

**THE SECURITIES ACT** ) **Order No. 2854**  
)  
**Section 19(5)** ) **March 30, 2000**

**Simon Meyer Rothschild, Simon De Rothschild, Dean George Rothschild, D.S.M. Rothschild, Dean George McDonald, David Michael Costello, and Simon Elah Weinstein (being one and the same person and collectively referred to as Rothschild") and S.M. Rothschild Mortgage Corporation**

**WHEREAS:**

(A) On February 7<sup>th</sup>, 2000, The Manitoba Securities Commission (the "Commission") issued a Notice of Hearing (the "Notice") giving notice of its intention to hold a hearing (the "Hearing") to consider whether or not it was in the public interest to grant an order pursuant to subsection 19(5) of The Securities Act (the "Act") with respect to Rothschild and S.M. Rothschild Mortgage Corporation (the "respondents");

(B) Staff of the Commission and the respondents entered into a Settlement Agreement (a copy of which is attached as Schedule "A") dated March 29, 2000 (the "Settlement Agreement"), which proposed settlement of the proceedings initiated by the Notice, subject to the approval of the Commission;

(C) Each of the respondents has consented to the issuance of this Order and has waived its/his respective rights to a full hearing;

(D) The Commission has reviewed the Settlement Agreement and is of the opinion that it is in the public interest to make this Order.

**IT IS ORDERED:**

1. **THAT** the Settlement Agreement, Schedule "A", be and the same is hereby approved.

2. **THAT** pursuant to subsection 19(5) of the Act:

(a) subsections 19(1) and 19(3) of the Act do not, with respect to such of the trades referred to in those subsections, apply to Rothschild; and

(b) subsection 19(2) of the Act does not, with respect to such securities referred to in that subsection, apply to Rothschild;

for a period of twenty (20) years from the date of the order.

3. **THAT** pursuant to subsection 19(5) of the Act:

(a) subsections 19(1) and 19(3) of the Act do not, with respect to such of the trades referred to in those subsections, apply to S.M. Rothschild Mortgage Corporation; and

(b) subsection 19(2) of the Act does not, with respect to such securities referred to in that subsection, apply to S.M. Rothschild Mortgage Corporation;

for a period of twenty (20) years from the date of the order.

**4. THAT** this order shall not be construed so as to deny Rothschild the ability to, during the twenty year period of denial of exemptions as referred to above at paragraph 2, incorporate a company, for some purpose other than trading in securities, in which he is the sole shareholder and remains the sole shareholder throughout the period of denial.

**BY ORDER OF THE COMMISSION**

**Director, Legal and Enforcement**

-

Settlement Agreement

**Simon Meyer Rothschild, Simon De Rothschild, Dean George Rothschild, D.S.M. Rothschild, Dean George McDonald, David Michael Costello, and Simon Elah Weinstein (being one and the same person and collectively referred to as Rothschild"), and S.M. Rothschild Mortgage Corporation**

**and**

**The Staff of The Manitoba Securities Commission**

The Manitoba Securities Commission  
1130 - 405 Broadway  
Winnipeg, Manitoba  
R3C 3L6

## **SETTLEMENT AGREEMENT**

### **A. Introduction**

A1. On February 7<sup>th</sup>, 2000, The Manitoba Securities Commission (the "Commission") issued a notice of hearing (the "Notice of Hearing") giving notice of its intention to hold a hearing under The Securities Act (the "Act") to consider:

1. whether or not it is in the public interest to order, pursuant to section 19(5) of The Securities Act (the "Act"), that:

(a) subsections 19(1) and 19(3) of the Act do not, with respect to such of the trades referred to in those subsections, apply to Rothschild and/or S.M. Rothschild Mortgage Corporation;

(b) subsection 19(2) of the Act does not, with respect to such securities referred to in that subsection, apply to Rothschild and/or S.M. Rothschild Mortgage Corporation;

2. whether or not it is in the public interest to order that the respondents, or either of them, pay the costs of and incidental to the hearing;

3. such further and other matters and the making of such further and other orders as the Commission may deem appropriate.

A2. Discussions have been held between the respondents and staff of the Commission ("Staff") in an effort to settle the matters set out in the Notice of Hearing and Statement of Allegations (the "Proceedings"). The Respondents have been advised of their right to legal counsel and have waived that right. A settlement (the "Settlement") has been reached based on the terms and conditions set forth in the herein agreement (the "Settlement Agreement").

A3. Pursuant to the Settlement, Staff agrees to recommend to the Commission that the Proceedings initiated against the respondents be resolved and disposed of in accordance with the terms and conditions of this Settlement Agreement as set forth below. The respondents consent to the Settlement and to the making of the consent order referred to in paragraph D. below, on the terms and conditions set forth in this Settlement Agreement.

## **B. Statement of Facts**

B1. At all material times, Rothschild was a resident of Winnipeg, Manitoba.

B2. S.M. Rothschild Mortgage Corporation is a corporation incorporated under the laws of Manitoba, with Rothschild named as its director.

B3. R.M.C. Investments was a business name approved by the Companies Office, Province of Manitoba on or about August 19, 1998. At all material times neither Rothschild nor S.M. Rothschild Mortgage Corporation were registered to trade in securities under The Securities Act of Manitoba (the "Act").

B4. S.M. Rothschild Mortgage Corporation had not filed a preliminary prospectus or a prospectus with the Commission, nor had it applied for or been granted an exemption order under section 20 of the Act.

B5. S.M. Rothschild Mortgage Corporation had not filed any reports under section 7 of the Regulation to the Act or any notice under section 91 of the Regulation to the Act with respect to any trades under section 19 of the Act or sections 90 or 91 of the Regulation.

B6. At all material times, Rothschild represented himself to be a law student, practicing as such with the law firm of Morris Feuer in the City of Winnipeg (the "Law Firm").

B7. Each of Elizabeth Paguio ("Paguio"), Jacqueline Surla ("Surla"), and Norman Espinosa ("Espinosa") had retained Rothschild for legal advice. Each of Paguio, Surla, and Espinosa were residents of Winnipeg, Manitoba.

B8. As a result of the relationship of client and legal advisor and based upon Rothschild's investment advice, each of Paguio, Surla, and Espinosa caused monies to be paid over to Rothschild to be invested pursuant to his recommendations as follows:

Paguio:

B9. In or about April of 1998, Paguio was introduced to Rothschild by her nephew Espinosa. Rothschild had represented Espinosa previously as legal counsel in respect of an injury claim with Autopac.

B10. Paguio had power of attorney to act on behalf of Arnel Balisacan a beneficiary of the Estate of Charito Fukusawa (the "Estate"). The probating and distribution of Estate proceeds was being handled by the law firm of Davis & Company located in British Columbia. Paguio was represented by counsel in Winnipeg.

B11. Based upon Rothschild's representations, Paguio believed Rothschild to be a law student practicing at the Law Firm and transferred the matter of the receipt of the Estate proceeds to him.

B12. Rothschild in representing Paguio did receive Estate monies from Davis & Company.

B13. On or about November 2, 1998, a payment in the amount of \$25,000.00 was made by Davis & Company to Rothschild as counsel, representing an interim distribution from the residue of the Estate. After deductions including legal fees, the net amount remaining was approximately \$18,755.00.

B14. Rothschild advised Paguio that he could either hold the Estate money in trust with his Law Firm at a 3.4% rate of return or alternatively invest it with a company of his own for a guaranteed 10% rate of return. Paguio opted for the 10% investment.

B15. Paguio endorsed the cheque of approximately \$18,755.00 over to Rothschild, which was then deposited into a chequing account in the name of Rothschild held at the TD bank, main branch, bearing account # 3152205.

B16. On or about December 28, 1998, \$15,000.00 of the \$18,755.00 of Estate money was invested in Rothschild's company, S.M. Rothschild Mortgage Corporation, for a period of 120

days at a guaranteed interest rate of 10% (the "Second Investment"). Rothschild advised Paguio that the S.M. Rothschild Mortgage Corporation investment was in a brewing company project.

B17. On or about January 11, 1999, at the recommendation of Rothschild, Paguio transferred two sums of money each in the amount of \$3,250.00 to Rothschild again for investment in S.M. Rothschild Mortgage Corporation for a period of 30 days with a guaranteed interest rate of 10%, one such sum having represented a payment of Estate monies and the second sum having been money from Paguio's own personal account (the "Third and Fourth Investments", respectively).

B18. In respect of the Third and Fourth Investments, Rothschild advised Paguio that S.M. Rothschild Mortgage Corporation in turn made loans of money, calling these investments the consumer loan program.

B19. Prior to the Fourth Investment, on or about August 24, 1998, Paguio had previously invested \$4,300.00 of her own personal funds with Rothschild (the "First Investment").

B20. Rothschild told Paguio that the First Investment would pay 10% over 3 months.

B21. In December of 1998, Rothschild paid to Paguio the sum of \$4,730.00 representing principal plus interest on the First Investment, said payment being drawn on the account of S.M. Rothschild Mortgage Corporation.

B22. Subsequent to the above three investments, Paguio was advised by Rothschild that the remaining monies from the Estate had been received by him from Davis & Company. The remaining monies totaled \$74,589.44 Canadian and \$600.00 U.S. funds.

B23. Rothschild again provided Paguio with an investment option of either investing the balance of the Estate monies with the Law Firm at a rate of 3.4% or investing the monies with his company at a rate of 10%.

B24. Paguio understood from Rothschild that either way the money was secure and that Rothschild, who would be handling the monies, was legal counsel in a position of trust.

B25. Paguio trusted Rothschild with the balance of the Estate monies.

B26. On or about January 26, 1999, \$72,262.19, representing the balance of the Estate monies less deductions including legal fees, was deposited into the account of S.M. Rothschild Mortgage Corporation, account # 0325086.

B27. Also on January 26, 1999, \$70,000.00 was debited from the S.M. Rothschild Mortgage Corporation account in favor of Rothschild personally.

Espinosa:

B28. In or about late 1997 or early 1998, Espinosa met Rothschild. Based upon his discussions with Rothschild, Espinosa believed Rothschild to be an articling student with the Law Firm.

B29. Espinosa transferred conduct of his autopac personal injury claim from his past legal counsel to Rothschild.

B30. The personal injury claim was settled, resulting in net proceeds to Espinosa in the amount of \$10,000.00. Espinosa received the settlement proceeds.

B31. Following receipt of the settlement proceeds, Rothschild told Espinosa of an investment opportunity involving investing in Eco-tech stocks, which Rothschild advised was a trendy stock that would explode in value in the short term, but that it would not last.

B32. Rothschild recommended that Espinosa put some money in, and when it goes up in value, sell the shares.

B33. Rothschild told Espinosa about his family history, the *Rothschild* family, and that it was like a dynasty, they had built lots of money and he had lots of connections.

B34. Espinosa was impressed by Rothschild and trusted him. Based upon Rothschild's recommendations, Espinosa gave Rothschild \$4,500.00 to purchase what Espinosa understood to be 1,000 Class "A" Common Shares @ \$4.50 each.

B35. A few months after investing with Rothschild, Rothschild advised Espinosa that he had sold the shares and that Espinosa would be receiving a cheque in the amount of \$9,000.00.

B36. Espinosa did not receive the payment. Instead, Rothschild later told Espinosa that he had taken the \$9,000.00 and purchased real estate and that Espinosa's share in the real estate had tripled in value.

B37. Next, Rothschild advised Espinosa that he would trade Espinosa one lot of shares in a credit union he was starting, S.M.R. Credit Union, in exchange for Espinosa's share of the real estate investment.

B38. Rothschild offered Espinosa shares in the S.M.R. Credit Union @ \$25.00 each. The minimum investment was 1,000 shares or \$25,000.00. Rothschild offered to simply swap Espinosa's share in the real estate for \$25,000.00 worth of shares in S.M.R. Credit Union. Espinosa agreed to Rothschild's suggestion.

B39. In furtherance of the transaction immediately described above, on or about February 22, 1999, Espinosa signed a Share Purchase Agreement as presented to him by Rothschild (the "Share Purchase Agreement").

B40. The Share Purchase Agreement identified Espinosa as the purchaser and Rothschild as the vendor of 1,000 Class "A" Common Shares in the capital stock of S.M. Rothschild Mortgage Corporation at a price of \$25,000.00.

Surla:

B41. In or about late 1997 or early 1998, Surla met Rothschild. She understood that Rothschild was a law student working under Morris Feuer and Gerald Holt of the Law Firm.

B42. Surla had an autopac personal injury claim then being handled by another lawyer. Rothschild persuaded her that he could do a better job for her.

B43. Surla transferred conduct of her autopac personal injury claim from her past legal counsel to Rothschild.

B44. The personal injury claim was settled, resulting in net proceeds to Surla in the amount of \$10,000.00. Surla received a portion of the settlement proceeds in the amount of \$5,500.00 from Rothschild. The balance of the settlement proceeds, being \$4,500.00, was to be invested by Rothschild.

B45. On or about June 1, 1998, the \$4,500.00 plus accumulated interest of \$29.00 was invested with R.M.C. Investments for a term of one year, in the form of class "B" preferred shares at a guaranteed interest rate of 9.25%. The investment was locked in for the one year term and provided for renewal thereafter.

B46. Rothschild confirmed that a confirmation of investment (stock certificates) would be sent to Surla by the investment company.

B47. Of all of the monies referred to above, \$8,000 was repaid to Paguio on or about February of 1999, the First Investment of \$4,300.00 plus interest was repaid to Paguio on or about December of 1998, and Rothschild paid monies into court in the approximate amount of \$2,990.00 as part of proceedings under the Criminal Code of Canada (the "Code"). A restitution order has been granted in favor of Paguio (see D2. below). Neither Espinosa nor Surla received any repayment of monies.

### **C. Acknowledgements**

C1. Rothschild acknowledges and agrees that he:

(a) traded in securities without having been registered and without prospectus in contravention of sections 6 and 37 of the Act;

(b) acted in contravention of subsection 69(2) of the Act by guaranteeing a rate of return to each of Paguio and Surla.

C2. S.M. Rothschild Mortgage Corporation acknowledges and agrees that it:

(a) traded in securities without having been registered and without prospectus in contravention of sections 6 and 37 of the Act.

### **D. Terms of Settlement**

D1. In order to effect a resolution of the issues raised by the Notice of Hearing, Staff and the respondents have entered into this Settlement Agreement. Upon this basis, Staff seek an order (the "Consent Order") from the Commission that:

1. Pursuant to subsection 19(5) of the Act:

(a) subsections 19(1) and 19(3) of the Act do not, with respect to such of the trades referred to in those subsections, apply to Rothschild; and

(b) subsection 19(2) of the Act does not, with respect to such securities referred to in that subsection, apply to Rothschild;

for a period of twenty (20) years from the date of the order.

2. Pursuant to subsection 19(5) of the Act:

(a) subsections 19(1) and 19(3) of the Act do not, with respect to such of the trades referred to in those subsections, apply to S.M. Rothschild Mortgage Corporation; and

(b) subsection 19(2) of the Act does not, with respect to such securities referred to in that subsection, apply to S.M. Rothschild Mortgage Corporation;

for a period of twenty (20) years from the date of the order.

3. This order shall not be construed so as to deny Rothschild the ability to, during the period of denial of exemptions as referred to above at paragraph 1, incorporate a company, for some purpose other than trading in securities, in which he is the sole shareholder and remains the sole shareholder throughout the period of denial.

D2. During recent provincial court proceedings involving charges under the Code and under the Act, counsel on behalf of Rothschild provided to the court information that Rothschild was penniless, was a student at a technical school, and had a common-law wife who was working but was expecting a baby at any time. Rothschild plead guilty to charges under the Act resulting in a fine of \$5,000.00 and to charges under the Code resulting in an eight month conditional sentence and a restitution order in favor of Paguio as power of attorney for Balisacan in the approximate amount of \$80,000.00. In the circumstances, the claim for costs as raised by the Notice of Hearing is abandoned and no order for costs is sought.

## **E. Procedure for Approval of Settlement**

E1. The approval of this Settlement Agreement and the making of the Consent Order set out in this Settlement Agreement shall be sought at a public hearing pursuant to the Notice of Hearing.



E2. Staff and the respondents agree that if this Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted to the Commission in connection with the Proceedings and the respondents each for themselves hereby waive their right to a full hearing and appeal of this matter.

E3. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the Consent Order referred to in paragraph D. above is not made by the Commission, Staff will be entitled to proceed with the hearing commenced by the Notice of Hearing unaffected by this Settlement Agreement or the settlement discussions. If this Settlement Agreement is not approved or the Consent Order set out in paragraph D. above is not made by the Commission, the terms of this Settlement Agreement will not be raised in the Proceedings or in any other proceeding.

E4. Staff and the respondents agree that if this Settlement Agreement is approved by the Commission and the Consent Order is made upon the terms set out in this Settlement Agreement, this Settlement Agreement will be a public document.

E5. The respondents each for themselves agree that they will not raise in any proceeding this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as a basis for an attack on the Commission's jurisdiction, alleged bias, alleged unfairness or any other challenge that may be available.

DATED at Winnipeg, Manitoba, this "27<sup>th</sup>" day of March, 2000.

Witness

Simon Meyer Rothschild

DATED at Winnipeg, Manitoba, this "27<sup>th</sup>" day of March, 2000.

S.M. Rothschild Mortgage Corporation  
per:

Witness

Simon Meyer Rothschild

DATED at Winnipeg, Manitoba, this "29<sup>th</sup>" day of March, 2000.

Staff of the Manitoba Securities Commission  
per:  
Director, Legal and Enforcement