



THE SECURITIES ACT

Section 148

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Order No. 7475

February 27, 2019

**THOMAS PETER SETKA**

**WHEREAS:**

(A) On February 15, 2019, The Manitoba Securities Commission ("Commission") issued a Notice of Hearing ("Notice") giving notice of its intention to hold a hearing to consider, inter alia, whether or not it was in the public interest to order, pursuant to section 148 of The Securities Act ("Act"), that a Settlement Agreement between staff of the Commission ("Staff") and Thomas Peter Setka ("SETKA") be approved;

(B) Staff of the Commission and SETKA entered into a Settlement Agreement (a copy of which is attached as Schedule "A") dated February 13, 2019 ("Settlement Agreement"), which proposed settlement of an enforcement matter, subject to the approval of the Commission;

(C) SETKA has consented to the issuance of this Order and has waived his right to a full hearing;

(D) On February 27, 2019, the Commission held a hearing ("Settlement Hearing") to consider whether or not to approve the Settlement Agreement;

(E) At the Settlement Hearing, the Commission approved the Settlement Agreement and the Commission 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 section 148 of the Act, SETKA undertakes to the Commission that for a period of seven (7) years from the date of this Order, SETKA will not place any trades on any accounts with any firm including any discount brokerage account within fifteen (15) minutes of the close of any trading day, nor will he cause anyone else on his behalf to do so.

3. **THAT**, pursuant to section 148 of the Act, SETKA undertakes to the Commission that for a period of seven (7) years from the date of this Order, SETKA will not cancel, nor will he cause anyone else on his behalf to do so, prior to open,

on any given trading day, pre-open orders already placed that day by him or by anyone else on his behalf.

**BY ORDER OF THE COMMISSION**

A handwritten signature in blue ink, appearing to read "C. S. S.", is written above a horizontal line.

**Director**



THE MANITOBA  
SECURITIES  
COMMISSION

## **SCHEDULE "A"**

### **Settlement Agreement**

**Thomas Peter Setka**

**and**

**Staff of The Manitoba Securities Commission**

**The Manitoba Securities Commission  
500 – 400 St. Mary Avenue  
Winnipeg, Manitoba  
R3C 4K5**

## SETTLEMENT AGREEMENT

### A. Introduction

- A1. By way of a Notice of Hearing to be issued ("NOH"), The Manitoba Securities Commission ("Commission") will give notice of its intention to hold a hearing to consider whether pursuant to The Securities Act ("Act") it is in the public interest for the Commission to make an order approving the settlement agreement contained herein entered into between staff of the Commission ("Staff") and the respondent Thomas Setka ("Settlement Agreement").
- A2. Discussions have been held between the respondent and Staff in an effort to settle all issues in connection with an enforcement matter in respect of conduct or alleged conduct of the respondent in relation to the facts set out in Part B. of this Settlement Agreement ("Enforcement Matter"). A settlement of the Enforcement Matter has been reached based on the terms and conditions set forth in this Settlement Agreement.
- A3. Pursuant to the settlement, Staff agree to recommend to the Commission that the Enforcement Matter against the respondent be resolved and disposed of in accordance with the terms and conditions of this Settlement Agreement as set forth below. The respondent consents to the settlement and to the making of the consent order referred to in Part D. below, on the terms and conditions set forth in this Settlement Agreement.

### B. Statement of Facts

#### Background -

- B1. Thomas Peter Setka ("SETKA") is an individual residing at all material times in Manitoba.
- B2. SETKA is a self-employed accountant, retired from being a controller for an equipment dealer business.
- B3. At all material times, SETKA together with his wife had five discount trading accounts ("accounts").
- B4. The accounts were first held at Scotia iTRADE and then later moved to RBC Direct Investing.
- B5. SETKA has never been registered under The Securities Act ("Act") in any capacity. In the 1990's, SETKA's wife was registered under the Act to sell mutual funds for approximately four years in conjunction with her employment as a bank employee.
- B6. At all material times, SETKA did all of the trading in the accounts.
- B7. Rosita Mining Corporation ("Rosita") was a publicly traded junior mining company. At all material times, the shares of Rosita were traded on the TSX Venture Exchange under the symbol RST-V.

- B8. Lion One Metals Limited (“Lion”) was a junior mining company. At all material times, shares of Lion were traded on the TSX Venture Exchange under the symbol LIO-V.

#### **Trading Activity – Scotia iTRADE**

- B9. The accounts were initially held at Scotia iTRADE.
- B10. While the accounts were at Scotia iTRADE, during the period of July 1, 2016 to February 28, 2017, SETKA placed 50 pre-open buy orders in Rosita, but then cancelled 43 of them prior to open that same day. 28 of the pre-open orders created a new high Calculated Opening Price.
- B11. Also during the period of July 1, 2016 to February 28, 2017, SETKA placed 15 buy orders of Rosita in the last 10 minutes of the trading day. 13 of the orders created a new high closing price.
- B12. While the accounts were at Scotia iTRADE, during the period of November 1, 2016 to March 30, 2017, SETKA placed 50 pre-open buy orders in Lion, but then cancelled 33 of them prior to open that same day. 26 of the pre-open orders created a new high Calculated Opening Price.
- B13. Also during the period of November 1, 2016 to March 30, 2017, SETKA placed 18 buy orders of Lion in the last 10 minutes of the trading day. 13 of the orders created a new high closing price.
- B14. On or about April 13, 2017, Scotia iTRADE notified SETKA they were terminating their business relationship with him due to his trading activity.

#### **Trading Activity – RBC Direct Investing**

- B15. In May of 2017, the accounts were transferred to RBC Direct Investing.
- B16. SETKA again had trading authority over the accounts.
- B17. After transferring from Scotia iTRADE to RBC Direct Investing, SETKA liquidated most of his holdings in Rosita and stopped trading Rosita on a regular basis.
- B18. After transferring from Scotia iTRADE to RBC Direct Investing, SETKA continued to trade in Lion.
- B19. During the period of May 1, 2018 to July 31, 2018, SETKA placed eight buy orders of Lion in the last 10 minutes of the trading day. Four of the orders created a new high closing price.

### **C. Acknowledgements**

C1. SETKA acknowledges that he engaged in trading activity as described above including placing and cancelling pre-open orders resulting in new calculated opening prices and in placing orders in the last 10 minutes of the day thereby creating new high closing prices, that he now understands such conduct is a form of market manipulation, and that therefore the terms of settlement are in the public interest.

C2. Staff acknowledge the cooperation of SETKA during the investigation.

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

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

- (a) the Settlement Agreement be approved;
- (b) SETKA undertakes to the Commission that for a period of seven (7) years from the date of this Order, SETKA will not place any trades on any accounts with any firm including any discount brokerage account within fifteen (15) minutes of the close of any trading day, nor will he cause anyone else on his behalf to do so;
- (c) SETKA undertakes to the Commission that for a period of seven (7) years from the date of this Order, SETKA will not cancel, nor will he cause anyone else on his behalf to do so, prior to open, on any given trading day, pre-open orders already placed that day by him or by anyone else on his behalf.

### **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 NOH to be issued.

E2. Staff and the respondent 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 Enforcement Matter and the respondent hereby waives his 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 Part D. above is not made by the Commission, Staff will be entitled to proceed with whatever steps it is entitled by law to take, including but not restricted to the commencement of a hearing before the Commission, unaffected by this Settlement Agreement or the settlement discussions. In the event that such steps are taken, the respondent shall have all the usual rights of an individual

subject to such proceedings. If this Settlement Agreement is not approved or the Consent Order set out in Part D. above is not made by the Commission, the terms of this Settlement Agreement shall remain confidential and will not be raised in this or any other proceeding and any admissions contained in this Settlement Agreement shall be considered as without prejudice communications and in furtherance of settlement discussions, which will not be binding upon the parties and which will be inadmissible in any proceeding whatsoever.

- E4. Staff and the respondent agree that if this Settlement Agreement is approved by the Commission and the Consent Order made upon the terms set out in this Settlement Agreement, this Settlement Agreement will be a public document. The Consent Order and/or approved Settlement Agreement may form the basis for parallel orders in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions may allow orders made in this matter to take effect in those other jurisdictions automatically, without further notice to the respondent(s). Respondents should contact the securities regulator of any other jurisdictions in which the respondent(s) may intend to engage in any securities related activities, prior to undertaking such activities.
- E5. The respondent agrees that he 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.
- E6. If this Settlement Agreement is approved by the Commission and the Consent Order is made upon the terms set out in this Settlement Agreement, neither Staff nor the respondent will make any statement inconsistent with this Settlement Agreement.

DATED at Winnipeg, Manitoba, this 12<sup>th</sup> day of February, 2019.

Catherine Setka  
Witness

Thomas Peter Setka  
Thomas Peter Setka

DATED at Winnipeg, Manitoba, this 13<sup>th</sup> day of February, 2019.

Staff of the Manitoba Securities Commission  
per: Alicia  
Director