

Case Name:
Valentine (Re)

**IN THE MATTER OF the Securities Act, R.S.O. 1990,
Chapter S.5, as amended
AND IN THE MATTER OF Mark Edward Valentine
Order
(Section 127)**

2004 LNONOSC 622

Also reported at: (2005), 28 OSCB 59

Ontario Securities Commission

P.M. Moore, W.S. Wigle, P.K. Bates

Decision: December 23, 2004.

ORDER:-- WHEREAS on June 17, 2002 the Ontario Securities Commission (the "Commission") made a Temporary Order in this matter pursuant to section 127(1) of the Securities Act, R.S.O. 1990, c. S-5 as amended (the "Temporary Order");

AND WHEREAS the Temporary Order was extended on July 8, 2002, January 31, 2003, February 14, 2003, July 28, 2003, February 2, 2004, July 27, 2004, October 29, 2004 and December 14, 2004;

AND WHEREAS on January 29, 2004 Staff of the Commission issued an Amended Amended Statement of Allegations in this matter (the "Statement of Allegations");

AND WHEREAS Valentine has entered into a settlement agreement with Staff of the Commission dated December 16, 2004 in relation to the matters set out in the Statement of Allegations (the "Settlement Agreement") ;

AND WHEREAS the Commission issued a Notice of Hearing dated December 16, 2004 setting out that it proposed to consider the Settlement Agreement (the "Notice of Hearing");

AND WHEREAS, in addition to the terms of the order below, Valentine has undertaken as follows:

- (a) to never re-apply for registration or recognition of any kind under Ontario securities law or any other Canadian securities legislation;
- (b) to never seek membership in, or approval in any capacity from, the Investment Dealers' Association of Canada; and
- (c) to consent to an Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the prohibitions set out in paragraphs 4, 5 and 6 below. These prohibitions may be modified to reflect the provisions of the relevant provincial or territorial securities law;

UPON reviewing the Statement of Allegations, Settlement Agreement and Notice of Hearing, and upon hearing submissions from counsel for Valentine and for Staff of the Commission;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order;

IT IS HEREBY ORDERED that:

1. The Settlement Agreement, a copy of which is attached to this Order, is hereby approved.
2. The Temporary Order is hereby rescinded.
3. Valentine's registration under Ontario securities law is hereby terminated.
4. The exemptions contained in Ontario securities law do not apply to Valentine, and Valentine must cease trading in securities for a period of 15 years, with the exception that:
 - (a) within 30 days, Valentine may sell up to 1,000 of the shares of Ericsson Telephone Company currently held in his Registered Retirement Savings Plan; and
 - (b) after 5 years, Valentine may trade in the securities specified below through an account held solely in his name if:
 - (i) the securities are securities referred to in clause 1 of subsection 35(2) of the Act; or
 - (ii) in the case of securities other than those referred to in paragraph (i) above:
 - (a) the securities are listed and posted for trading on The Toronto Stock Exchange or the New York Stock Exchange (or their successor exchanges); and
 - (b) Valentine does not own directly, or indirectly through another person or company or through any person or company acting on his behalf, more than one (1) percent of the outstanding securities of the class or series of the class in question.

5. Valentine shall resign all positions that he holds as director or officer of an issuer.
6. Valentine is permanently prohibited from becoming or acting as a director or officer of any issuer.
7. Valentine shall pay the sum of \$100,000.00 towards the costs of Staff's investigation into the matters set out in the Statement of Allegations.

P.M. MOORE
W.S. WIGLE
P.K. BATES

* * * * *

IN THE MATTER OF
THE SECURITIES ACT
R.S.O. 1990, c. S.5, AS AMENDED
AND
IN THE MATTER OF
MARK EDWARD VALENTINE
SETTLEMENT AGREEMENT

I INTRODUCTION

1. In a Notice of Hearing to be issued, the Ontario Securities Commission (the "Commission") will announce that it will hold a hearing to consider whether, pursuant to section 127 of the Securities Act, R.S.O. 1990, c. S-5, as amended (the "Act"), it is in the public interest for the Commission to make an order regarding Mark Edward Valentine ("Valentine") that:
 - (a) this settlement agreement be approved;
 - (b) the registration of Valentine under securities law be suspended or restricted or terminated, or that terms and conditions be imposed on his registration;
 - (c) trading in securities by Valentine cease permanently or for such period as the Commission may order;
 - (d) the exemptions contained in Ontario securities law do not apply to Valentine permanently or for such period as the Commission may order;
 - (e) Valentine resign all positions that he holds as director or officer of an issuer;
 - (f) Valentine be prohibited from becoming or acting as a director or officer of an issuer; and

- (g) pursuant to section 127.1 of the Act, Valentine pay the costs of the investigation into his conduct as set out in the Amended Amended Statement of Allegations dated January 29, 2004.

II JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceeding against Valentine in accordance with the terms and conditions set out below. Valentine consents to the making of an order against him in the form attached as Schedule "A" on the basis of the facts set out below.

III AGREED FACTS

3. For the purposes of this settlement agreement, Valentine agrees with the facts set out in Part III.

A. Background

(i) Mark Valentine

4. At all relevant times, Valentine was the Chairman, a Director and the largest shareholder of Thomson Kernaghan & Co. Ltd. ("TK"). Valentine was also a Registered Representative with the Investment Dealers' Association ("IDA"). He resides in Toronto, Ontario.
5. TK is a corporation incorporated pursuant to the laws of Ontario and was registered with the IDA as an Investment Dealer in the provinces of Ontario, British Columbia, Alberta and Quebec.

(ii) The Funds

6. Valentine is the President, Director and a shareholder of VMH Management Ltd. ("VMH"), an Ontario corporation. VMH held trading accounts at TK. Valentine was the Registered Representative assigned to those accounts and held trading authority over them.
7. VMH was the General Partner of the Canadian Advantage Limited Partnership ("CALP"), an Ontario limited partnership which operated as a private investment fund.
8. Advantage (Bermuda) Fund Ltd. ("CALP Offshore Fund") is a mutual fund company incorporated under the laws of Bermuda and is CALP's corresponding offshore fund.
9. Valentine is the President, Director and a shareholder of VC Advantage Limited ("VC Ltd."), an Ontario corporation. VC Ltd. was the General Partner of the VC Advantage Fund Limited Partnership ("VC Fund"), an Ontario limited partnership which operated as a private investment fund.

10. VC Advantage (Bermuda) Fund Ltd. ("VC Offshore Fund") is a mutual fund company incorporated under the laws of Bermuda and is the VC Fund's corresponding offshore fund.
11. Collectively, CALP, CALP Offshore Fund, VC Fund and VC Offshore Fund will be referred to as the "Funds".
12. Pursuant to written partnership agreements and offering memoranda, Valentine, acting through VMH and VC Ltd. (together, the "General Partners"), was authorized to recommend, advise on and enter into all investments on behalf of the Funds and he did so.
13. The majority of the limited partners (unitholders) of the Funds were individual retail clients of TK. The Funds performed all of their securities transactions through trading accounts held at TK. Valentine was the Registered Representative at TK for all of these trading accounts.
14. Neither Valentine nor the General Partners were registered with the Commission as Investment Counsel/Portfolio Managers.

(iii) Hammock Group Ltd.

15. Valentine has a beneficial interest in Hammock Group Ltd., a corporation registered pursuant to the laws of Bermuda. Hammock had a trading account at TK. Valentine was the Registered Representative for that account. The Hammock account was not designated as a pro account on the books and records of TK.

B. TK's Financial Difficulties

(i) The Trilon Loans

16. By the spring of 2001, TK was in financial difficulty. In particular, it was at least \$3,000,000 short of the risk-adjusted capital ("RAC") that it was required by the IDA to maintain for the protection of its clients. Valentine, along with other senior officers of TK, approached Trilon Bancorp Inc. to obtain a short-term loan on the basis that this would permit TK to meet its RAC requirement.
17. On March 30, 2001, Trilon advanced the sum of \$5,000,000 to TK Holdings Inc. These funds were used by TK Holdings to purchase \$5,000,000 worth of preferred shares of TK. The loan was to be repaid in full by June 30, 2001. This transaction was properly reported to the IDA. On July 3, 2001, the loan was repaid in full.
18. In July of 2001, Valentine and other senior officers of TK approached Trilon for a further loan to assist TK in relation to its RAC requirement. Trilon agreed to provide a US\$5,000,000 loan facility with an initial advance of US\$3,000,000. The funds were advanced to Valentine personally. The loan facility was to be repaid in full by December 31, 2001. TK guaranteed all of Valentine's obligations under the loan facility.
19. On July 31, 2001, US \$3,000,000 was advanced to Valentine. US \$816,945 (\$1,250,579.41) of this sum was placed in a trading account at

TK held in the name of Trilon Securities Corp. TK reported to the IDA that the \$1,250,579.41 represented a subordinated loan made by Valentine to TK. TK did not disclose to the IDA that further funds had been advanced by Trilon to Valentine. TK also did not disclose to the IDA that it had guaranteed Valentine's entire obligation to Trilon. Valentine signed the mandatory quarterly report filed with the IDA which disclosed the \$1,250,579.41 "subordinated loan", certifying that the report contained full and accurate disclosure of TK's liabilities.

20. Valentine was unable to repay the US \$3,000,000 advance by the due date of December 31, 2001. He therefore negotiated several further advances of funds and extensions of the repayment deadline under the loan facility, the last of which expired on July 15, 2002. As of that date, the amount outstanding on the loan was approximately US \$5,600,000. Valentine defaulted on the loan on July 15, 2002.

C. The March 28, 2002 Transactions

21. On March 28, 2002, Valentine conducted two series of transactions. Each series of transactions involved numerous trades and included trading in the Funds' accounts, in Valentine's personal accounts and in the accounts of other TK clients. These two series of transactions form the basis for the majority of the allegations of wrongdoing by Valentine.
22. At the time of these transactions, the Funds were not permitted to acquire further securities due to amendments made to their partnership agreements.

(i) The Chell Corp. Transaction

23. Chell Group Corporation ("Chell Corp.") was a Canadian company whose shares traded on the NASDAQ exchange.
24. On March 28, 2002, Valentine's pro account received 1,060,000 shares of Chell Corp. that belonged to CALP without any cash payment by Valentine. Valentine claimed that the shares were provided to repay a debt of US \$1,060,000 owed by CALP to him personally. The shares were thus transferred at a value of US \$1 per share.
25. Valentine's explanation for CALP's debt to him was that CALP had borrowed US \$360,000 from him in July 2001, and another US \$700,000 from him in January 2002. The \$360,000 that was transferred to CALP came from the proceeds of the Trilon loan, described above.
26. Also on March 28, 2002, pursuant to sell orders placed March 26, 2002, after receiving the Chell Corp. shares from CALP, Valentine effected the following transactions:
 - (a) Valentine sold 1,000,000 Chell Corp. shares at a price of US \$2 per share to his inventory account;
 - (b) Valentine sold 375,000 Chell Corp. shares at a price of US \$2 per share from his inventory account to the VC Fund;

- (c) Valentine sold 375,000 Chell Corp. shares at a price of US \$2 per share from his inventory account to the VC Offshore Fund;
 - (d) Valentine sold 250,000 Chell Corp. shares at a price of US \$2 per share from his inventory account to another TK retail client; and
 - (e) Of the US \$2 million in proceeds in his pro account from these sales, Valentine transferred US \$450,000 (\$717,000) to his trader receivable account to reduce his liabilities to TK.
 - (f) On April 30, 2002, the VC Fund sold 200,000 shares of Chell Corp. at a price of US \$2.09 per share.
27. At the time, there was an agreement between Valentine and the VC Fund that Valentine would buy 250,000 shares of Chell Corp. per quarter from the VC Fund commencing July 1, 2002 at a price of US \$2.20 per share. The agreement was purportedly guaranteed by the General Partners.
28. Valentine cannot produce evidence of a loan of US \$700,000 to CALP in January of 2002 (as referenced in paragraph 25, above). No evidence of the loan can be found in the books and records of TK that were provided to Staff.
29. TK reported to the IDA that the Chell Corp. transactions affected its RAC by creating excess margin in Valentine's own accounts of \$1,412,189, and by creating a margin requirement in the Funds' accounts of \$434,000. Further, the amount owing in Valentine's trader receivable account was decreased by \$717,000 (US \$450,000).
- (ii) The IKAR Transaction
30. On March 28, 2002, CALP paid US \$1.3 million to Hammock to purchase a debenture issued by a company named IKAR Minerals. The debenture was dated March 1998 and had expired in March of 2000.
31. Valentine stated that the rationale for the transaction was to settle a debt that CALP owed to Hammock of US \$1,582,830. The debt related to transactions in the shares of JAWZ Inc., a Canadian company whose shares traded on the NASDAQ exchange. Valentine explained that this debt had been incurred as follows:
- (a) In July, 2001, Hammock paid CALP US \$537,068 for 652,573 shares of JAWZ at a price of US \$0.823 per share. JAWZ shares were then trading at a price of US \$0.59 per share. Valentine explained this step as Hammock assisting CALP in meeting its margin requirement at TK. In consideration for its help, CALP guaranteed the JAWZ investment by promising that any losses Hammock might suffer from its eventual sale of the JAWZ shares would be reimbursed by CALP;
 - (b) Over the next three weeks, Hammock sold the JAWZ shares at an average price of US \$0.218 per share, generating a loss of US

- \$386,895.54 which Valentine claimed that CALP was obliged to reimburse pursuant to its "guarantee";
- (c) In a separate transaction, Valentine stated that CALP had sold 900,000 shares of a firm called Global Path short to Hammock at a price of US \$1.33 per share for net proceeds of US \$1,196,500. Valentine claimed that CALP made the short sale "believing that it was to receive Global Path shares as partial compensation for its JAWZ losses";
 - (d) CALP was unable to deliver the Global Path shares and was therefore indebted to Hammock for total of US \$1,582,830 as a result of the JAWZ guarantee and the undeliverable Global Path shares;
32. "To allow Hammock to recoup the bulk of its out of pocket cost in supporting the funds", Valentine stated that he took the following steps;
- (a) Valentine's company VMH was the owner of the IKAR debenture which it "gifted" to Hammock;
 - (b) Hammock in turn sold the debenture to CALP for US \$1.3 million as payment for the "debt" which CALP owed to Hammock;
 - (c) The debenture had value because IKAR's principal had recently promised Valentine to make up the US \$1.3 million loss by converting the IKAR debenture into shares of the renamed company, Patriot Energy Corporation. This promise was later set out in a letter addressed to Valentine by the President of Patriot Energy. This promise was purportedly given because Valentine had personally made a US \$250,000 private placement investment in Patriot Energy; and
 - (d) Valentine claimed that as a result, CALP was the beneficiary of a "gift" from him through VMH of the IKAR position.
33. The evidence does not support this explanation. Hammock did not purchase JAWZ shares from CALP but rather from Valentine's inventory account. Therefore CALP did not guarantee Hammock's JAWZ investment, and correspondingly was not liable for Hammock's US \$386,330.70 loss in the JAWZ transaction.
34. CALP did not sell 900,000 shares of Global Path to Hammock but rather sold 1,000,000 shares of Global Path to Valentine's inventory account. The price per share and net proceeds of this transaction were not US \$1.33 and US \$1,196,500 respectively, but rather US \$0.65 and US \$635,000.
35. Hammock did not purchase 900,000 Global Path shares at a price of US \$1.33 per share from CALP but rather from Valentine's inventory account. The price per share and net proceeds of this transaction were not US \$1.33 and US \$1,196,500 respectively but rather US \$1.05 and US \$945,000.

36. The Global Path trade did not fail as delivery slips confirm the transfer of share certificates.
 - (iii) TK's Investigation
 37. On May 7, 2002, TK's Management Committee requested an explanation from Valentine about the Chell Corp. and IKAR transactions and commenced an internal investigation into the trades.
 38. On June 13, 2002, as a result of its internal investigation, TK took disciplinary actions against Valentine. Valentine volunteered a 30 day suspension of his employment and TK agreed to the suspension. At that time, TK also took steps to exclude him from TK's premises.
 39. On June 19, 2002, TK delivered to the IDA its Investigation Report setting out its findings into the impugned transactions.
40. TK's investigation found:
- (a) that the propriety of certain of the trades was "questionable";
 - (b) that there was "inadequate documentation" for other trades;
 - (c) that Valentine had failed to provide any documents to support still other trades; and
 - (d) that "the rationale was not supportable" for one entire series of trades.
41. On June 19, 2002 TK decided to reverse the Chell Corp. and IKAR transactions, and later did so.

D. TK's Bankruptcy

42. On July 11, 2002, TK informed the IDA that it could no longer meet its outstanding liabilities to its clients and its registration as an Investment Dealer was suspended. On the same date, the Canadian Investor Protection Fund brought a motion for an order declaring TK bankrupt and appointing Ernst & Young Inc. as the trustee of its estate. The motion was granted and a receiving order was made on July 12, 2002.

E. Valentine's Criminal Conviction

43. On Wednesday March 10, 2004, in the United States District Court for the Southern District of Florida, Valentine pleaded guilty to one count of securities fraud, contrary to sections 78(b) and 78(ff) of Title 15 of the United States Criminal Code.
44. As part of his guilty plea, Valentine agreed that he had sold shares of SoftQuad Software Ltd. ("SoftQuad") to an undercover agent of the U.S. Federal Bureau of Investigations (the "Undercover Agent"). The Undercover Agent was posing as the portfolio manager of a mutual fund located

in the United Kingdom. Shares of SoftQuad traded on the over-the-counter market of the NASDAQ stock exchange.

45. In his plea agreement, Valentine admitted that he had agreed to sell US\$ 8 million dollars worth of SoftQuad shares to the Undercover Agent. Valentine also agreed to send 30% of the proceeds of the sale to the Undercover Agent as a hidden commission. The Undercover Agent requested an initial "test" purchase of US\$10,000 worth of SoftQuad stock. On January 16, 2001, Valentine sold 3,278 shares of SoftQuad to the Undercover Agent for that amount through his TK account.
46. As a result of his guilty plea, Valentine was sentenced to a term of probation for 4 years, including 9 months of home detention, and deported from the United States. Valentine was permitted to serve his period of home detention at his residence in Toronto.

Conduct Contrary to Ontario Securities Law and the Public Interest

47. Valentine agrees that his conduct was contrary to the public interest and Ontario securities law for the reasons set out below.

A. The Chell Corp. Transactions

48. Valentine created a culture of conflict of interest and non-compliance at TK and breached Ontario securities law in respect of the Chell Corp. transactions by:
 - (a) playing multiple roles as the President of the Funds' General Partners, as the Registered Representative of the Funds' trading accounts, as the Chairman and controlling shareholder of TK and as a trader in Chell Corp. shares on his own behalf in his pro and inventory accounts at TK;
 - (b) failing to deal fairly, honestly and in good faith with his clients contrary to s. 2.1(2) of OSC Rule 31-505, by:
 - (i) appropriating shares belonging to his client CALP without supportable consideration;
 - (ii) causing his client CALP to provide shares to his pro account at a value of US \$1 per share and immediately thereafter selling those shares to his inventory account at a price of US \$2 per share;
 - (iii) causing his other clients the VC Fund and the VC Offshore Fund to immediately buy those shares from his inventory account at US \$2 per share;
 - (iv) causing his client the VC Fund to sell shares at US \$2.09 per share on April 26, 2002 in the face of a put agreement at US \$2.20 per share on July 1, 2002; and
 - (v) orchestrating the Chell Corp. transactions which provided a substantial benefit to TK's Risk Adjusted Capital and to his

own accounts and which had a corresponding detrimental effect on his clients' accounts.

- (c) breaching the fiduciary and contractual duties that Valentine owed to the unitholders of the Funds by:
 - (i) purportedly providing loans to the Funds;
 - (ii) placing shares belonging to CALP into his pro account without supportable consideration;
 - (iii) selling his shares of Chell Corp. to the VC Fund and the VC Offshore Fund;
 - (iv) selling shares of Chell Corp. to the VC Fund and the VC Offshore Fund at a price of US \$2 per share when he had obtained them at a value of US \$1 per share;
 - (v) entering into a put agreement to buy shares from the VC Fund;
 - (vi) causing the VC Fund to sell shares at a price of US \$2.09 per share on April 26, 2002 in the face of a purported put agreement to buy the same shares at a price of US \$2.20 per share beginning July 1, 2002; and
 - (vii) unnecessarily creating a margin requirement in the Funds' accounts.

- 49. Valentine failed to maintain the books and records necessary to record properly the business transactions and financial affairs which he carried out in the course of the Chell Group transaction, contrary to s. 19(1) of the Act and s. 113(1) of Ont. Reg. 1015.

B. The IKAR Transaction

- 50. Valentine created a culture of conflict of interest and non-compliance at TK and breached Ontario Securities laws in respect of the IKAR transaction by:
 - (a) playing multiple roles as the President of the Funds' General Partners, as the Registered Representative of the Funds' trading accounts, as the Chairman and controlling shareholder of TK, as the Registered Representative of Hammock's trading account, and as a beneficial owner of Hammock;
 - (b) failing to deal fairly, honestly and in good faith with his clients, contrary to s. 2.1(2) of OSC Rule 31-505, by:
 - (i) causing his client CALP to guarantee an investment made by another of his clients (Hammock) thereby placing one client's interests ahead of those of another;

- (ii) causing his client CALP to guarantee an investment made by a company of which he is the beneficial owner (Hammock), thereby putting his own interests ahead of those of his client;
 - (iii) causing his client CALP to pay valuable consideration for a worthless security to another of his clients (Hammock), thereby placing one client's interests ahead of those of another; and
 - (iv) causing his client CALP to pay valuable consideration for a worthless security to a company of which he is a beneficial owner (Hammock), thereby placing his own interests ahead of those of his client.
- (c) breaching the fiduciary and contractual duties that Valentine owed to the unitholders of the Funds by:
- (i) causing CALP to guarantee an investment made by a company of which he is a beneficial owner (Hammock); and
 - (ii) causing CALP to give valuable consideration for a worthless security to a company of which he is a beneficial owner (Hammock).

51. In agreeing that CALP would reimburse any losses suffered by Hammock in its sale of shares of JAWZ, Valentine made representations that CALP would refund Hammock a portion of the purchase price of a security contrary to s. 38(1) of the Act.
52. Valentine failed to maintain the books and records necessary to record properly the business transactions and financial affairs which he carried out in the course of the IKAR transaction, contrary to s. 19(1) of the Act and s. 113(1) of Ont. Reg. 1015.

C. Other Conduct

53. Valentine failed to ensure that the terms of the second Trilon loan were properly disclosed to the IDA, as required by IDA By-law 17. This failure had the effect of hiding the poor financial circumstances of TK from the IDA.
54. Neither Valentine nor the General Partners are registered as Investment Counsel/Portfolio Managers, but nevertheless acted as advisors to the Funds in the Chell Corp. and IKAR transactions as detailed above, contrary to s. 25 of the Act.
55. Valentine failed to designate the Hammock account as a pro account, contrary to IDA Policy No. 2, Section II(C)(4).
56. Valentine agrees that it is in the public interest for the Commission to make the order set out in Schedule "A" to this agreement.

IV TERMS OF SETTLEMENT

57. Valentine agrees to the terms of settlement listed below.

58. The Commission will make an order:

- (a) terminating his registration under Ontario securities law;
- (b) declaring that the exemptions contained in Ontario securities law do not apply to him and requiring him to cease trading in securities for a period of 15 years commencing from the date of the order; provided that, after 5 years, Valentine may trade in the securities specified below through an account held solely in his name if:
 - (i) the securities are securities referred to in clause 1 of subsection 35(2) of the Act; or
 - (ii) in the case of securities other than those referred to in paragraph (i) above:
 - (1) the securities are listed and posted for trading on The Toronto Stock Exchange or the New York Stock Exchange (or their successor exchanges); and
 - (2) Valentine does not own directly, or indirectly through another person or company or through any person or company acting on his behalf, more than one (1) percent of the outstanding securities of the class or series of the class in question;
- (c) requiring Valentine to resign all positions that he holds as director or officer of an issuer;
- (d) permanently prohibiting Valentine from becoming a director or officer of any issuer; and
- (e) requiring Valentine to pay the sum of \$100,000.00 towards the costs of Staff's investigation into the matters set out in the Amended Amended Statement of Allegations dated January 29, 2004.

59. Valentine undertakes that he will consent to an Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the prohibitions set out in paragraphs (b), (c) and (d) above. These prohibitions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

60. Valentine undertakes to never re-apply for registration or recognition of any kind under Ontario securities law or any other Canadian securities legislation.

61. Valentine undertakes to never seek membership in, or approval in any capacity from, the IDA.

V STAFF COMMITMENT

62. If this agreement is approved by the Commission, Staff will not initiate any proceeding under Ontario securities law in relation to the facts set out in Part III of this agreement, subject to the provisions of paragraph 63 below.
63. If this settlement agreement is approved by the Commission and at any subsequent time Valentine fails to honour the undertakings and agreements contained in paragraphs 59, 60, 61 and 66 of the settlement agreement, Staff reserve the right to bring proceedings under Ontario securities law against Valentine based on the facts set out in Part III of this settlement agreement, as well as the breach of the undertakings and agreements.

VI PROCEDURE FOR APPROVAL OF SETTLEMENT

64. Approval of this settlement will be sought at a public hearing before the Commission scheduled for December 23, 2004 or such other date as may be agreed to by Staff and Valentine, in accordance with the procedures set out in this settlement agreement and the Commission's Rules of Practice.
65. Staff and Valentine agree that if this settlement agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted regarding Valentine's conduct in this matter, and Valentine agrees to waive his rights to a full hearing and appeal of this matter under the Act.
66. Staff and Valentine agree that if this settlement agreement is approved by the Commission, neither party will make any public statement that is inconsistent with this settlement agreement.
67. If this settlement agreement is not approved by the Commission, or an order in the form attached as Schedule "A" to this settlement agreement is not made by the Commission, each of Staff and Valentine will be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Amended Amended Statement of Allegations dated January 29, 2004, unaffected by this agreement or the settlement negotiations; and
68. Whether or not this settlement agreement is approved by the Commission, Valentine agrees that he will not, in any proceeding, refer to or rely upon this agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction,

alleged bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

VII DISCLOSURE OF AGREEMENT

69. The terms of this settlement agreement will be treated as confidential by both parties until approved by the Commission. The terms of this settlement agreement will be treated as confidential forever if this settlement agreement is not approved by the Commission, except with the written consent of both Valentine and Staff or as may be required by law.
70. Any obligations of confidentiality will terminate upon approval of this settlement agreement by the Commission.

VIII EXECUTION OF SETTLEMENT AGREEMENT

71. This agreement may be signed in one or more counterparts which together will constitute a binding agreement.
72. A facsimile copy of any signature will be as effective as an original signature.

December 15, 2004.

MARK EDWARD VALENTINE

(Per) "Edward L. Greenspan" Edward L. Greenspan Q.C. Counsel to Mark Edward Valentine

December 16, 2004.

STAFF OF THE ONTARIO SECURITIES COMMISSION

(Per) "Michael Watson" Michael Watson Director, Enforcement Branch

Schedule "A"

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S. 5, AS AMENDED

AND

IN THE MATTER OF
MARK EDWARD VALENTINE

ORDER
(Section 127)

WHEREAS on June 17, 2002 the Ontario Securities Commission (the "Commission") made a Temporary Order in this matter pursuant to section 127(1) of the Securities Act, R.S.O. 1990, c. S-5 as amended (the "Temporary Order");

AND WHEREAS the Temporary Order was extended on July 8, 2002, January 31, 2003, February 14, 2003, July 28, 2003, February 2, 2004, July 27, 2004, October 29, 2004 and December 14, 2004;

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- (c) to consent to an Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the prohibitions set out in paragraphs 4, 5 and 6 below. These prohibitions may be modified to reflect the provisions of the relevant provincial or territorial securities law;

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AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order;

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- (b) after 5 years, Valentine may trade in the securities specified below through an account held solely in his name if:
 - (i) the securities are securities referred to in clause 1 of subsection 35(2) of the Act; or
 - (ii) in the case of securities other than those referred to in paragraph (i) above:
 - (a) the securities are listed and posted for trading on The Toronto Stock Exchange or the New York Stock Exchange (or their successor exchanges); and
 - (b) Valentine does not own directly, or indirectly through another person or company or through any person or company acting on his behalf, more than one (1) percent of the outstanding securities of the class or series of the class in question.
- 5. Valentine shall resign all positions that he holds as director or officer of an issuer.
 - 6. Valentine is permanently prohibited from becoming or acting as a director or officer of any issuer.
 - 7. Valentine shall pay the sum of \$100,000.00 towards the costs of Staff's investigation into the matters set out in the Statement of Allegations.

December 23, 2004.

e/qlmss