

# 2007 BCSECCOM 391

## Schedule "A"

### Settlement Agreement

**China Dragon Fund Ltd.,  
Michael Patrick Lathigee and Earle Douglas Pasquill**

***Securities Act, RSBC 1996, c. 418***

- ¶ 1 The Executive Director of the British Columbia Securities Commission (the Executive Director), China Dragon Fund Ltd. (CDF), Michael Patrick Lathigee (Lathigee) and Earle Douglas Pasquill (Pasquill) agree as follows:

#### **Agreed Statement of Facts**

1. FIC Investment Ltd. (FIC), WBIC Canada Ltd. (WBIC) and CDF (the Funds) are incorporated under the laws of British Columbia, are not reporting issuers and are not registered under the *Securities Act*, RSBC 1996, c. 418. They are non-redeemable investment funds with diverse investment portfolios.
2. Lathigee and Pasquill are residents of Vancouver, British Columbia and are not registered under the Act. They are directors and officers of the Funds and manage the investment portfolios of the Funds in that capacity.

#### ***Illegal Distributions***

3. The Funds distributed securities under various offering memoranda over the time periods and in the approximate dollar amounts set out below:

FIC	October 2002 – December 2005	\$6.1 million
WBIC	June 2003 – December 2005	\$3.0 million
CDF	September 2004 – December 2005	\$3.6 million

4. On December 22, 2005, the Executive Director issued cease trade orders under section 164 of the Act against the Funds because the offering memoranda were not in the form required by Multilateral Instrument 45-103 *Capital Raising Exemptions* (MI 45-103).
5. Since the offering memoranda for the distributions were not in the required form, the Funds contravened sections 34(1)(a) and 61(1) of the Act. Lathigee and Pasquill performed acts in furtherance of the Funds' distributions, and accordingly also contravened those provisions of the Act.

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6. In 2004, Lathigee promoted an opportunity for FIC investors to invest directly in debt securities by lending funds to Lathigee personally, which he in turn invested in a payroll loans company “side by side” with FIC’s investment in that company. Lathigee made lending arrangements with 29 investors of securities worth approximately \$1 million. By performing acts in furtherance of those trades, Lathigee contravened sections 34(1)(a) and 61(1) of the Act.

### ***Misrepresentation***

7. In early 2006, FIC and Lathigee issued an FIC member newsletter that stated that FIC investors paid no management expense ratio and that FIC offsets most expenses through education-related sales.
8. FIC’s financial statements show that, at the time of the statement, FIC’s education-related sales of investment club memberships and seminars had fallen significantly short of covering FIC’s management fees and administrative expenses. FIC paid the excess fees and expenses from its general account.
9. The excess fees and expenses paid by FIC could reasonably be expected to significantly affect the value of FIC’s securities. As a result, the newsletter contained an untrue statement of a material fact, and FIC and Lathigee made a misrepresentation, contrary to section 50(1)(d) of the Act.

### ***Breach of Directors’ Duties***

10. In 2002 and 2003, FIC granted Lathigee options to purchase FIC shares. In 2004 and 2005, without paying to exercise the options, receiving shares or redeeming them, Lathigee caused FIC to issue cheques to himself, totaling approximately \$80,000, for the difference between the exercise price of his options and the current redemption value of the shares.
11. From January 2004 to April 2006, WBIC granted Lathigee and Pasquill options to purchase WBIC shares. In May 2006, without paying to exercise the options, receiving shares or redeeming them, Lathigee and Pasquill caused WBIC to issue cheques to themselves, totaling approximately \$170,000 and \$65,000, respectively, for the difference between the exercise price of their options and the current redemption value of the shares.
12. At the time Lathigee and Pasquill received the financial benefit of the options, no FIC or WBIC shares could be redeemed for three years from the date they were issued. As a result, Lathigee and Pasquill acted contrary to section 118(1) of the *Company Act*, RSBC 1996, c. 418, and section 142(1) of the *Business Corporations Act*, SBC 2002, c. 57.

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### **Public Interest**

13. The Funds, Lathigee and Pasquill acted contrary to the public interest by engaging in the conduct set out above.

### **Mitigating Factors**

14. After the Executive Director issued cease trade orders under section 164 of the Act, the Funds retained legal counsel to prepare updated offering memoranda in the form required by MI 45-103. FIC and WBIC circulated the updated offering memoranda to their investors and provided them with the opportunity to rescind their original investments. A small number of investors accepted the rescission offer. The Executive Director revoked the cease trade orders against FIC and WBIC in 2006.
15. CDF is preparing a revised offering memorandum that complies with MI 45-103, and will offer rescission to its investors as soon as it is complete. CDF has the financial ability to pay out all investors who accept the rescission offer.

### **Undertakings**

16. CDF undertakes to complete its revised offering memorandum and offer rescission to investors by August 31, 2007.
17. Lathigee undertakes to pay \$60,000 to the British Columbia Securities Commission in respect of settlement of this matter which sum is due and payable immediately without further demand.
18. Pasquill undertakes to pay \$30,000 to the British Columbia Securities Commission in respect of settlement of this matter which sum is due and payable immediately without further demand.

### **Order**

- ¶ 2 The Executive Director will issue an order (the Order) that, under section 161(1)(a) of the Act, Lathigee and Pasquill will comply fully with the Act, the *Securities Rules*, BC Reg. 194/97, and any applicable regulations.

### **Consent to Reciprocal Orders**

- ¶ 3 Any securities regulator in Canada may rely on the facts admitted in this agreement solely for the purpose of making an order similar to the one contemplated above.

### **Waiver**

- ¶ 4 The respondents waive any right they may have, under the Act or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to, this settlement.

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### Counterpart

¶ 5 This Settlement Agreement may be executed in counterpart or by facsimile execution and all such counterparts of executed copies or faxed copies shall be read or construed together as if they formed one originally executed document.

¶ 6 June 29, 2007

¶ 7 “M.P. Lathigee”  
China Dragon Fund Ltd.  
(Signing Authority)

“E. Pasquill” )  
Witness Signature )  
Earle Pasquill )  
Witness Name (please print) )  
4027 W. 27 Ave )  
Vancouver )  
Address )  
Executive )  
Occupation )

¶ 8 June 29, 2007

¶ 9 “M.P. Lathigee”  
Michael Patrick Lathigee

“E. Pasquill” )  
Witness Signature )  
Earle Pasquill )  
Witness Name (please print) )  
4027 W 27 Ave )  
Vancouver )  
Address )  
Executive )  
Occupation )

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¶ 10 June 29, 2007

¶ 11 “E. Pasquill”  
Earle Douglas Pasquill

“M.P. Lathigee” )  
Witness Signature )  
Mike Lathigee )  
Witness Name (please print) )  
2861 W 12th )  
Vancouver BC V6K 2G8 )  
Address )  
CEO )  
Occupation )

¶ 12 July 4, 2007

¶ 13 “Brenda Leong”  
Brenda M. Leong  
Executive Director