

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

- and -

IN THE MATTER OF CALDWELL INVESTMENT MANAGEMENT LTD.

**SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE COMMISSION AND
CALDWELL INVESTMENT MANAGEMENT LTD.**

PART I - INTRODUCTION

1. The Ontario Securities Commission (the “Commission”) will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S-5, as amended (the “Act”), it is in the public interest for the Commission to make certain orders in respect of Caldwell Investment Management Ltd. (“CIM” or the “Respondent”).

PART II - JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission (“Staff”) agree to recommend settlement of the proceeding commenced by Notice of Hearing to be issued by the Commission (the “Proceeding”) against CIM according to the terms and conditions set out in Part VI of this Settlement Agreement. CIM agrees to the making of an order in the form attached as Schedule “A”, based on the facts set out below.

PART III - AGREED FACTS

3. For this proceeding, CIM agrees with the facts set out in this Part of this Settlement Agreement.

4. CIM was registered with the Commission as an Investment Counsel Portfolio Manager (“ICPM”) during the relevant time period commencing in 2007 through to August 2010.

5. Commencing in 2007, CIM was retained by the general partner of certain limited partnerships organized as public investment funds promoted by the FrontierAlt (“FALT”) financial

organization. CIM agreed to act as portfolio manager of certain FALT investment funds including: a public mutual fund, FrontierAlt Resource Capital Class Fund (“FALT Resource”), and two limited partnerships organized as public, non-redeemable investment funds, FrontierAlt 2007 Energy & Precious Metals Flow-Through Limited Partnership and FrontierAlt 2008 Precious Metals & Energy Flow-Through Limited Partnership (collectively, the “FALT LPs”). CIM was compensated by these FALT public investment funds for its portfolio management services pursuant to portfolio management agreements executed with the general partners for the FALT investment funds. The FALT LPs prepared and issued prospectuses and raised \$24 million from the public. In the prospectuses, CIM was identified as the ICPM of the FALT LPs.

6. Under the limited partnership agreements governing the FALT LPs, the general partners for the FALT LPs controlled and managed the business of the partnerships and retained control over the portfolio assets of the FALT LPs. During the relevant time, CIM primarily received information about portfolio assets from the back-office service provider affiliated with the FALT financial organization (the “Service Provider”).

7. In practice, investment recommendations were routinely made to CIM by representatives of a limited market dealer affiliated with the FALT financial organization (“LMD”) and CIM’s approval of the investments was routinely conveyed to the LMD verbally. Written trade instructions were not given by CIM.

8. During the relevant period, between 2007 and 2010:

- (a) CIM failed to maintain adequate documentation recording trade instructions provided for portfolio transactions executed for the FALT investment funds. Further, CIM failed to maintain a separate trade blotter of transactions conducted by the FALT investment funds.
- (b) CIM had insufficient access to information about activity in the brokerage accounts maintained by the general partners to monitor trading activities. CIM did not have trading authority over or adequate access to monitor the brokerage accounts or the parties maintaining the custody of the assets of the FALT LPs. CIM did not receive copies of trade confirmations for transactions effected in the portfolios of FALT LPs nor did CIM receive monthly account statements from the brokerages. Rather, the

general partners of the FALT LPs received those records and CIM received data about the portfolio assets it was responsible for managing and monitoring from the Service Provider. As a result, CIM lacked adequate means to independently monitor trading activity in the FALT investment funds that it was responsible for advising and managing.

9. In or about August 2009 and continuing through to December 2009, unauthorized purchases and sales of securities of issuers for the accounts of FALT LPs were conducted by a principal of the general partners of the FALT LPs without the authorization, approval, consent or knowledge of CIM which went undetected by CIM until early 2010 as a result of the inadequate monitoring of trading activity.

10. Until as late as the end of 2008, Caldwell compliance staff failed to perform adequate monitoring or oversight of the portfolio management activities performed by CIM for the FALT investment funds. This included inadequate ongoing monitoring of compliance with applicable investment restrictions and guidelines set out in the portfolio management agreements. The absence of ongoing portfolio monitoring resulted in CIM compliance staff learning and reporting to CIM senior management and FALT management in January 2009 about compliance issues relating to the FALT funds which included: concentration of ownership of issuers, early warning thresholds being reached but not reported on a timely basis, and a control block position being obtained in the securities of a reporting issuer.

11. Following the identification of compliance issues in 2009, CIM failed to implement adequate changes to its internal controls and procedures respecting its portfolio management activities for the FALT investment funds. This included: failing to start conducting periodic compliance reviews of the portfolios and failing to take steps to improve access to and control over the brokerage accounts. As late as the fall of 2009, CIM lacked adequate access to monitor trading in the brokerage accounts which held custody of the public assets of the FALT investment funds.

12. CIM failed to adequately monitor and manage activities of the individual portfolio adviser for the FALT investment funds. There was inadequate compliance oversight and supervision of the individual portfolio adviser's activities.

PART IV - CONDUCT CONTRARY TO THE PUBLIC INTEREST

13. CIM engaged in conduct contrary to the public interest by:
- (a) failing to keep such books, records and other documents as were necessary for the proper recording of the business transactions and the financial affairs relating to the FALT investment funds;
 - (b) failing to provide adequate compliance oversight and supervision over CIM's individual portfolio adviser with day-to-day responsibility for providing portfolio management services to FALT investment funds

PART V - TERMS OF SETTLEMENT

14. The Respondent agrees to the terms of settlement listed below.
15. The Commission will make an order pursuant to section 127(1) and section 127.1 of the Act that:
- (a) the settlement agreement is approved;
 - (b) the Respondent will submit to a review of its compliance practices and procedures in accordance with the terms of reference attached as Schedule "B" to the Settlement Agreement, and institute such changes as may be approved by Commission Staff or, in the event of a disagreement between Commission Staff and CIM, ordered by the Commission in light of the review;
 - (c) the Respondent will make a voluntary payment of \$75,000, to be allocated under section 3.4(2)(b) of the Act to or for the benefit of third parties; and
 - (d) the Respondent will pay the costs of the Commission's investigation in the amount of \$25,000.
16. The Respondent agrees to make any payments ordered above by certified cheque when the Commission approves this Settlement Agreement. The Respondent will not be reimbursed for, or receive a contribution toward, this payment from any other person or company.

PART VI - STAFF COMMITMENT

17. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding under Ontario securities law in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 18 below.

18. If the Commission approves this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against the Respondent. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement.

PART VII - PROCEDURE FOR APPROVAL OF SETTLEMENT

19. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for May 26, 2011 or on another date agreed to by Staff and the Respondent, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Practice.

20. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on the Respondent's conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.

21. If the Commission approves this Settlement Agreement, the Respondent agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

22. If the Commission approves this Settlement Agreement, neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

23. Whether or not the Commission approves this Settlement Agreement, the Respondent will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART VIII - DISCLOSURE OF SETTLEMENT AGREEMENT

24. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:

- (a) this Settlement Agreement and all discussions and negotiations between Staff and the Respondent before the settlement hearing takes place will be without prejudice to Staff and the Respondent; and
- (b) Staff and the Respondent will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.

25. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality. If the Commission does not approve the Settlement Agreement, both parties must continue to keep the terms of the Settlement Agreement confidential, unless they agree in writing not to do so or are required by law to disclose the terms.

PART IX - EXECUTION OF SETTLEMENT AGREEMENT

26. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.

27. A fax copy of any signature will be treated as an original signature.

Dated this 24 day of May, 2011.

"Brendan T. N. Caldwell"
For Caldwell Investment Management Ltd

"Tom Atkinson"
Tom Atkinson
Director, Enforcement Branch

SCHEDULE "A"

**FORM OF ORDER TO BE MADE BY
ONTARIO SECURITIES COMMISSION UNDER S.127 and 127.1 OF
THE ONTARIO SECURITIES ACT**



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

P.O. Box 55, 19th Floor
20 Queen Street West
Toronto ON M5H 3S8

CP 55, 19^e étage
20, rue queen ouest
Toronto ON M5H 3S8

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

- and -

**IN THE MATTER OF
CALDWELL INVESTMENT MANAGEMENT LTD.**

**ORDER
(Sections 127(1) and 127.1)**

WHEREAS 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") in respect of Caldwell Investment Management Ltd. (the "Respondent");

AND WHEREAS the Respondent and Staff of the Commission ("Staff") entered into a Settlement Agreement (the "Settlement Agreement") in which they agreed to a settlement of the proceeding commenced by the Notice of Hearing dated May 20, 2011, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement and upon hearing submissions from counsel for Staff and counsel for the Respondent;

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 is approved;
2. pursuant to paragraph 127(1)(4) of the Act, the Respondent will submit to a review of its compliance practices and procedures in accordance with the terms of reference attached as Schedule "B" to the Settlement Agreement, and institute such changes as may be approved by Commission Staff or, in the event of a disagreement between Commission Staff and the Respondent, ordered by the Commission in light of the review; and
3. pursuant to section 127.1 of the Act, the Respondent will pay the costs of the Commission's investigation in the amount of \$25,000.

DATED at Toronto this 26th day of May, 2011.

Christopher Portner

SCHEDULE "B"

TERMS OF REFERENCE FOR COMPLIANCE REVIEW

A. Retention of the Consultant

1. The Consultant's reasonable compensation and expenses shall be borne exclusively by Caldwell Investment Management Ltd. (the "Respondent").
2. The agreement with the Consultant ("Agreement") shall provide that the Consultant examine:
 - (a) the Respondent's compliance and oversight functions and books and records processes relating to CIM's engagements, business or clients in circumstances where the assets of CIM's clients are in the custody of a third party other than CIM or a related party where CIM does not have direct control of the assets;
 - (b) any committees or other mechanisms established to review and approve new business lines and related services or products;
 - (c) the Respondent's training of its staff concerning new business lines and related services or products; and
 - (d) the Respondent's training of its staff as to when to escalate issues to compliance and engaging other appropriate processes.

(collectively, the "Review")

B. The Consultant's Reporting Obligations

1. The Consultant shall issue a draft report to the Respondent within three months of appointment and in that regard will be provided the opportunity to present its report to the Board of Directors of the Respondent.
2. The Consultant shall engage with the Respondent in discussions regarding the draft report with a view to reaching consensus and finalizing the report within one month of the delivery of the

draft report. If requested by the Consultant, the Consultant will be provided with an opportunity to present its final report to the Board of Directors of the Respondent, and may explain any areas of disagreement with management of the Respondent.

3. The Consultant will deliver the final report to the Respondent.

4. Staff with prior notice to the Respondent may attend at the premises of the Respondent for the purpose of reviewing the draft and final versions of the Consultant's report but such review need not occur on the Respondent's premises if Staff wishes to conduct the review by some other reasonable means.

5. The Consultant's draft and final reports shall include a description of the review performed, the conclusions reached, and the Consultant's recommendations for any changes or improvements to the Respondent's policies and procedures as the Consultant reasonable deems necessary to conform to regulatory requirements.

6. The Respondent will, within 60 days after receipt of the Consultant's report, advise Staff of the timetable to implement the recommendations contained in the report. If the Respondent disagrees with any of the recommendations, the Respondent shall so advise Staff and the Consultant in writing specifying the reasons for its position and, if applicable, any alternative actions, policies or procedures (the "Alternative Actions") the Respondent intends to adopt. If the Alternative Actions are acceptable to Staff, Staff will advise the Respondent but if they are not acceptable to Staff, staff will advise the Respondent and the issue will be referred to the Commission and it may order that the Respondent institute such changes (the "Ordered Changes") it feels are necessary in light of the Review.

7. Staff may attend at the premises of the Respondent and may review the Consultant's report for the purpose of determining whether or not the Consultant's recommendations or the mutually agreed Alternative Actions or Ordered Changes have been implemented.

8. The Respondent shall certify to the Commission by certificate executed by each of the Chief Executive Officer, the Ultimate Designated Person, the Chief Compliance Officer and the Chair of the Board of Directors of the Respondent that the Respondent has implemented those recommendations of the Consultant which it had agreed upon as well as all mutually agreed Alternative Actions and Ordered Changes and will do so promptly following such implementation.

9. For greater certainty, the terms of this compliance review do not limit in any respect the authority of the Ontario Securities Commission to undertake, as part of its normal course audit activities, a review of all matters within the scope of the Review or any other aspect of the business of the Respondent.

C. Terms of the Consultant's Retention

1. The appointment of the Consultant shall be made promptly following the approval of the Settlement Agreement, but in any event by no later than June 26, 2011 by mutual agreement between the Respondent and OSC Staff.

2. The Consultant shall have reasonable access to all of the Respondent's books and records and the ability to meet privately with the Respondent's personnel. The Respondent shall instruct and otherwise encourage its officers, directors, and employees to cooperate fully with the review conducted by the Consultant, and inform its officers, directors, and employees that failure to cooperate with the Review may be grounds for disciplinary action.

3. The Consultant shall make and keep notes of interviews conducted, and keep a copy of documents gathered, in connection with the performance of his or her responsibilities.