



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e 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 JAMES BARNETT (ALSO KNOWN AS JOHN DAVID)

**SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
and JAMES BARNETT (ALSO KNOWN AS JOHN DAVID)**

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 section 127 of the Act, it is in the public interest for the Commission to approve this Settlement Agreement between Staff of the Commission (“Staff”) and James Barnett (also known as John David) (“Barnett”) (the “Settlement Agreement”), and to make certain orders in respect of Barnett.

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff agree to recommend settlement of the proceeding initiated by the Notice of Hearing against Barnett in accordance with the terms and conditions set out below. Barnett consents to the making of an order against him in the form attached as Schedule “A” on the basis of the facts set out below.

PART III – AGREED FACTS

A. Background

3. During the period between 2002 and October 12, 2012, Barnett was a *de facto* officer of MineralFields Management Inc. (“MFMI”), Limited Market Dealer Inc. (“LMDI”) and Pathway Investment Counsel Inc. (“Pathway”) which comprised a group of companies, the MineralFields Group.

4. The MineralFields Group was involved in the distribution and management of flow-through limited partnerships. These limited partnerships invested primarily in flow-through shares of junior Canadian resource issuers through private placement issues.

5. MFMI was registered in the category of investment fund manager. It acted as the investment fund manager for flow-through limited partnerships the units of which were sold to investors through prospectuses and offering memoranda under the branding of “MineralFields”, “Pathway”, and “EnergyFields LPs” (the “MineralFields LPs”).

6. LMDI was registered as a dealer in the category of exempt market dealer. LMDI sourced private placement issues of resource companies for the MineralFields LPs to invest in, and received a finder’s fee (in cash and/or warrants) from these resource issuers for its services as an agent/finder. LMDI was also involved in negotiating the terms of the private placement issues on behalf of the MineralFields LPs with management of the resource issuers in connection with the purchase of securities by the MineralFields LPs.

7. Pathway was registered as an adviser in the category of portfolio manager. It was retained by MFMI to provide portfolio management services to the MineralFields LPs.

8. Between April 28, 2011 and August 31, 2011, Staff conducted reviews of MFMI, LMDI and Pathway (the “Compliance Reviews”) for the period between April 1, 2010 and March 31, 2011 (the “Review Period”). During the course of the Compliance Reviews, certain matters came to the attention of Staff respecting Barnett.

9. The Compliance Reviews conducted by Staff revealed that Barnett breached Ontario securities law and acted contrary to the public interest. In particular:

B. Omissions to the Commission

10. During the Compliance Reviews, it was revealed that commencing in 2002 and continuing until 2011, there was a consistent failure to disclose in regulatory filings with the Commission that Barnett had beneficial interest in 49.99% of the non-voting shares of MFMI and LMDI since inception of these firms in 2002 and 2004, respectively, until after the Compliance Reviews. Barnett had an understanding with the individual who eventually became the Ultimate Designated Person (the “UDP”) of the firms of the MineralFields Group that Barnett would have a 49.9% interest and the UDP would have a 50.1% interest in the companies from the date each company was incorporated. Between 2002 and 2011:

- (a) a document dated March 25, 2002 and signed by the UDP was filed with the Commission certifying that the UDP owned 100% of the shares of LMDI;
- (b) in 2005, a limited market dealer survey questionnaire was signed by the UDP as president of LMDI and submitted to the Commission. It stated that the UDP was the sole director, officer and shareholder of LMDI;
- (c) during a compliance field review conducted by Staff in November 2005 of LMDI, Staff were told by LMDI’s Chief Compliance Officer (“CCO”) that the UDP was the sole shareholder of LMDI;
- (d) in 2010, the Commission was provided with an ownership chart of MFMI signed by the UDP which stated that the UDP “owns 100% of the shares of MineralFields Fund Management Inc.”; and
- (e) during the compliance reviews of the MineralFields Group that commenced with the compliance review of MFMI on April 28, 2011, Staff sent a books and records request that included a request “for a copy of the Registrant’s current organization chart and employee list with telephone numbers.” In response to this request, Staff received from the CCO and Chief Financial Officer of LMDI an organizational chart showing that the UDP (directly and through his companies) as the 100% owner of MFMI and LMDI.

11. Barnett was not registered under the Act in any capacity and was not disclosed as a “permitted individual” within the meaning of National Instrument 33-109-*Registration Information*.

12. Barnett’s failure to disclose his ownership of non-voting shares constituted conduct contrary to the public interest.

C. Barnett engaged in trading and advising without registration

13. During the Review Period and until August 2011, Barnett engaged in registerable activities on behalf of LMDI and Pathway without registration. His activities included:

- (a) soliciting private placement deals from resource issuers for investment by the flow-through MineralFields LPs managed by MFMI;
- (b) negotiating deal terms with resource issuers regarding such private placement issues;
- (c) making investment recommendations on behalf of and/or to Pathway;
- (d) determining the subscription price and subscription amount based on the recommendation made by LMDI’s in-house mining analysis. Barnett did not act based on instructions from Pathway’s registered advising representative. Instead, Barnett made the investment decisions; and
- (e) sending out engagement letters to resource issuers which were signed by himself or the UDP, although even where the UDP’s “signature” appears on the engagement letters, the UDP did not actually sign the engagement letters as Barnett simply sent the letters out in the UDP’s name. The engagement letters include the relevant subscription amount and were sent out before Pathway’s registered adviser approved the investments.

14. By engaging in the trading and advising activity without being registered, Barnett acted contrary to Ontario securities law.

D. Respondent’s Position

15. The Respondent submits:
- (a) prior to the establishment of the MineralFields Group, Barnett had not worked in the securities industry;
 - (b) for reasons of personal protection relating to incidents which occurred between 1998 and 2002, Barnett structured his affairs in a manner to protect his identity including adopting a pseudonym;
 - (c) there is no evidence that the Respondent's conduct contrary to Ontario securities law or conduct contrary to the public interest caused investor losses; and
 - (d) after the compliance deficiencies at the MineralFields Group were discovered by Compliance Staff, Barnett cooperated with Staff in replacing the UDP, the CCO and the portfolio manager and appointing a monitor until the assets of the MineralFields Group were transferred to another registrant. The MineralFields Group entities are no longer in business.

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

16. By engaging in the conduct described above, Barnett admits and acknowledges that he contravened Ontario securities law by trading and advising without being registered and acted contrary to the public interest by omitting to disclose his ownership of 49.99% of the non-voting securities of MFMI and LMDI.

PART V - TERMS OF SETTLEMENT

17. Barnett agrees to the terms of settlement listed below.
18. The Commission will make an order, pursuant to subsection 127(1) and section 127.1 of the Act, that:
- (a) the Settlement Agreement is approved;

- (b) Barnett resign any position he holds as a director of a registrant or as a chief executive officer, chief financial officer or chief operating officer of a registrant or the functional equivalent of any of these positions;
- (c) Barnett shall be prohibited from becoming or acting as a “chief compliance officer” or “ultimate designated person” as defined in subsection 1(1) of the Act or, with the exception of a director of or owner as described in subparagraph (d) below, a “permitted individual” within the meaning of section 1.1 of *National Instrument 33-109* of a registrant permanently;
- (d) Barnett shall be prohibited from becoming or acting as a registrant, a director of a registrant or as an individual who has beneficial ownership of, or direct or indirect control or direction over, 10% or more of the voting securities of a registered firm until the later of a period of four years from the date of the approval of the Settlement Agreement and the date on which Barnett successfully completes, in addition to any applicable proficiency requirements, the Conduct and Practices Handbook Course and, if seeking to become a director of a registered firm, until the later of a period of four years from the date of the approval of the Settlement Agreement and the date on which Barnett completes the Directors Education Program;
- (e) subject to the satisfaction of (d) and upon becoming registered by the Director under subsection 27(1) of the Act, Barnett will be subject to strict supervision of a sponsoring firm for a period of one year;
- (f) Barnett is reprimanded;
- (g) Barnett shall pay an administrative penalty of \$125,000 for breaching Ontario securities law by trading and advising without registration to the Commission which is designated for allocation or use by the Commission in accordance with section 3.4(2)(b) of the Act; and
- (h) Barnett shall pay the costs of the Commission’s investigation in the amount of \$25,000 within 180 days of the approval of the Settlement Agreement.

19. For his conduct contrary to the public interest, Barnett undertakes to make a voluntary payment in the amount of \$75,000 which is designated for allocation or is by the commission in accordance with subsection 3.4(2)(b) of the Act.

20. With respect to sub-paragraphs 18(g) and (h), Barnett agrees to personally make a payment of \$25,000 by certified cheque or bank draft payable to the Ontario Securities Commission within one year of the approval of this Settlement Agreement and agrees to pay a further \$50,000 by certified cheque or bank draft payable to the Ontario Securities Commission within one year of each preceding payment until the sum of the administrative penalty and costs has been paid in full.

21. Barnett undertakes to consent to a regulatory order made by any provincial or territorial securities regulatory authority in Canada containing any or all sanctions set out in subparagraphs 18 (b) to (e) above.

PART VI - STAFF COMMITMENT

22. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Barnett in relation to the facts set out in Part III herein, subject to the provisions of paragraph 23 below.

23. If this Settlement Agreement is approved by the Commission, and at any subsequent time Barnett fails to honour the terms of the Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against Barnett based on, but not limited to, the facts set out in Part III herein as well as the breach of the Settlement Agreement.

PART VII - PROCEDURE FOR APPROVAL OF SETTLEMENT

24. Approval of this Settlement Agreement will be sought at a hearing of the Commission scheduled on a date to be determined by the Secretary to the Commission, or such other date as may be agreed to by Staff and Barnett for the scheduling of the hearing to consider the Settlement Agreement.

25. Staff and Barnett agree that this Settlement Agreement will constitute the entirety of the agreed facts to be submitted at the settlement hearing regarding their conduct, unless the parties agree that further facts should be submitted at the settlement hearing.

26. If this Settlement Agreement is approved by the Commission, Barnett agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

27. If this Settlement Agreement is approved by the Commission, none of the parties shall make any public statement that is inconsistent with this Settlement Agreement or inconsistent with any additional agreed facts submitted at the settlement hearing.

28. Whether or not this Settlement Agreement is approved by the Commission, Barnett agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the settlement negotiations as the basis of any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

29. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the order attached as Schedule “A” is not made by the Commission:

- (a) this Settlement Agreement and its terms, including all settlement negotiations between Staff and Barnett leading up to its presentation at the settlement hearing, shall be without prejudice to Staff and Barnett; and
- (b) Staff and Barnett shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations in the Notice of Hearing and the Statement of Allegations of Staff, unaffected by the Settlement Agreement or the settlement discussions/negotiations.

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

PART IX - EXECUTION OF SETTLEMENT AGREEMENT

31. This Settlement Agreement may be signed on one or more counterparts which together will constitute a binding agreement.

32. A facsimile copy of any signature will be as effective as an original signature.

Signed in the presence of:

J. Martinez

“James Barnett”

Witness

James Barnett

J. Martinez

(Print Name)

Dated this “21st” day of March, 2014

STAFF OF THE ONTARIO SECURITIES COMMISSION

“Tom Atkinson”

Tom Atkinson
Director, Enforcement Branch

Dated this “21st” day of March, 2014.



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue queen ouest
Toronto ON M5H 3S8

Schedule "A"

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

- and -

IN THE MATTER OF JAMES BARNETT (ALSO KNOWN AS JOHN DAVID)

- and -

**IN THE MATTER OF A SETTLEMENT AGREEMENT BETWEEN STAFF OF THE
ONTARIO SECURITIES COMMISSION AND JAMES BARNETT (ALSO KNOWN AS
JOHN DAVID)**

ORDER

(Subsections 127(1) and 127(2) and Section 127.1)

WHEREAS the Ontario Securities Commission (the "Commission") issued a Notice of Hearing (the "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 connection with a Statement of Allegations filed by Staff of the Commission ("Staff") to consider whether it is in the public interest to make certain orders against James Barnett (also known as John David) ("Barnett");

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

AND WHEREAS the Commission has reviewed the Notice of Hearing, the Statement of Allegations and the Settlement Agreement;

AND WHEREAS Barnett has entered into an undertaking as part of the Settlement Agreement whereby he shall make a voluntary payment to the Commission in the amount of \$75,000, which will be designated for allocation or for use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

AND WHEREAS Barnett has provided to Staff a certified cheque in the payment of \$75,000 in full payment of the voluntary undertaking;

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 approved;
- (b) pursuant to paragraph 8.1 of subsection 127(1) of the Act, Barnett resign any position he holds as a director of a registrant or as a chief executive officer, chief financial officer or chief operating officer of a registrant or the functional equivalent of any of these positions;;
- (c) pursuant to paragraph 8.2 of subsection 127(1) of the Act, Barnett shall be prohibited from becoming or acting as a director of a registrant except as described in subparagraph (g) below or from becoming or acting as a chief executive officer, chief financial officer or chief operating officer of a registrant or the functional equivalent of any of these positions permanently;
- (d) pursuant to paragraph 8.2 of subsection 127(1) of the Act, Barnett shall be prohibited from becoming or acting as an “ultimate designated person” or chief compliance officer” as defined in subsection 1(1) of the Act permanently;
- (e) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Barnett shall be prohibited from becoming or acting as a registrant, or as an individual who has beneficial ownership of, or direct or indirect control or direction over, 10% or more of the voting securities of a registered firm until the later of a period of four years from the date of the approval of the Settlement Agreement and the date on which Barnett completes, in addition to any proficiency requirements, the Conduct and Practices Handbook Course;
- (f) pursuant to 8.2 of subsection 127(1) of the Act, Barnett shall be prohibited from becoming or acting as a director of a registrant until the later of a period of four years from the date of the approval of the Settlement Agreement and the date the date on which Barnett completes the Directors Education Program;
- (g) subject to the satisfaction of subparagraph (e) and upon becoming a registered by the Director under subsection 27(1) of the Act, Barnett’s registration shall be

subject to a term and condition requiring he be subject to strict supervision of a sponsoring firm for a period of one year;

- (e) pursuant to paragraph 6 of subsection 127(1) of the Act, Barnett is reprimanded;
- (f) the voluntary payment of \$75,000 to the Commission made by Barnett upon the approval of the Settlement Agreement is designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;
- (g) pursuant to paragraph 9 of subsection 127(1) of the Act, Barnett shall pay an administrative penalty of \$125,000 to the Commission which is designated for allocation or use by the Commission in accordance with section 3.4(2)(b) of the Act;
- (h) pursuant to section 127.1 of the Act, Barnett shall pay the costs of the Commission's investigation in the amount of \$25,000 within 180 days of the signing of this Order; and
- (i) in satisfaction of term (g) above, Barnett shall pay \$25,000 by certified cheque or bank draft payable to the Ontario Securities Commission within one year of the signing of this Order and shall pay a further \$50,000 by certified cheque or bank draft payable to the Ontario Securities Commission within one year of each preceding payment until the sum of the administrative penalty and costs has been paid in full.

DATED AT TORONTO this day of April, 2014.
