

## SETTLEMENT AGREEMENT

Made as of this \_\_\_\_\_ day of April, 2016

**BETWEEN:**

YEGAL ROSEN  
("Rosen" or "Plaintiff")

- and -

BMO NESBITT BURNS INC.  
("Nesbitt")

(Rosen and Nesbitt are individually a "Party" and collectively the "Parties")

**WHEREAS** Rosen was employee of Nesbitt from approximately June 2002 until April 2006. Rosen worked as an Investment Advisor Trainee and Investment Advisor at a Nesbitt branch in Thornhill, Ontario;

**AND WHEREAS** Rosen subsequently commenced a class action bearing court file number **CV-10-39668500CP** in the Ontario Superior Court of Justice at Toronto pursuant to the *Class Proceedings Act, 1992* (Ontario) (the "Action") against Nesbitt, claiming entitlement to overtime compensation pursuant to the Employment Standards Act, 2000, S.O. 2000, c. 41, and the regulations thereto (the "ESA") and related claims;

**AND WHEREAS** by Order of the Honourable Justice Belobaba, dated August 20, 2013, the Action was certified as a class proceeding. Leave to appeal the certification order was denied on December 17, 2013;

**AND WHEREAS** extensive documentary productions have been made;

**AND WHEREAS** the Parties attended a two day mediation with the Honourable Warren Winkler on January 20 and 21, 2016, and further negotiations continued thereafter;

**AND WHEREAS** the Parties with the assistance of the Honourable Warren Winkler, reached an agreement to resolve the Action and entered into a Term Sheet dated January 30, 2016, which is attached to this Agreement as **Schedule "A"**;

**AND WHEREAS** the Term Sheet contemplated the parties executing a settlement agreement ("Term Sheet");

**NOW THEREFORE** in consideration of the mutual agreements set forth below, the Parties agree as follows:

## DEFINITIONS

1. In this Settlement Agreement, and its Schedules:
  - (a) **"Administrator"** means Crawford Class Action Services;
  - (b) **"Allocation Plan"** means the plan of allocation set out on **Schedule "B"**;
  - (c) **"Class"** means all Ontario current and former Nesbitt employees who, between January 1, 2002 to June 1, 2016, held the position of Investment Advisor, or who performed the same or similar job functions under a different or previous Nesbitt job title, exclusive of any time period for which they:
    - (i) Held the position of Branch Manager; or
    - (ii) Held the position of Assistant Branch Manager; or
    - (iii) Held the position of Divisional Manager; or
    - (iv) Were Investment Advisors on a team that (i) had an Associate IA or Sales Assistant assigned to them;
  - (d) **"Class Counsel"** means counsel for the Class in the Action, Koskie Minsky LLP and Mr. Eli Karp;
  - (e) **"Class List"** has the meaning set out in paragraph 6 of this Settlement Agreement;
  - (f) **"Class Member"** means a member of the Class;
  - (g) **"Class Period"** means the period beginning January 1, 2002 and ending on June 1, 2016;
  - (h) **"Compensation Fund"** has the meaning set out in paragraph 2(e) of **Schedule "B"** of this Settlement Agreement;
  - (i) **"Court"** means the Ontario Superior Court of Justice;

- (j) **“Distribution Confirmation Form”** means the form referred to in **Schedule “D”** to this Settlement Agreement as provided for in Section 14 hereof;
- (k) **“Final Fee Approval”** means the date of issuance of an Order by the Court approving Class Counsel’s legal fees and disbursements (inclusive of taxes) together with the expiration of any applicable appeal periods and, if applicable, the dismissal of all appeals taken from such Order of the Court;
- (l) **“Final Settlement Approval”** means the date of issuance of a final settlement approval order by the Court in the form attached hereto as **Schedule “C”** together with the expiration of any applicable appeal periods and, if applicable, the dismissal of all appeals that are taken from the settlement approval order of the Court;
- (m) **“Finality Contribution”** means the payment described in paragraph 2(b) of this Settlement Agreement;
- (n) **“IA Trainee”** means a Settlement Class Member who participated in the IIROC mandated initial close supervision period of six months of the Nesbitt Trainee Program, or any part thereof, during the Class Period;
- (o) **“Nesbitt Trainee Program”** means the full training program for the training of IA Trainees during the Class Period;
- (p) **“Notice Program”** is the program for publishing and distributing the Settlement Approval Hearing Notice pursuant to paragraph 10 of this Settlement Agreement;
- (q) **“Settlement”** means the settlement agreed to in this Settlement Agreement;
- (r) **“Settlement Approval Hearing Notice”** has the meaning set out in paragraph 4 of this Settlement Agreement;
- (s) **“Settlement Approval Motion”** means the motion returnable before the Court for approval of the Settlement;

- (t) **“Settlement Class”** means all Ontario current and former Nesbitt employees who, between January 1, 2002 to June 1, 2016, held the position of Investment Advisor, or who performed the same or similar job functions under a different or previous Nesbitt job title, exclusive of any time period for which they:
  - (i) Held the position of Branch Manager; or
  - (ii) Held the position of Assistant Branch Manager; or
  - (iii) Held the position of Divisional Manager,as further reflected in subparagraph 6(b) of this Settlement Agreement;
- (u) **“Settlement Class Member”** means a member of the Settlement Class;
- (v) **“Settlement Fund”** has the meaning set out in paragraph 2 of this Settlement Agreement;
- (w) **“Supplemental Settlement Class List”** has the meaning set out in paragraph 7 of this Settlement Agreement.

### **SETTLEMENT FUND**

2. Nesbitt will pay a non-reversionary lump sum of CAD 12 million (the **“Settlement Fund”**) to Koskie Minsky LLP, in trust, or as otherwise directed by Koskie Minsky LLP, within 30 days of Final Settlement Approval, to be allocated:

- (a) by payment to each IA Trainee who participated in the Nesbitt Trainee Program and who properly completes and returns a Distribution Confirmation Form or otherwise advise the Administrator of the information set out in the Distribution Confirmation Form; and
- (b) a Finality Contribution for all Settlement Class Members, of CAD 2 million, to be divided and paid in equal amounts to each Settlement Class Member, who properly completes and returns a Distribution Confirmation Form or otherwise

advises the Administrator of the information set out in the Distribution Confirmation Form, regardless of whether they are an IA Trainee.

in accordance with the **Allocation Plan** and subject to its applicable deductions.

3. The Administrator will be appointed to implement notice and to administer and distribute the Settlement Fund in accordance with the Allocation Plan. Class Counsel will be solely responsible for instructing the Administrator in respect of distribution and administration of the Settlement Fund.

#### **SETTLEMENT APPROVAL HEARING NOTICE PROGRAM**

4. Rosen will, in consultation with Nesbitt, prepare a form(s) of notice to advise Settlement Class Members of the Settlement Approval Motion and Fee Approval (the "**Settlement Approval Hearing Notice**") and an opt out notice for those individuals who commenced employment with Nesbitt after January 26, 2015, being the date of the class list used for the distribution of notice of certification which advised Settlement Class Members of their right to opt out;

5. The Settlement Approval Hearing Notice will be distributed by:

- (a) direct mailings to the Settlement Class Members using regular mail and e-mail (where available); and
- (b) publishing a single written notice in the Business Section of the Thursday edition of The Globe and Mail.

6. Nesbitt will provide to Class Counsel and the Administrator a list of Settlement Class Members (in Excel format):

- (a) updated to April 29, 2016, listing the individuals' first name, middle name, last name, mailing address, phone number, E-mail, whether they are a former or current employee of BMO Nesbitt Burns Inc. and whether they commenced employment after January 26, 2015, with the exception of those Class Members

who opted out of the proceeding in accordance with the affidavit of Terri Retzler, sworn July 28, 2015, by May 2, 2016 (the "**Settlement Class List**");

- (b) that does not attempt to isolate which Settlement Class Members were on a team that had an Associate IA or Sales Assistant assigned to them as the Parties deferred such a determination.

7. Nesbitt will provide a supplemental list of Settlement Class Members (the "**Supplemental Settlement Class List**") to Class Counsel and the Administrator by June 6, 2016 in the same format as the Class List. The Supplemental Settlement Class List will identify individuals who entered the Settlement Class between April 29, 2016 and June 1, 2016.

8. Class Counsel will provide to the Administrator the mailing addresses and email addresses for Settlement Class Members in its possession.

9. The Administrator will take the following steps to locate Settlement Class Members for the purposes of delivery of the Settlement Approval Hearing Notice:

- (a) the Administrator will cross-reference the addresses of all former employees of BMO Nesbitt Burns Inc. identified by BMO Nesbitt Burns Inc. pursuant to paragraphs 6 and 7 above (the "Former Employees") against the National Change of Address Database produced by Canada Post;
- (b) the Administrator will search the names of all Former Employees with the IIROC (Investment Industry Regulatory Organization of Canada) Advisor Report database to locate Former Employees' active and currently registered business addresses, and given that the IIROC Advisor Report only provides current business mailing addresses for registrants, Crawford will further search for Former Employees' current business E-mail addresses, if this is made available on the webpage of the Former Employee's currently registered employer;
- (c) If the Administrator does not locate an active registration for a Former Employee through the search in (b) above, the Administrator will search the name of the Former Employee with the Canadian Securities Administrators National

Registration Search (CSANR) database to locate Former Employees' currently registered addresses, and given that the CSANR database only provides current business mailing addresses for registrants, the Administrator will further search for Former Employees' current business E-mail addresses if they are made available on the webpage of the Former Employee's current employer;

- (d) If the Administrator does not locate an active registration for a Former Employee through the searches in (b) and (c) above, the Administrator will search the name of the Former Employee with the Ontario Securities Commission Registration Database (the "OSC List"), and given that OSC List only provides employer names, the Administrator will search the employer's webpage for specific contact information for any Former Employee who is registered with the OSC List, including current mailing address and E-mail address;
- (e) The Administrator will consult and use the addresses for any Settlement Class Members who have contacted the Administrator.

10. By June 16, 2016, the Administrator will publish and distribute the Settlement Approval Hearing Notice in accordance with paragraph 5 (and, with respect to Settlement Class Members who commenced employment after **January 26, 2015** the Administrator will also send the Opt Out Notice), using the updated address lists as revised following searches performed pursuant to paragraph 9.

11. All of the costs of the Notice Program, including, without limitation, all fees and costs of the Administrator, all costs related to distribution of the Settlement Approval Hearing Notice, Globe and Mail publication and address searches will be paid by Nesbitt.

12. The Parties are to seek a notice Order ("Notice Order") in accordance with this Settlement Agreement. The Parties will abide by the Notice Program ordered by the Court, which Notice Program is to be paid for by Nesbitt separate and apart from the administration fees set out at paragraph 26 of this Settlement Agreement, and the failure to obtain a Notice Order on the terms set out in herein will not be a basis to terminate the Settlement. Any costs incurred in

distributing the Settlement Approval Hearing Notice are non-refundable to Nesbitt if the Settlement is not approved by the Court.

**DISTRIBUTION OF FUNDS TO THE CLASS**

13. The allocation of the Settlement Fund will be in Accordance with **Schedule "B"** to this Settlement Agreement.

14. Settlement Class Members will be required to properly complete and return a Distribution Confirmation Form or otherwise advise the Administrator of the information set out in the Distribution Confirmation Form, in order to receive any payment.

15. Within 5 days of Final Settlement Approval, Class Counsel and Nesbitt are to provide any updated addresses they may have for the Settlement Class Members to the Administrator upon the Administrators written request.

16. The Administrator will send the Distribution Confirmation Forms by regular mail and e-mail (as available) to the addresses used for the distribution of the Settlement Approval Hearing Notice, subject to any updated contacts received by the Administrator through the searches conducted at paragraph 18 below or as provided by Class Counsel and Nesbitt.

17. The Administrator will report to the Parties on the date of Final Settlement Approval the number of Settlement Class Members for whom returned mail or e-mail was received (the "**Returned Mail**"). The Administrator will employ the services of a skip tracer to attempt to locate recent contact information for all Returned Mail. In order to assist the Administrator and skip tracer, Nesbitt will provide to the Administrator the following information within 5 days of it being requested by the Administrator, in respect of each Settlement Class Member with Returned Mail:

- (a) the Settlement Class Member's date of birth;
- (b) the Settlement Class Member's sex;
- (c) the Settlement Class Member's Social Insurance Number; and



(d) the Settlement Class Member's last known address.

18. Nesbitt will seek a court order at the Settlement Approval Motion to permit the information at paragraph 17 to be provided to the Administrator.

19. The searches at paragraph 17 above will be completed within 30 days of Final Settlement Approval.

20. The Administrator will have the discretion to conduct further reasonable searches to locate recent contact information for Settlement Class Members.

21. The Distribution Confirmation Forms will be sent by the Administrator as soon as possible following, and within 60 days of the date of Final Settlement Approval.

22. Settlement Class Members will have 60 days from the date that the form is sent to properly complete and return a Distribution Confirmation Form or otherwise advise the Administrator of the information set out in the Distribution Confirmation Form (the "**Response Deadline**").

23. The Administrator will inform Class Counsel of the number of responses to Distribution Confirmation Forms, and how many responses are from a Settlement Class Member who participated in the Nesbitt Trainee Program or not, within 5 days of the Response Deadline.

24. The Administrator will mail cheques calculated pursuant to **Schedule "B"** within 15 days of the Response Deadline (the "**Compensation Cheque**"). The Compensation Cheque will be sent by regular mail to each Settlement Class Member who responds with a Distribution Confirmation Form or otherwise advise the Administrator of the information set out in the Distribution Confirmation Form, by the Response Deadline.

25. The Administrator will:

- (a) keep all communications with Settlement Class Members confidential from Nesbitt and will not provide Nesbitt with the identities of any Settlement Class Members who return a Distribution Confirmation Form or otherwise advise the Administrator of the information set out in the Distribution Confirmation Form,

unless specifically required in order to administer the Settlement or pursuant to subparagraph 25(d) herein;

- (b) Make reasonable requests of Nesbitt for assistance in clarifying information concerning Settlement Class Members and reaching them where Nesbitt can reasonably assist;
- (c) Consult with Nesbitt with respect to any issues that may affect human resources or tax reporting interests or obligations of Nesbitt;
- (d) Provide necessary information to permit Nesbitt to comply with its human resource and tax reporting requirements;
- (e) Reasonably indemnify Nesbitt for any liability Nesbitt may be exposed to as a result of the Administrator administering the Settlement.

26. Nesbitt will pay all costs related to the administration and distribution of the Settlement Fund, including, without limitation, all fees of the administrator and all costs related to searches and other administration, up to a maximum of CAD 500,000.

#### **RELEASE AND BAR ORDER**

27. On the date of Final Settlement Approval:

- (a) Nesbitt and its subsidiaries, affiliates and related entities and its current and former officers, directors, employees, shareholders, partners, agents, lawyers, insurers, reinsurers, subrogees, successors and assigns (“Releasees”) will be fully, finally and forever released and discharged, without qualification or limitation, by each Settlement Class Member, whether or not he or she responds to a Distribution Form or otherwise receives funds in accordance with the Allocation Plan and their heirs, executors and assigns (“Releasers”), from any and all rights, claims, sums of money, damages, actions, allegations, causes of action or demands whatsoever, whether known or unknown, in law or equity, of whatever kind or character, suspected, fixed or contingent, including, any claims for pension and benefit entitlements attributable to payments under this Settlement

and any claim for breach of fiduciary duty that have been or could have been asserted or could have been asserted by any of the Releasors against the Releasees, or any of them, on or after the Final Settlement Approval date based on events occurring up to and including June 1, 2016 arising out of, in connection with, or in any way related, directly or indirectly, to the claims raised or which could have been raised in the Action (“the Released Claims”).

- (b) The Releasors will be forever barred from advancing the Released Claims directly or indirectly against the Releasees by way of any proceedings or procedure, whether court-based or administrative, including under the terms of the *Employment Standards Act*, 2000, S.O. 2000 c.41, or by way of advancing a claim against any person or entity who might claim in any manner or form contribution or indemnity in common law or in equity, or under the provisions of any statute or regulation, including the *Negligence Act* and the amendments thereto and/or any successor legislation thereto and/or under the *Rules of Civil Procedure* (Ontario), from the Releasees for or in respect of the Released Claims.

28. Without limiting the generality of paragraph 27 above, the Parties acknowledge that the intent of this Settlement Agreement and the Release and Bar Order is to conclude all issues arising from the Released Claims including causes of action, claims and demands for damages, indemnity, costs, interest and loss or injury not now known or anticipated but which may later develop or be discovered in respect of the Released Claims, including all the effects and consequences thereof.

#### **NO ADMISSIONS**

29. The Parties acknowledge that Nesbitt denies the truth of the allegations in the Action and denies any liability whatsoever.

#### **PUBLIC DISCLOSURE WITH RESPECT TO THE SETTLEMENT**

30. Class Counsel is not precluded from disclosing or referencing any aspect of the Settlement that is a matter of public record, once the Notice Order has been made by the Court in a manner consistent with paragraph 31 hereof.

31. Press releases, if any, are to be drafted in agreement by the Parties, acting reasonably. A press release in substantially the same form as the release at **Schedule "E"** will be released following Final Settlement Approval.

32. Nothing herein precludes communications directed by the notice program contemplated herein between Class Counsel and Settlement Class Members, and communications advising the Settlement Class Members of developments through updates posted to the Class Counsel webpage telephone hotline, and otherwise.

### **SETTLEMENT CONDITIONAL**

33. The obligation on Nesbitt to complete this Settlement Agreement, including the making of the payment provided for in paragraph 2 hereof, is conditional upon the Final Settlement Approval being in the form attached hereto as Schedule "C", including the form of Release and Bar Order contained in paragraphs 27 and 28 hereof. This condition is entirely for the benefit of Nesbitt and may only be waived by it in writing.

### **GENERAL PROVISIONS**

34. The Parties agree that:

- (a) they will support the implementation of the terms of this Settlement Agreement in the Action before the Court and when communicating at any time and in any manner with any Settlement Class Member;
- (b) time is of the essence in implementing this Settlement Agreement. In this regard, the Parties will endeavour to implement and give effect to this Settlement Agreement in a timely and time effective manner;
- (c) there are no oral warranties or representations or other agreements between the Parties in connection with the subject matter hereof, except as expressly set forth and referred to herein. No amendment of this Settlement Agreement will be binding unless executed in writing by the Parties to be bound thereby. No waiver of any provision of this Settlement Agreement will be deemed or will constitute a

waiver of any other provision nor will any such waiver constitute a continuing waiver unless otherwise expressed to provide it;

- (d) this Settlement Agreement will be binding upon and enure to the benefit of the Parties hereto and their respective successors, assigns, heirs, administrators and/or legal representatives;
- (e) this Settlement Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Nesbitt and Rosen, on behalf of himself and of all Settlement Class Members, hereby attorn to the jurisdiction of the Ontario Superior Court of Justice, which Court will have the exclusive power and jurisdiction to adjudicate upon and provide a binding decision on any dispute concerning the construction, effect or enforcement of this Settlement Agreement; and
- (f) this Settlement Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

Date: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**YEGAL ROSEN**

Date: \_\_\_\_\_

**BMO NESBITT BURNS INC.**

Per:   
\_\_\_\_\_

Name: **CHARVYL GALPIN**

Position: **HEAD, PRIVATE CLIENT  
DIVISION**

waiver of any other provision nor will any such waiver constitute a continuing waiver unless otherwise expressed to provide it;

- (d) this Settlement Agreement will be binding upon and enure to the benefit of the Parties hereto and their respective successors, assigns, heirs, administrators and/or legal representatives;
- (e) this Settlement Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Nesbitt and Rosen, on behalf of himself and of all Settlement Class Members, hereby attorn to the jurisdiction of the Ontario Superior Court of Justice, which Court will have the exclusive power and jurisdiction to adjudicate upon and provide a binding decision on any dispute concerning the construction, effect or enforcement of this Settlement Agreement; and
- (f) this Settlement Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

Date: April 22/2016

Witness Cecil Dong

Date: April 22/2016

Yegor Rosen  
YEGAL ROSEN

**BMO NESBITT BURNS INC.**

Per:

\_\_\_\_\_

Name:

Position:

*YR*

**SCHEDULE "A"**

[TERM SHEET, DATED JANUARY 30, 2016]

January 28, 2016

**Without Prejudice – for Mediation Purposes**

Court File No: CV-10-396685

*Rosen v. BMO Nesbitt Burns – Term Sheet*

1. The defendant shall pay a non-reversionary lump sum amount of \$12 million (the “Settlement Fund”) into an interest bearing trust account within 30 days of settlement approval, in full satisfaction of all class member claims, interest, legal fees, disbursements, payment of the levy to the Class Proceedings Fund and honorarium if granted. Payment to class members comprises:
  - a. Payment to each IA trainee only (meaning class members who participated in the Nesbitt trainee program) <sup>1</sup> for the IIROC initial close supervision period of 6 months for the class period beginning January 1, 2002 and ending June 1, 2016; and
  - b. A Finality Contribution for all class members, of \$2 million, to be divided and paid in equal amounts to each Class Member<sup>2</sup>.
2. The administration of the settlement will be done by a third party administrator selected and instructed by plaintiff’s counsel. The administration fees to administer the Settlement Fund will be paid by the defendant, up to a maximum of \$500,000. There shall be no claims process.
3. Any remaining settlement funds after:
  - a. Satisfaction of any Order of the court approving Class counsel’s fees, taxes, disbursements and any honorarium to the Class plaintiff;
  - b. Satisfaction of the levy payable to the Class Proceedings Fund; and

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<sup>1</sup> who complete a Distribution Confirmation Form in accordance with paragraph 4

<sup>2</sup> who complete a Distribution Confirmation Form in accordance with paragraph 4

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- c. Settlement funds unclaimed following the distribution to a confirmed address and all reasonable efforts to reach Class Members through the administration process set out at paragraphs 4 and 5 below, shall be paid by the Administrator to the United Way Toronto & York Region.
4. The administrator is to conduct reasonable searches as necessary to locate up to date addresses for class members. Defendant to provide contact information, trainee period information and other necessary related data in order to locate updated addresses of class members, to permit administration of the Settlement Fund and to make payment of the Settlement Fund to class members. Should an order be required for the provision of such information due to privacy obligations, such order will be sought at the same time as the settlement approval motion. The Administrator shall use the address list which was updated through the certification notice process, as well as further updating of addresses using information obtained from the defendant and other reasonable searches to send a Distribution Confirmation Form to each Class Member and to follow-up. The Class Member shall be required to respond and confirm their address in order to receive a distribution.
5. The distribution of the Settlement Fund to Class Members pursuant to paragraph 1(a) and 1 (b) above shall be calculated and paid to Class Members who confirm their address through the Distribution Confirmation process.
6. Notice of the proposed settlement and of the fairness hearing to be delivered to the class in the same manner as the notice of certification. The notice costs will be paid for by the defendant, separate and apart from the administration fees set out in paragraph 4. These costs will be non-refundable to the defendant in the event that the settlement is not approved.
7. Conditional on executing of satisfactory form of settlement agreement within 60 days, in writing, including addressing the tax treatment and withholdings relating to the Settlement Funds.

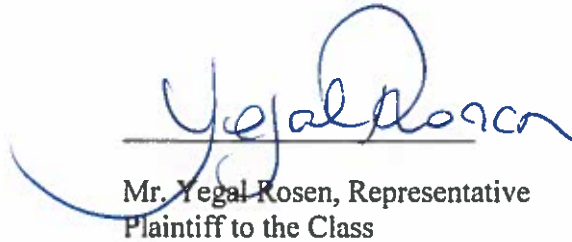
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8. Conditional on satisfactory settlement approval order with full release from entire class.
9. Dissemination of any settlement information before the settlement approval order, in a form satisfactory to the parties. Any press release must be issued after the settlement approval order only and in a form satisfactory to the parties.

This term sheet may be signed in counterparts.

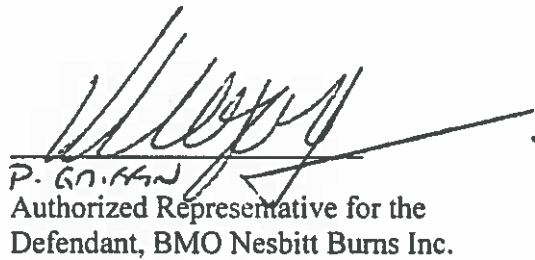
30 Jan / 2016

Date

  
Mr. Yegor Rosen, Representative  
Plaintiff to the Class

January 30, 2016

Date

  
P. G. Allen  
Authorized Representative for the  
Defendant, BMO Nesbitt Burns Inc.



## SCHEDULE "B"

### SETTLEMENT FUND ALLOCATION

1. The CAD 12 million Settlement Fund is allocated amongst the Settlement Class as follows:

- (a) by payment to each IA Trainee in the Settlement Class who participated in the Nesbitt Trainee Program and who properly completes and returns a Distribution Confirmation Form or otherwise advise the Administrator of the information set out in the Distribution Confirmation Form; and
- (b) a Finality Contribution for all Settlement Class Members, of CAD 2 million (less deductions), to be divided and paid in equal amounts to each Settlement Class Member, who properly completes and returns a Distribution Confirmation Form or otherwise advise the Administrator of the information set out in the Distribution Confirmation Form, regardless of whether they are an IA Trainee.

The respective amounts in subparagraphs 1(a) and 1(b) are the "**Gross Trainee Fund**" and the "**Gross Finality Fund**" and comprise the Settlement Fund.

2. The Settlement Fund will be subject to deductions in respect of legal fees, disbursements, taxes, representative plaintiff honorarium, Class Proceedings Fund levy and excess administration amounts as identified at paragraphs 2(a), (b), (c) and (d).

3. The Administrator will pay the following amounts, in the following order, to administer the Settlement Fund:

- (a) to Class Counsel, such amount as is approved by the Court in respect of legal fees (including applicable taxes) and disbursements, within 15 days of Final Fee Approval;<sup>1</sup>

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<sup>1</sup> the legal fees and disbursements (inclusive of taxes) are a deduction from the Settlement Fund as a legal expense in proportion to the amounts allocated to them in the Settlement Fund.

- (b) to Rosen, any honorarium as may be sought by Class Counsel and approved by the Court within 15 days of Final Fee Approval;
- (c) to the Class Proceedings Fund, such amount as is approved by the Court as the amount it is entitled to receive pursuant to the *Law Society Act* (Ontario) and the regulations passed thereto and in respect of disbursements, within 15 days of Final Fee Approval;
- (d) any amount required for administration of the Settlement in excess of the maximum of CAD 500,000 to be paid by Nesbitt pursuant to paragraph 26 of the Settlement Agreement for such administration; and
- (e) to the Settlement Class, in accordance with the allocation described below, the amount remaining after payment of the amounts set out in paragraphs 2(a), (b),(c) and (d) above (the "**Compensation Fund**"), subject to the deduction and remittance to Canada Revenue Agency of withholding tax at the rate applicable to the highest personal marginal tax rate by the Administrator, within 135 days of Final Settlement Approval under a protocol to be agreed with Nesbitt.

4. Each Settlement Class Member's share of the Compensation Fund will be based on the following calculation (which calculation will be performed by the Administrator):

- (a) The Administrator will deduct the fees and expenses at paragraph 2(a), (b),(c) and (d) above from the Gross Trainee Fund and Gross Finality Fund in the following proportion:
  - (i) 16.66% in respect of the Gross Finality Fund; and
  - (ii) 84.34% in respect of the Gross Trainee Fund;(the "**Net Trainee Fund**" and "**Net Finality Fund**").
- (b) Every Settlement Class Member who properly completes and returns a Distribution Form will be entitled to an equal share of the Net Finality Fund, which will not be subject to withholding tax; and

- (c) Every IA Trainee in the Settlement Class who participated in the Nesbitt Trainee Program during the Class Period and who properly completes and returns a Distribution Confirmation Form or otherwise advise the Administrator of the information set out in the Distribution Confirmation Form, will receive an equal share of the Net Trainee Fund, less applicable withholding taxes.
5. The Administrator will distribute the Settlement Fund as follow:
- (a) Each Settlement Class Member who properly completes and returns a Distribution Confirmation Form or otherwise advise the Administrator of the information set out in the Distribution Confirmation Form, shall receive from the Settlement Fund such amounts under subparagraphs 3(b) and/or 3(c) to which they are entitled;
  - (b) The Administrator will calculate the entitlement of each Settlement Class Member who responds to a Distribution Form and then send by regular mail a single cheque (the "**Compensation Cheque**");
  - (c) The Administrator will advise Class Counsel of the amounts to be awarded to each Settlement Class Member.
  - (d) If, for any reason, a Settlement Class Member does not cash a cheque within 3 months after the date of the Compensation Cheque, the Administrator will make reasonable efforts to locate and follow up with the Settlement Class Member to ensure the cheque is cashed. If by 6 months after the date of the Compensation Cheque, the Settlement Class Member has still not cashed the Compensation Cheque, the Settlement Class Member will be deemed to forfeit the right to receive the funds and the funds will be distributed by the Administrator to the United Way Toronto and York Region.
  - (e) Thirty days prior to the expiry of the 6 month period described above, the Administrator will:
    - (i) provide Class Counsel with a list of Settlement Class Members who have not cashed their Compensation Cheque; and

- (ii) send the Settlement Class Members a further letter (copied to Class Counsel) advising that they have 30 days to cash the Compensation Cheque.

6. The Administrator will have the discretion to make determinations in respect of the eligibility of Settlement Class Members and determine the categorization of Settlement Class Members in respect of whether they are entitled to a distribution from the Net Trainee Fund and/or Net Finality Fund. The Administrator's decision in this respect will be final and binding and not subject to appeal.

7. The Administrator will keep all communications with Settlement Class Members confidential from Nesbitt, but will provide Nesbitt with sufficient information for Nesbitt to meet its obligations for tax reporting purposes and for all requirements Nesbitt is under by law, regulation and regulatory reporting obligations.

**SCHEDULE "C"**

Court File No. **CV-10-39668500CP**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) THE \_\_\_\_\_ DAY OF  
JUSTICE ) \_\_\_\_\_, 2016

**BETWEEN:**

**YEGAL ROSEN**

Plaintiff

- and -

**BMO NESBITT BURNS INC.**

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

**THIS MOTION**, made by the Plaintiff, on consent of the Defendant, for an order approving the settlement of this action pursuant to subsection 29(2) of the *Class Proceedings Act, 1992*, was heard on \_\_\_\_\_, 2016 at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

**WHEREAS** this action was certified as a class proceeding pursuant to the order of Justice Belobaba dated August 20, 2013, (the "Certification Order"),

**AND WITHOUT ADMISSION OF LIABILITY** on the part of the Defendant,

**AND UPON HAVING REGARD** for the steps required to oversee the implementation of the Settlement Agreement pursuant to this court's supervisory jurisdiction pursuant to the *Class Proceedings Act, 1992*, and its inherent jurisdiction to control its own process, in order to ensure the Settlement Agreement is administered in a fair and impartial manner,

**AND UPON HEARING** the submissions of counsel for the Plaintiff and Defendant and upon reading the materials filed, including the motion record of the Plaintiff and the factum of the Plaintiff, and the hearing of objections, if any,

1. **THIS COURT ORDERS AND DECLARES** that for the purposes of this order, and subsequent orders in this action, the following definitions will apply:

- (a) **"Approval Order"** means the order of the court approving the settlement;
- (b) **"Class" or "Class Members"** means:
  - (i) all Ontario current and former Nesbitt employees who, since January 1, 2002 until June 1, 2016, held the position of Investment Advisor, or who performed the same or similar job functions under a different or previous Nesbitt job title, exclusive of any time period for which they:
    - (1) Held the position of Branch Manager; or
    - (2) Held the position of Assistant Branch Manager; or
    - (3) Held the position of Divisional Manager; or
    - (4) Were Investment Advisors on a team that (i) had an Associate IA or Sales Assistant assigned to them;
- (c) **"Final Fee Approval"** means the date of issuance of an Order by the Court approving Class Counsel's legal fees and disbursements (inclusive of taxes) together with the expiration of any applicable appeal periods and, if applicable, the dismissal of all appeals that are taken from such Order of the Court;



- (d) **“Final Settlement Approval”** means the date of issuance of a final settlement approval order by the Court together with the expiration of any applicable appeal periods and, if applicable, the dismissal of all appeals that are taken from the settlement approval order of the Court;
- (e) **“Releasees”** means BMO Nesbitt Burns Inc., together with its subsidiaries, affiliates and related entities and its current and former officers, directors, employees, shareholders, partners, agents, lawyers, insurers, reinsurers, subrogees, successors and assigns;
- (f) **“Settlement Agreement”** means the executed Settlement Agreement between the parties dated [INSERT DATE], attached as **Schedule “A”** to this order;
- (g) **“Settlement Approval Hearing Notice”** means court-approved notice to the Class Members advising that the court has approved the settlement and advising of the distribution process;
- (h) **“Settlement Class”** or **“Settlement Class Members”** means:
  - (i) all Ontario current and former Nesbitt employees who, since January 1, 2002 until June 1, 2016, held the position of Investment Advisor, or who performed the same or similar job functions under a different or previous Nesbitt job title, exclusive of any time period for which they:
    - (1) Held the position of Branch Manager; or
    - (2) Held the position of Assistant Branch Manager; or
    - (3) Held the position of Divisional Manager;
  - (i) **“Settlement Class Member”** means a member of the Settlement Class.

2. **THIS COURT ORDERS AND DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Class Members and Settlement Class Members.

3. **THIS COURT ORDERS** that the Settlement Agreement, which is expressly incorporated by reference into this order, be and hereby is approved and will be implemented in accordance with its terms and this order and any further orders of this Court.
4. **THIS COURT ORDERS, ADJUDGES AND DECLARES** that this order and the Settlement Agreement are binding upon all Class Members and Settlement Class Members, including those persons who are under a disability.
5. **THIS COURT ORDERS AND DECLARES** that the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of this action.
6. **THIS COURT ORDERS AND DECLARES** that without in any way affecting the finality of this order, this Court reserves exclusive and continuing jurisdiction over this action, the Plaintiff, all of the Class Members, Settlement Class Members and the Defendant for the limited purposes of implementing the Settlement Agreement and enforcing and administering the Settlement Agreement and this order.
7. **THIS COURT ORDERS AND ADJUDGES** that, save as set out above, this action is dismissed without costs and with prejudice, and that such dismissal will be a defence to any subsequent action in respect of the subject matter hereof.
8. **THIS COURT ORDERS AND DECLARES** that the claims of the Class Members, Settlement Class Members, Class as a whole and Settlement Class as a whole, are released against the Defendant in accordance with paragraphs 27 and 28 the Settlement Agreement.
9. **THIS COURT ORDERS** that Notice of Approval of the Settlement and the distribution process will proceed as follows:
  - (a) the Administrator will deliver a Distribution Confirmation Form in substantially the same form as attached hereto as **Schedule "B"** (the "**Distribution Confirmation Form**");
  - (b) the Distribution Confirmation Form will be delivered by regular mail and Email in accordance with the Settlement Agreement;

- (c) the Administrator will maintain a 1-800 number, namely 1-800-000-0000, from the date of this order until the administration of the Settlement is complete;
- (d) the Administrator will maintain the E-mail address "000000000@Crawford.ca" from the date of this order until the administration of the Settlement is complete; and
- (e) Class Counsel will forward the Distribution Confirmation Form, by mail or email, to any person who has contacted Class Counsel seeking information about this class action.

10. **THIS COURT ORDERS** that a Settlement Class Member will only receive compensation if they properly complete and return the Distribution Confirmation Form or otherwise advise the Administrator of the information set out in the Distribution Confirmation Form, attached hereto as **Schedule "B"**. A Settlement Class Member may respond to the Distribution Form by letter mail, fax, delivery, phone or E-mail by no later than sixty (60) days after the mailing of the Distribution Form (the "**Response Deadline**");

11. **THIS COURT ORDERS** that the legal fees and disbursements (inclusive of taxes) of Class Counsel will be determined by further order of this Court.

12. **THIS COURT ORDERS** that the levy owing to the Law Foundation of Ontario will be determined by further order of this Court.

13. **THIS COURT ORDERS** that Crawford Class Actions Services will be and hereby is appointed as Administrator under the Settlement Agreement.

14. **THIS COURT ORDERS** that it may issue such further and ancillary orders, from time to time, as are necessary to implement and enforce the provisions of the Settlement Agreement and this order.

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Belobaba J.

**SCHEDULE "A"**  
**[SETTLEMENT AGREEMENT]**

**SCHEDULE "B"**  
**[DISTRIBUTION CONFIRMATION FORM]**

**SCHEDULE "D"**

[MONTH], 2016

**Crawford Class Action Services**

Direct Dial: 1-800- 000-000

Direct Fax: 416-000-000

0000000000@Crawford.ca

**Re: NOTICE OF SETTLEMENT APPROVAL and DISTRIBUTION  
*Rosen v. BMO Nesbitt Burns Inc.* (the "Class Action")**

**Re: Overtime Pay**

You are receiving this notice and distribution confirmation form because you are eligible to receive funds from a class action settlement that has been approved by the Ontario Superior Court of Justice. If you have questions about this notice or how to receive funds, you should contact the Administrator, Crawford Class Action Services, at the contact information provided at the end of this notice.

**Distribution Response Deadline**

In order receive funds from the Settlement, you must confirm your address with the Administrator. The address you confirm will be used to communicate with you regarding the Settlement and for mailing of the settlement funds. You must respond to this letter by no later than **[60 days after Final Approval]**, confirming your address and that you wish to receive payment. If you do not respond by the deadline, you will forfeit your entitlement to any funds.

You must respond to the Administrator in one of the following ways:

1. **returning a copy of the attached Distribution Confirmation Form;**
2. **send an email to 0000000000@Crawford.ca confirming your mailing address;**
3. **Call 1-800- 000-000 and confirm your address; or**
4. **send a letter confirming your mailing address to:**

**Crawford Class Action Services**

**Re: Rosen v. BMO**

**180 King St S,**

**Waterloo, ON**

**N2J 1P8**

## **Overview of the Class Action**

This Settlement concerns the allegation that BMO Nesbitt Burns Inc. failed to pay certain Investment Advisors, Investment Advisor Trainees and Associate Investment Advisors in respect of overtime compensation. BMO Nesbitt Burns Inc. defended this class action and denies this allegation. It has not been proven in court.

## **Overview of Settlement**

The Plaintiff has entered into a settlement with BMO Nesbitt Burns Inc. (the "Settlement Agreement"). The Settlement provides for payment of CAD 12 million all inclusive, including a streamlined distribution which does not require class members to prove their hours worked. The Settlement Agreement has now been approved by the Court and Settlement Class Members who are eligible can now receive the approved distribution.

Subject to the deductions in respect of legal fees, disbursements, representative plaintiff honorarium, taxes, Class Proceedings Fund levy and excess administration costs, if any, the Settlement Fund of CAD 12 million is allocated amongst the Settlement Class as follows:

- (a) by payment to each IA Trainee in the Settlement Class who participated in the Nesbitt Trainee Program and who properly completes and returns a Distribution Confirmation Form or otherwise advise the Administrator of the information set out in the Distribution Confirmation Form (less deductions); and
- (b) a Finality Contribution for all Settlement Class Members, of CAD 2 million, to be divided and paid in equal amounts to each Class Member, who properly completes and returns a Distribution Confirmation Form or otherwise advise the Administrator of the information set out in the Distribution Confirmation Form, regardless of whether they are an IA Trainee (less deductions).

You will receive a single cheque for your total entitlement, mailed to your confirmed address.

The amount of settlement distribution you receive depends on whether you participated in the Nesbitt Trainee program.

A full copy of the Settlement Agreement can be found on the webpage [www.kmlaw.ca/nesbittclassaction](http://www.kmlaw.ca/nesbittclassaction), or you can request a copy by emailing [nesbittclassaction@kmlaw.ca](mailto:nesbittclassaction@kmlaw.ca).

This settlement is the result of 8 years of litigation, production of over 2 million documents, extensive settlement discussions and a 2 day mediation conducted by the former Chief Justice of Ontario acting as mediator. Class Counsel conducted a detailed analysis of the risks of litigation. If this case had proceeded to trial, there was a very significant risk the class as a whole, or very significant portions of the class, would not be successful in a determination for overtime. If Class Counsel was successful at trial, the amount of money owed to each individual class member would require individual determinations and potentially individual proof of hours worked. The earliest date for a trial would be April, 2017, and a final disposition of any appeals would likely not be completed until at least 2019, or later. Even if the plaintiff was entirely successful at trial

and on all appeals, individual damage determinations could only start in 2019 or 2020 at the earliest. This settlement is very beneficial as it provides certainty and immediate benefits relative to the alternative of proceeding to trial and lengthy uncertain individual determinations. Class Counsel recommends this settlement.

**BMO Nesbitt Burns Inc. denies the truth of the allegations in the Action and denies any liability whatsoever.**

**You have been identified as someone who [was a Trainee][was not a Trainee].**

If you have a question or concern about your category, or whether you are eligible, you should contact Crawford Class Action Services.

A complete copy of the Settlement Agreement and other information about this lawsuit is available at: [www.Crawford.ca/00000000000](http://www.Crawford.ca/00000000000).

**Contact Information**

If you would like additional information, please contact Crawford Class Action Services, at the address, phone number or E-mail below.

**Crawford Class Action Services  
Re: Rosen v. BMO  
180 King St S,  
Waterloo, ON  
N2J 1P8  
Tel: 1-800-000-0000  
Email: [0000000000@Crawford.ca](mailto:0000000000@Crawford.ca)  
Fax: 000-000-000**

Yours truly,

**Crawford Class Action Services**

Do not direct inquiries about this notice to the Court. Inquiries should first be directed to Crawford Class Action Services.

If you still have questions after speaking with Crawford Class Action Services, you may contact Class Counsel, Koskie Minsky LLP and Mr. Eli Karp, at [nesbittclassaction@kmlaw.ca](mailto:nesbittclassaction@kmlaw.ca) or 1-866-777-6308

**DISTRIBUTION OF THIS NOTICE HAS BEEN AUTHORIZED  
BY THE ONTARIO SUPERIOR COURT OF JUSTICE**



**DISTRIBUTION CONFIRMATION FORM**  
***Rosen v. BMO Nesbitt Burns Inc.***

I confirm I wish to receive the settlement distribution in *Rosen v. BMO Nesbitt Burns Inc.*

I confirm that my current address and contact information for administration of the distribution and receipt of all compensation is as follows:

Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City or Town: \_\_\_\_\_

Province: \_\_\_\_\_

Country: \_\_\_\_\_

Phone Number: \_\_\_\_\_

E-Mail: \_\_\_\_\_

**Sign and date this form below and return by mail, fax or E-mail to**

Crawford Class Action Services  
Re: Rosen v. BMO  
180 King St S,  
Waterloo, ON  
N2J 1P8  
Fax: 416-000-000  
0000000000@Crawford.ca

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

## SCHEDULE "E"

### Court Approves Settlement in Overtime Class Action involving BMO Nesbitt Burns Inc.

A settlement has been approved in respect of a class action for overtime at BMO Nesbitt Burns Inc.

In 2013, a class action was certified by the Ontario Superior Court of Justice against BMO Nesbitt Burns Inc. The class action claimed unpaid overtime on behalf of Investment Advisors, Associate Investment Advisors and Investment Advisor Trainees at BMO Nesbitt Burns Inc. for employment between 2002 to the present date. Mr. Yegal Rosen, a former Investment Advisor who worked at BMO Nesbitt Burns Inc. from 2002-2006, was the lead plaintiff on behalf of the class. Koskie Minsky LLP and Mr. Eli Karp were counsel to the class members in the class action.

The Ontario Superior Court has now approved a settlement which was reached between the parties. The settlement provides for payment of a total of CAD 12 million, plus up to CAD 500,000 in administration costs, to be paid by BMO Nesbitt Burns Inc., less deductions for legal fees, disbursements, HST, representative plaintiff honorarium, Class Proceedings Fund levy and any excess administration amounts. The Settlement Funds are to be distributed as follows:

- (a) by payment to each Settlement Class Member who participated as an IA Trainee in the Nesbitt Trainee Program between January 1, 2002 and June 1, 2016 and who properly completes and returns a Distribution Confirmation Form; and
- (b) a Finality Contribution for all Settlement Class Members, of CAD 2 million (less certain deductions), to be divided and paid in equal amounts to each Settlement Class Member, who properly completes and returns a Distribution Confirmation Form regardless of whether they are an IA Trainee.

The distribution process will not require class members to prove their hours of work.

BMO Nesbitt Burns Inc. denies the truth of the allegations in the class action and denies any liability whatsoever.

Jonathan Ptak of Koskie Minsky LLP commented that "This settlement is an excellent result following 8 years of litigation. We are very pleased the court has now approved the settlement.