

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

- and -

IN THE MATTER OF BRUCE CARLOS MITCHELL

- and -

**IN THE MATTER OF A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
and BRUCE CARLOS MITCHELL**

PART I – INTRODUCTION

1. By Notice of Hearing dated November 22, 2011, the Ontario Securities Commission (the “Commission”) announced that it proposed to 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 Bruce Carlos Mitchell (the “Respondent” or “Mitchell”).

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission (“Staff”) recommend settlement with the Respondent of the proceeding commenced by Notice of Hearing dated November 22, 2011 (the “Proceeding”) according to the terms and conditions set out in Part V of this Settlement Agreement. The Respondent 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. Solely for the purposes of this proceeding, and any other regulatory proceeding commenced by securities regulatory authorities in Canada, the Respondent agrees with the facts as set out in Part III of this Settlement Agreement. Part III includes Schedule “1” to the Settlement Agreement.

A. THE RESPONDENT

4. Mitchell is a resident of Ottawa, Ontario.

B. ACQUISITION OF SHARES BY MITCHELL

5. Between December 29, 2006 and December 31, 2008 (the “material period”), Mitchell maintained at least 16 personal trading accounts at numerous brokerage firms (the “Personal Trading Accounts”). In addition, Mitchell maintained discretionary trading authority over at least 12 brokerage accounts in the names of other individuals (the “Trading Authority Accounts” and collectively with the Personal Trading Accounts, the “Trading Accounts”).

6. Mitchell had beneficial ownership of and/or control or direction over the securities held in the Trading Accounts for the purposes of Ontario securities law.

7. During the material period, Mitchell directed trading in securities in the Trading Accounts in, *inter alia*, four companies (each an “Issuer Company”), namely:

- (a) Imaging Dynamics Company Ltd.;
- (b) Midnight Oil Exploration Ltd.;
- (c) Solara Exploration Ltd.; and
- (d) WIN Energy Corp.

8. During the material period, each Issuer Company was an issuer that was a reporting issuer in Ontario and the securities of each Issuer Company were voting or equity securities, within the meaning of the Act.

9. Mitchell acquired in excess of 10 percent of the outstanding securities of each Issuer Company during the material period.

C. FAILURE TO COMPLY WITH REPORTING REQUIREMENTS

10. Mitchell contravened Ontario securities law and engaged in conduct contrary to the public interest during the material period as described below and more particularly described in Schedule “1”:

- (a) On numerous occasions, Mitchell contravened the early warning requirements of Ontario securities law by,
 - (i) failing to file on a timely basis or at all, or filing a report containing inaccurate information, an early warning report and news release, contrary to former subsection 101(1) of the Act for the period prior to February 1, 2008 and subsection 102.1(1) of the Act for periods on or after February 1, 2008, in relation to the acquisition of 10 percent or more of the outstanding voting or equity securities of an Issuer Company;
 - (ii) failing to file on a timely basis or at all, or filing a report containing inaccurate information, an early warning report and news release, contrary to former subsection 101(2) of the Act for the period prior to February 1, 2008 and subsection 102.1(2) of the Act for periods on or after February 1, 2008, in relation to the additional acquisition of two percent or more of the outstanding voting or equity securities of an Issuer Company; and
 - (iii) failing to comply with the trading moratorium, imposed by former subsection 101(3) of the Act for the period prior to February 1, 2008 and subsection 102.1(3) of the Act for periods on or after February 1, 2008, in relation to the acquisition of outstanding voting or equity securities of an Issuer Company in respect of which an early warning report was required to be filed;
- (b) On multiple occasions, Mitchell failed to comply with the take-over bid requirements contained in Part XX of the Act and the regulations made thereunder in relation to the acquisition of 20 percent or more of the outstanding voting or equity securities of an Issuer Company;

- (c) On numerous occasions, Mitchell failed to comply with the insider reporting requirements of Ontario securities law by failing to file on a timely basis or at all, or filing a report containing inaccurate information,
 - (i) an insider report within 10 days of becoming an insider of an Issuer Company disclosing any direct or indirect beneficial ownership of, or control or direction over, securities of an Issuer Company and such other disclosure required by the regulations, as required by subsection 107(1) of the Act; and
 - (ii) an insider report within 10 days of a change in the direct or indirect beneficial ownership of, or control or direction over, securities of an Issuer Company as required by subsection 107(2) of the Act; and
- (d) On multiple occasions, Mitchell traded in securities of an Issuer Company at a time when, by virtue of his holdings of securities in that Issuer Company, he was presumed to be a “control person”, as defined in subsection 1(1) of the Act, in relation to that Issuer Company, with the result that any trade out of his holdings would be a “distribution” of such securities subject to the prospectus requirements of Ontario securities law. On these occasions, Mitchell failed to comply with the prospectus requirements or the conditions to the exemption from the prospectus requirements in section 2.8 of National Instrument 45-102 *Resale of Securities*, including filing a Form 45-102F1, *Notice of Intention of Distribution Securities under Section 2.8 of NI 45-102 Resale of Securities*.

**PART IV – CONDUCT CONTRARY TO ONTARIO SECURITIES LAW
AND THE PUBLIC INTEREST**

- 11. By engaging in the conduct described above, Mitchell admits and acknowledges that he contravened Ontario securities law and acted contrary to the public interest.

PART V – TERMS OF SETTLEMENT

- 12. The Respondent agrees to the following terms set out in paragraphs 13 and 14 of this Settlement Agreement.

13. The Commission will make an order pursuant to sections 127(1) and 127.1 of the Act as follows:
- (a) the Settlement Agreement is hereby approved;
 - (b) pursuant to clauses 2 and 2.1 of subsection 127(1) of the Act, the Respondent shall cease trading in, and the acquisition of, any securities for a period of two years with the exception that, once Mitchell has complied with the undertakings contained in clauses (a), (b), (c), and (d) of paragraph 14, below, he is permitted to trade in and acquire securities in accounts held in his name only or in the name of Forwarders Properties Ltd. (“Forwarders Properties”)¹, through any account with any registered representative that is a member of the Investment Industry Regulatory Organization of Canada (“IIROC”);
 - (c) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions in Ontario securities law do not apply to the Respondent for a period of two years except for trades undertaken by the Respondent that are permitted pursuant to the exception provided for in clause (b), above;
 - (d) pursuant to clause 6 of subsection 127(1) of the Act, that the Respondent be reprimanded;
 - (e) pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act, that the Respondent be prohibited from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager for a period of ten years, with the exception of any position he holds as a director or officer in Norwall Group Inc. or Forwarders Properties, both private issuers of which Mitchell is a director or officer as at the date of this Order;
 - (f) pursuant to clause 8.5 of subsection 127(1) of the Act, that the Respondent is prohibited from becoming or acting as a registrant for a period of ten years;
 - (g) pursuant to clause 9 of subsection 127(1) of the Act, that the Respondent pay an administrative penalty in the amount of \$50,000 to the Commission for his non-

¹ Forwarders Properties is a private issuer of which Mitchell is the sole shareholder, officer and director.

compliance with Ontario securities law to be allocated under section 3.4(2)(b) to or for the benefit of third parties and such payment will be made by certified cheque at the time of the Commission's approval of this Settlement Agreement;

- (h) pursuant to section 127.1 of the Act, that the Respondent will make a payment of \$20,000 to the Commission in respect of a portion of the Commission's costs with respect to this matter and such payment will be made by certified cheque at the time of the Commission's approval of this Settlement Agreement.

14. The Respondent shall provide a written undertaking to the Commission to do the following:

- (a) file² all outstanding insider and early warning reports or make alternative summary filings in a manner acceptable to Staff in respect of any transaction³ undertaken by the Respondent during the period December 29, 2006 to the date of the Certification, as defined below, within 120 days of the date of this Order;
- (b) make payment to the Commission with respect to any fees attributable to the filings required by clause (a), above;
- (c) file with the Office of the Secretary certification, in a form acceptable to Staff, acknowledging that he has complied with the requirements of clause (a), above, (the "Certification") within 120 days of the date of this Order;
- (d) retain and submit to a review by counsel from Fraser Milner Casgrain LLP, or such other consultant agreed to by Staff and the Respondent, of his trading activities and compliance practices at the sole expense of the Respondent and the Respondent will implement such changes as are recommended by the consultant to ensure that he is in compliance with his reporting and disclosure requirements under Ontario securities law within 120 days of the date of this Order;

² For the purposes of the Settlement Agreement, where appropriate, this could include filing on SEDAR, SEDI, or with the Commission.

³ For the purposes of the Settlement Agreement, a "transaction" shall include any transaction resulting in a change in the Respondent's beneficial ownership of, or power to exercise control or direction over, a security of any issuer that is a reporting issuer in Ontario, or a change in the Respondent's interest in or obligation associated with a derivative of a security of an issuer that is a reporting issuer in Ontario.

- (e) beginning on the date that the Certification is filed, the Respondent shall file additional certification, in a form acceptable to Staff, with the Office of the Secretary on a quarterly basis for a period of one year on dates to be agreed upon by Staff and the consultant acknowledging that he has complied with all applicable reporting and disclosure obligations under Ontario securities law in relation to all trading activities undertaken by him within the applicable time periods;

PART VI – STAFF COMMITMENT

- 15. 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 16 below.
- 16. If the Commission approves this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, including the undertakings found in paragraph 14, above, 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

- 17. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission, according to the procedures set out in this Settlement Agreement and the Commission's *Rules of Procedure*.
- 18. 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.
- 19. 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.
- 20. 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.

21. 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

22. 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.
23. All 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, all parties must continue to keep the terms of the Settlement Agreement confidential, unless they agree in writing not to do so or if required by law.

PART IX– EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 31st day of January, 2012.

STAFF OF THE ONTARIO SECURITIES COMMISSION

“Karen Manarin”

Per Director, Enforcement Branch
Ontario Securities Commission

BRUCE CARLOS MITCHELL

“Bruce Carlos Mitchell”

Bruce Carlos Mitchell

“Shakir Salman”

Witness

Schedule “A”

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STAFF OF THE ONTARIO SECURITIES COMMISSION
and BRUCE CARLOS MITCHELL**

**ORDER
(Sections 127 and 127.1)**

WHEREAS on November 22, 2011 the Ontario Securities Commission (the “Commission”) issued a Notice of Hearing that it proposed to hold a hearing to consider whether it is in the public interest to make orders 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 Bruce Carlos Mitchell (“Mitchell” or the “Respondent”);

AND WHEREAS on November 22, 2011, Staff of the Commission (“Staff”) filed a Statement of Allegations with the Commission;

AND WHEREAS the Respondent entered into a Settlement Agreement dated January 31, 2012 in relation to the matters set out in the Statement of Allegations;

AND WHEREAS the Commission issued a Notice of Hearing dated January 27, 2012, announcing that it proposed to consider the Settlement Agreement;

UPON reviewing the undertaking provided by the Respondent and attached as Schedule 1;

AND UPON reviewing the Settlement Agreement, the Notice of Hearing, the Statement of Allegations, and upon considering submissions from the Respondent through his counsel and from Staff;

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 hereby approved;
- (b) pursuant to clauses 2 and 2.1 of subsection 127(1) of the Act, the Respondent shall cease trading in, and the acquisition of, any securities for a period of two years with the exception that, once Mitchell has complied with the undertakings contained in clauses (a), (b), (c), and (d) of Schedule “1” to this Order, attached hereto, he is permitted to trade in and acquire securities in accounts held in his name only or in the name of Forwarders Properties Ltd. (“Forwarders Properties”)¹, through any account with any registered representative that is a member of the Investment Industry Regulatory Organization of Canada (“IIROC”);
- (c) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions in Ontario securities law do not apply to the Respondent for a period of two years except for trades undertaken by the Respondent that are permitted pursuant to the exception provided for in clause (b), above;
- (d) pursuant to clause 6 of subsection 127(1) of the Act, that the Respondent be reprimanded;
- (e) pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act, that the Respondent be prohibited from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager for a period of ten years, with the exception of any position he holds as a director or officer in Norwall Group Inc. or Forwarders Properties, both private issuers of which Mitchell is a director or officer as at the date of this Order;
- (f) pursuant to clause 8.5 of subsection 127(1) of the Act, that the Respondent is prohibited from becoming or acting as a registrant for a period of ten years;

¹ Forwarders Properties is a private issuer of which Mitchell is the sole shareholder, officer and director.

- (g) pursuant to clause 9 of subsection 127(1) of the Act, that the Respondent pay an administrative penalty in the amount of \$50,000 to the Commission for his non-compliance with Ontario securities law to be allocated under section 3.4(2)(b) to or for the benefit of third parties and such payment will be made by certified cheque at the time of the Commission's approval of this Settlement Agreement;
- (h) pursuant to section 127.1 of the Act, that the Respondent will make a payment of \$20,000 to the Commission in respect of a portion of the Commission's costs with respect to this matter and such payment will be made by certified cheque at the time of the Commission's approval of this Settlement Agreement.

DATED at Toronto this day of January, 2012
