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Schedule A Settlement Agreement

Bradley Nixon Scharfe

Section 161 of the *Securities Act*, RSBC 1996, c. 418 (the Act)

- ¶ 1 The following settlement of issues has been reached between Bradley Nixon Scharfe (Scharfe) and the Executive Director.

Agreed Statement of Facts

- ¶ 2 As the basis for the undertakings and orders referred to in this settlement, Scharfe acknowledges the following facts as correct.

1. Scharfe has been registered as an investment adviser under the Act from on or about December 1987 to the present.
2. Undeclared Short Sales
 - (a) Scharfe was the investment adviser for six accounts in which the account-holders made in excess of 100 undeclared short sales in the period between January 1, 1996 and February 14, 1996;
 - (b) the undeclared short sales did not settle within a reasonable period of time in accordance with industry rules and practice;
 - (c) the four accounts that made most of the undeclared short sales were restricted and closed by March 1996; and
 - (d) on March 26, 2001 Scharfe entered into a consent settlement with the Canadian Venture Exchange (the CDNX) in connection with these facts, pursuant to which he agreed to pay a fine of \$25,000, disgorge commissions of \$57,500, and pay investigative costs of \$5,000.
3. Trading in Clay-Tech Industries Inc. (Clay-Tech)
 - (a) Scharfe was the investment adviser for two accounts (the Clay-Tech Accounts), one of which was involved in the undeclared short sales, in which the account-holders traded in various securities;
 - (b) in particular, the Clay-Tech Accounts traded extensively in the shares of Clay-Tech, a company that was listed on the Alberta Stock Exchange (the ASE), in the period between May and July of 1996;

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- (c) although not declared by the account-holders, the Clay-Tech Accounts were each nominee accounts for Michael Lee Mitton (Mitton);
 - (d) at the time, Mitton was subject to an order issued on December 19, 1988 by the Superintendent of Brokers which, among other things, prevented Mitton from trading in securities or acting as an adviser until October 31, 2008; and
 - (e) subsequent investigations and reviews of the trading records of the ASE and the various brokerage firms involved indicate that the trading of Clay-Tech in the Clay-Tech Accounts was part of a broader scheme to manipulate the price of the shares of Clay-Tech.
4. Trading in H & R Enterprises Inc. (H & R)
- (a) Scharfe was the investment adviser for two accounts (the H & R Accounts) which were involved in the trading of H & R, a company that traded on the OTC Bulletin Board in the United States;
 - (b) although not declared by the account-holders, the H & R Accounts were each nominee accounts for Mitton; and
 - (c) subsequent investigations and reviews of the trading records for the various brokerage firms involved in the trading of H & R indicate that the trading of H & R in the H & R Accounts was part of a broader scheme to manipulate the price of the shares of H & R.
5. Scharfe admits that, although he was not aware at the time, he ought to have known that:
- (a) the Clay-Tech Accounts were each nominee accounts of Mitton;
 - (b) the H&R Accounts were each nominee accounts of Mitton; and
 - (c) the price of the shares of Clay-Tech were being manipulated.

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Breaches of the Act and Securities Rules

6. Scharfe breached section 48 of the *Securities Rules*, BC Reg 479/95, by failing to make sufficient enquiries concerning the identity of his clients with respect to the Clay-Tech Accounts and the H & R Accounts.

Public Interest

7. Scharfe failed to fulfill his gatekeeper responsibilities by not detecting and taking steps to prevent the Clay-Tech Accounts' involvement in the manipulation of the price of the shares of Clay-Tech.

Mitigating Factors

- ¶ 3 The Executive Director has taken into account the following facts as factors mitigating the sanctions which would otherwise have applied in the public interest:

1. Scharfe has previously settled with the CDNX in relation to the undeclared short sales;
2. Scharfe sought and received advice from his brokerage firm with respect to his ability to talk to Mitton and advises that he acted within the scope of that advice; and
3. the Clay-Tech Accounts and the H & R Accounts were each active only for a short period of time.

Undertaking

- ¶ 4 Scharfe agrees and undertakes as follows:

4. to voluntarily resign his registration no later than May 31, 2004;
5. to not apply for registration for a period of two years from the latter of:
 - (a) the date of his resignation; or
 - (b) the date he successfully completes a course of study satisfactory to the Executive Director;
6. notwithstanding his ability to apply for registration, Scharfe acknowledges that such registration may be opposed by the Executive Director;

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7. to not accept any position as a director or officer of a reporting issuer for a period of two years from the date of this Order, unless he has delivered to the reporting issuer a copy of this Order and this Settlement Agreement;
8. to not perform investor relations activity for a reporting issuer for a period of two years from the date of this Order, unless he has delivered to the reporting issuer a copy of this Order and this Settlement Agreement;
9. to comply fully with the Act, the Rules, and any applicable regulations, policies and guidelines;
10. to not say anything, in writing or orally, which may contradict the terms of this settlement or call those terms into question; and
11. to pay to the Commission the sum of \$53,500, of which \$43,500 represents commissions he earned from the trading in the Clay-Tech Accounts and H & R Accounts and \$5,000 represents a portion of the cost of the investigation.

Order

- ¶ 5 Scharfe consents to an order by the Executive Director (the Order) that pursuant to section 161(1)(b) of the Act, for a period of two years from the date of this Order, Scharfe may only trade or purchase securities through accounts held in the name of Scharfe or personal holding corporations, for his own benefit or the benefit of his children, and through a single registered dealer designated in writing and approved by the Executive Director, and that before any such trades or purchases take place he must deliver to the registered dealer a copy of this Order and this Settlement Agreement.

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Waiver

- ¶ 6 Scharfe waives any right he 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.

January 20, 2004

Bradley Nixon Scharfe

“Richard Bandstra”)
Witness Signature)
R. Bandstra)
Witness Name (please print))
1000 – 840 Howe Street)
Vancouver, BC)
Address)
Lawyer)
Occupation

January 21, 2004

Stephen J. Wilson
Executive Director