

ALBERTA SECURITIES COMMISSION

Citation: Re Bland, 2018 ABASC 80

Docket: ENF-009610

Date: 20180524

**SETTLEMENT AGREEMENT  
AND UNDERTAKING**

Nancy Louise Bland

**Agreed Facts**

*Introduction*

1. Staff of the Alberta Securities Commission (**Staff** and **Commission**, respectively) conducted an investigation into the affairs of Cash Store Financial Services Inc. (**CSF**) to determine if Alberta securities laws had been breached. Nancy Louise Bland (**Bland**) was an officer of CSF during periods relevant to the investigation.
2. Solely for securities regulatory purposes in Alberta and elsewhere, and as the basis for the settlement and undertaking(s) referred to in paragraph 31 and for no other use or purpose, Bland agrees to the facts and consequences set out in this Agreement.
3. The investigation confirmed, and Bland admits, that CSF and Bland breached those sections of the *Securities Act*, RSA 2000, c S-4, as amended, (**Act**), referred to in this Settlement Agreement and Undertaking (**Agreement**).
4. Terms used in this Agreement have the same meaning as provided in the Alberta securities laws, a defined term in the *Act*.

*Parties*

5. Bland is a resident of Alberta. She was Chief Financial Officer of CSF until June 2012.

*Circumstances*

CSF's Payday Loan Business

6. CSF was an entity incorporated pursuant to the laws of Alberta. Its shares traded on the Toronto Stock Exchange and on the New York Stock Exchange. At all relevant times, its head office was located in Edmonton, Alberta. As a result of a proceeding under the *Companies' Creditors Arrangement Act* RSC, 1985 c C-36, CSF became 1511419 Ontario Inc.
7. CSF operated in the payday loans industry in Canada and the United Kingdom. CSF obtained funds from creditors and provided them to borrowers, who paid interest and fees on short-term, "pay-day" loans. Initially, it operated primarily on a "broker model", where CSF arranged and managed loans between borrowers and creditors (described as "third party lenders" (**TPL(s)**) in return for a fee. In 2011 and 2012, CSF began to move towards a "direct lending model", where it raised funds and lent to borrowers directly.

Relevant Disclosure

8. As a reporting issuer, CSF provided continuous disclosure to the market. The disclosure documents most relevant to this Agreement are as follows:
  - 8.1 Interim Consolidated Financial Statements for the 3 and 6 months ended March 31, 2012 (**Q2 2012 Financial Statements**)
  - 8.2 Interim Consolidated Financial Statements for the 3 and 9 months ended June 30, 2012 (**Q3 2012 Financial Statements**)
9. CSF elected to prepare both these statements according to generally accepted accounting principles in the United States of America (**US GAAP**) pursuant to section 3.7 of National Instrument (**NI**) 52-107.

Loan Portfolio Acquisition

10. In or around the spring of 2011, CSF began to consider moving away from the "broker model" of payday lending and towards a "direct lending model", where CSF would provide its own funds to borrowers. It decided to adopt the direct lending model in Canadian provinces that had enacted regulations over the payday loan industry, called "regulated provinces" in the industry.
11. In or around January 2012, CSF purchased the outstanding TPL loans (**Consumer Loan Portfolio**) in the regulated provinces for \$116,334,000 (**Loan Purchase Transaction**). CSF funded this purchase through a sale of senior secured notes bearing an interest rate of 11.5% (**Bond Issuance**), a transaction that raised \$125,377,501.

Valuation of Loan Portfolio

12. CSF first reported on the Loan Purchase Transaction in its Q2 2012 Financial Statements. It allocated the purchase price as follows:

**Consumer Loan Portfolio Purchase Price Allocation**

	Q2 2012 F/S
Consumer loan portfolio	80,334
Non-compete agreement	18,998
Favorable supplier relationships	17,369
Proprietary knowledge	2,714
Total acquired assets	119,415
Deferred tax liability	3,081
<b>Total purchase price</b>	<b>116,334</b>

\*\*Note: Amounts reported in thousands.

13. In the Q3 2012 Financial Statements, CSF disclosed that during the course of preparing the Q3 2012 Financial Statements, it noticed that the values it had assigned in the Q2 Financial Statements to the Consumer Loan Portfolio and related intangible assets acquired in the Loan Purchase Transaction were incorrect. CSF corrected the values assigned to the Consumer Loan Portfolio and related intangible assets in the Q3 2012 Financial Statements as follows:

**Consumer Loan Portfolio Purchase Price Allocation**

	Q3 2012 F/S
Consumer loan portfolio	70,334
Non-compete agreement	24,274
Favorable supplier relationships	22,193
Proprietary knowledge	3,469
Total acquired assets	120,270
Deferred tax liability	3,936
<b>Total purchase price</b>	<b>116,334</b>

\*\*Note: Amounts reported in thousands.

14. In December 2012, CSF filed restated Q2 and Q3 2012 Financial Statements that revised the Consumer Loan Portfolio price allocation as follows:

**Consumer Loan Portfolio Purchase Price Allocation**

	Restated Q2 & Q3 2012 F/S
Consumer loan portfolio	50,014
Non-compete agreement	15,524
Favorable supplier relationships	14,220
Proprietary knowledge	2,280
Total acquired assets	82,038
Premium paid to acquire loan portfolio	36,820
Deferred tax liability	2,524
<b>Total purchase price</b>	<b>116,334</b>

\*\*Note: Amounts reported in thousands.

15. The restated Q2 and Q3 2012 Financial Statements disclosed that CSF had in the Loan Purchase Transaction paid a “premium” of \$36,820,000 to acquire the TPLs’ loan portfolio. The disclosure indicated that the premium “settled pre-existing relationships” between CSF and the TPLs. This premium was then listed as a one-time expense.
16. The Q2 and Q3 2012 Financial Statements were reported in US GAAP. US GAAP requires issuers to report the fair market value of acquired debt assets. The fair market value attributed to the Consumer Loan Portfolio itself fell by approximately \$30M from the original Q2 2012 Financial Statements to the final restated Q2 and Q3 2012 Financial Statements. The restated Q2 2012 Financial Statements disclosed that the restatements were necessary because of accounting errors CSF had made. Bland left CSF prior to the issuance of the restated Q2 and Q3 2012 Financial Statements and did not approve the restatements.
17. The original Q2 and Q3 2012 Financial Statements stated in reference to the Consumer Loan Portfolio that, “[t]he determination of fair value included significant management judgment and estimation involving use of discounted cash flow methodologies, market comparables, and pricing models which incorporated the assumptions a market participant would use in pricing the assets.”
18. The original Q2 and Q3 2012 Financial Statements also stated that “[c]ertain estimates, such as those related to the...valuation of acquired loans...depend upon subjective or complex judgments about matters that may be uncertain, and changes in those estimates could materially impact the consolidated financial statements. Actual results could differ from those estimates made by management.”
19. CSF obtained a fairness opinion from Canaccord Genuity Corp. dated January 31, 2013 regarding the consideration paid for the Consumer Loan Portfolio. CSF also engaged Ernst

& Young LLP to provide professional valuation services on an estimate basis in connection with the acquisition of the Consumer Loan Portfolio and consulted its auditors, KPMG LLP, on a review basis in preparing its valuation of the Consumer Loan Portfolio for the Q2 2012 Financial Statements.

20. Notwithstanding the steps taken by Bland and CSF, the predicted collectability rate used in the valuation of the Consumer Loan Portfolio was higher than the actual collectability rate, which resulted in the value of the Consumer Loan Portfolio being lower than estimated.
21. Bland admits that the Consumer Loan Portfolio valuation in the Q2 2012 Financial Statements was based on judgments and estimates formulated by CSF management that were not in accordance with US GAAP and represented a contravention of section 146 of the *Act* and section 3.7 of NI 52-107 by CSF. Bland further admits she authorized, permitted or acquiesced in this contravention of section 146 of the *Act* and section 3.7 of NI 52-107 in the Q2 2012 Financial Statements.

#### Loan Loss Provision

22. The Q2 2012 Financial Statements disclosed a provision for loan losses of \$7,487,000 and \$8,155,000 respectively for the three and six months ended March 31, 2012.
23. In December 2012, after Bland left CSF, it filed restated Q2 Financial Statements. CSF restated its provision for loan losses to \$10,798,000 and \$11,466,000 respectively for the three and six months ended March 31, 2012. In Note 3 of the restated Q2 2012 Financial Statements, CSF explained that its provision for loan losses was understated as a result of an error, and that, as a result, it recorded an additional expense of \$3,311,000 for the three and six months ended March 31, 2012. In conjunction with the restatement of the provision for loan losses, the allowance for consumer loan losses increased by \$3,311,000 from \$10,604,000 to \$13,915,000.
24. As set out in the original and restated Q2 2012 Financial Statements, “[a] provision for loan losses is recorded when the Company no longer has reasonable assurance of timely collection of the full amount of principal and interest.” The original Q2 2012 Financial Statement disclosed that, “[t]he provision is primarily based upon models that analyze specific portfolio statistics and also reflect, to a lesser extent, management judgment regarding overall accuracy. The analytical model takes into account several factors, including the number of transactions customers complete and charge-off and recovery rate.”
25. The determination of the loan loss provision depended in part on estimated loan collectability rates. The predicted collectability rate was modelled using historical collection rates, anticipated collection rates, and competitors’ collection rates. The predicted collectability rate used in the determination of the loan loss provision was higher than the actual collectability rate, which resulted in the loan loss provision being too low.

26. Bland admits that the loan loss provision in the Q2 2012 Financial Statements was based on judgments and estimates formulated by CSF management that were not in accordance with US GAAP and represented a contravention of section 146 of the *Act* and section 3.7 of NI 52-107 by CSF. Bland further admits she authorized, permitted or acquiesced in this contravention of section 146 of the *Act* and section 3.7 of NI 52-107 in the Q2 2012 Financial Statements.

#### **Admitted Breaches of Alberta securities laws (Admitted Breaches)**

27. Based on the Agreed Facts, Bland admits that:
- 27.1 CSF breached section 146 of the *Act* and section 3.7 of NI 52-107 by failing to disclose in its Q2 2012 Financial Statements an appropriate valuation for the Consumer Loan Portfolio it purchased; Bland authorized, permitted, or acquiesced in this contravention; and
- 27.2 CSF breached section 146 of the *Act* and section 3.7 of NI 52-107 in its Q2 2012 Financial Statements by failing to disclose an appropriate loan loss provision and allowance for consumer loan losses; Bland authorized, permitted, or acquiesced in this contravention.

#### **Circumstances Relevant to Settlement**

28. Bland has not been previously sanctioned by the Commission.
29. Bland cooperated with Staff during the investigation.
30. This Agreement has saved the Commission the time and expense associated with a contested hearing under the *Act*.

#### **Settlement and Undertakings**

31. Based on the Agreed Facts and Admitted Breaches, Bland agrees and undertakes to the Executive Director of the Commission to:
- 31.1 Pay to the Commission the amount of \$50,000 as settlement; and
- 31.2 Resign all positions she may have as a director or officer of any reporting issuers and refrain from becoming an officer or director of any such issuer for a period of two years from the date of this Agreement.

#### **Administration**

32. Bland acknowledges that she received independent legal advice and has voluntarily made the admissions and undertakings in this Agreement.
33. Bland waives any right existing under the *Act*, or otherwise, to a hearing, review, judicial review or appeal of this matter.

- 34. Bland acknowledges and agrees that the Commission may enforce this Agreement in the Court of Queen’s Bench or in any other court of competent jurisdiction.
- 35. Bland understands and acknowledges that this Agreement may form the basis for securities-related orders in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions may allow for provisions of a settlement agreement made in this matter to be given parallel effect in those other jurisdictions automatically, without further notice to her. Bland understands and acknowledges that she should contact the securities regulator of any other jurisdiction in which she may intend to engage in any securities related activities.
- 36. Execution and fulfillment of the terms of this Agreement by Bland resolves all issues relating to the conduct described above, and Staff will take no further steps against them arising from these facts.
- 37. This Agreement may be executed in counterpart.

Signed by NANCY LOUISE BLAND at )  
 Spruce Grove, Alberta this 19 day of May, )  
 2018, in the presence of: )

William Bland )  
 WITNESS NAME )

“original signed by” )  
 SIGNATURE )

“original signed by” )  
 NANCY LOUISE BLAND )

) ALBERTA SECURITIES COMMISSION  
 )

Calgary, Alberta, May 24, 2018 )

) “original signed by” )  
 ) David C. Linder, Q.C. )  
 ) Executive Director )