3.4(2) of the Act. Rizzuto agrees that he is responsible personally for the \$9,000.00 voluntary payment.

## **VI. STAFF COMMITMENT**

26. If this settlement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Rizzuto in relation to the facts set out in Part III of this Settlement Agreement.

## **VII. APPROVAL OF SETTLEMENT**

27. Approval of the settlement set out in this Settlement Agreement shall be sought at the public hearing of the Commission scheduled for July 7, 2004 or such other date as may be agreed to by Staff and Rizzuto (the "Settlement Hearing"). Rizzuto will attend in person at the Settlement Hearing.

28. Counsel for Staff or Rizzuto may refer to any part, or all, of this Settlement Agreement at the Settlement Hearing. Staff and Rizzuto agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing.

29. If this settlement is approved by the Commission, Rizzuto agrees to waive his rights to a full hearing, judicial review or appeal of the matter under the Act.

30. Staff and Rizzuto agree that if this settlement is approved by the Commission, they will not make any public statement inconsistent with this Settlement Agreement.

31. If for any reason whatsoever this settlement is not approved by the Commission, or an order in the form attached as Schedule "A" is not made by the Commission:

- (a) the Settlement Agreement and its terms, including all discussions and negotiations between Staff and Rizzuto and his counsel leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and Rizzuto;
- (b) Staff and Rizzuto shall 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 of Staff, unaffected by this Agreement or the settlement discussions/negotiations;

- (c) The terms of this Settlement Agreement will not be referred to in any subsequent proceeding, or disclosed to any person, except with the written consent of Staff and Rizzuto or as may be required by law; and
- (d) Rizzuto agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement, the settlement discussions/negotiations or the process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias or appearance of any bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

### **VIII. DISCLOSURE OF SETTLEMENT AGREEMENT**

32. Except as permitted under paragraph 28 above, this Settlement Agreement and its terms will be treated as confidential by Staff and Rizzuto until approved by the Commission, and forever, if for any reason whatsoever this settlement is not approved by the Commission, except with the consent of Staff and Rizzuto, or as may be required by law.

33. Any obligations of confidentiality shall terminate upon approval of this settlement by the Commission.

### **IX. EXECUTION OF SETTLEMENT AGREEMENT**

34. This Settlement Agreement may be signed in one or more counterparts that together shall constitute a binding agreement.

35. A facsimile copy of any signature shall be as effective as an original signature.

**DATED** this 30<sup>th</sup> day of June, 2004

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**WITNESS**

\_\_\_\_\_  
"Robert Rizzuto"  
**ROBERT LOUIS RIZZUTO**

**DATED** this 6th day of July, 2004

**STAFF OF THE ONTARIO  
SECURITIES COMMISSION**

\_\_\_\_\_  
"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  
ALLAN EIZENGA, RICHARD JULES FANGEAT,  
MICHAEL HERSEY, LUKE JOHN MCGEE and ROBERT LOUIS RIZZUTO**

**ORDER  
(Subsection 127(1) and section 127.1)**

**WHEREAS** on September 24, 1998, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") respecting Robert Louis Rizzuto ("Rizzuto") and others and issued Amended Notices of Hearing against Rizzuto and others on February 7, 2003 and May 21, 2004;

**AND WHEREAS** on September 24, 1998, the Commission made a Temporary Order as against Rizzuto and others, such Temporary Order that was extended by Commission Orders dated October 9, 1998 and February 5, 1999 (the "Temporary Order");

**AND WHEREAS** Rizzuto and Staff of the Commission entered into a Settlement Agreement executed on June 30, 2004 and July 6, 2004 (the "Settlement Agreement") in which they agreed to a proposed settlement of the proceedings, subject to the approval of the Commission;

**AND WHEREAS** the attached Settlement Agreement includes the term that Rizzuto will make a voluntary payment of \$9,000.00 to the Commission for allocation to, or for the benefit of, third parties as may be approved by the Minister under s. 3.4(2)(b) of the Act;

**AND UPON** reviewing the Settlement Agreement and the Amended Statement of Allegations of Staff of the Commission and upon hearing submissions from counsel for Rizzuto and from Staff of the Commission, the Commission is of the opinion that it is in the public interest to make the following Order pursuant to subsection 127(1) and section 127.1 of the Act;

**IT IS ORDERED THAT:**

1. The attached Settlement Agreement is approved.

2. Pursuant to s. 3.4(2)(b) of the Act, the \$9,000.00 voluntary payment to the Commission is allocated to, or for the benefit of, third parties as may be approved by the Minister.
3. Pursuant to subsection 127(1), paragraph 1, Rizzuto's registration with the Commission is suspended for six months commencing on July 7, 2004;
4. Pursuant to subsection 127(1), paragraph 2, trading in any securities by Rizzuto cease for six months commencing on July 7, 2004;
5. Pursuant to subsection 127(1), paragraph 1, Rizzuto must successfully complete the Canadian Securities Course in order for his registration to be reinstated following the suspension;
6. Pursuant to subsection 127(1), paragraph 6, Rizzuto is reprimanded;
7. The Temporary Order as against Rizzuto no longer has any force or effect; and
8. Pursuant to section 127.1, Rizzuto pay to the Commission costs in the amount of \$8,000.00.

**DATED** at Toronto this    day of            , 2004

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