

**IN THE MATTER OF THE SECURITIES ACT,
R.S.O. 1990, C. s. 5, AS AMENDED**

-and-

ROBERT WALTER HARRIS

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Hearing dated June 25, 2003 (the “Notice of Hearing”), the Ontario Securities Commission (the “Commission”) announced that it proposed to hold a hearing to consider whether, pursuant to s. 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “*Act*”), it is in the public interest to make an Order that:
 - (a) trading in any securities by Robert Harris cease permanently or for such period as is specified in the Order;
 - (b) any exemptions contained in Ontario securities law do not apply to Robert Harris permanently or for such period as is specified in the Order;
 - (c) Robert Harris be reprimanded;
 - (d) Robert Harris resign all positions that he holds as officer or director of an issuer;
 - (e) Robert Harris be prohibited from becoming or acting as a director or officer of any issuer for such period as is specified in the Order; and
 - (f) to make such other Orders as the Commission considers appropriate.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff recommend settlement of the proceeding initiated in respect of the respondent, Robert Walter Harris (“Harris”), by the Notice of Hearing in accordance with the terms and conditions set out below. Harris agrees to the settlement on the basis of the facts

agreed to as provided in Part III and consents to the making of an Order in the form attached as Schedule "A" on the basis of the facts set out below.

III. FACTS

Acknowledgement

3. Solely for the purposes of this agreement and as a basis for the undertakings contained herein, Staff and Harris agree with the facts and conclusions set out in Part III of the Settlement Agreement.
4. Staff acknowledge that Harris was cooperative during the investigation of this matter and during the process of reaching settlement.

Introduction

5. Harris is 61 years of age. He graduated from the University of Toronto in 1965 and was employed by a variety of both large and small investment dealers, and periodically worked on his own in the investment industry, from 1965 until July 2, 2003.
6. From June 1996 until July 1997, Harris was self-employed in an unregistered capacity. From August 1997 until September of 1998, he was employed by Brenark Securities, where he was registered as a Registered Representative. From September 1998 to May 1999, he was employed by Groome Capital Inc., where he was registered as a Registered Representative. From June 1, 1999 until July 2, 2003, Harris was employed at Dominick & Dominick Securities. He was registered as a trading officer in Ontario and Alberta. Harris' business activities related primarily to corporate finance transactions. Specifically, as agent for clients, he made introductions between parties who wished to complete corporate deals and negotiate corporate reorganizations, including any necessary financing. When the Notice of Hearing and Statement of Allegations were served in this matter, Harris' employment with Dominick & Dominick was terminated as was his registration as a trading officer.
7. Harris has no current plans to apply for reinstatement of his registration.

Conduct Contrary to Ontario Securities Law and the Public Interest

(a) Overview

8. (a) In late 1996 and 1997, Harris acted as agent for Clavos Enterprises Inc. (formerly Clavos Porcupine Mines Limited) (“Clavos”), a reporting issuer, to negotiate a corporate reorganization. Harris became a Director and Officer of Clavos in March, 1997;
- (b) Harris was a person in a special relationship with Clavos. In June, 1997 he sold securities of Clavos (250,000 common shares) with knowledge of a material fact with respect to Clavos (the corporate reorganization) that had not been generally disclosed, in breach of subsection 76(1) of the *Act* and contrary to the public interest;
- (c) Harris failed to file the reports required to be filed by insiders disclosing his trades in Clavos, contrary to section 107(2) of the *Act* and the public interest; and
- (d) Harris failed to correct the Management Information Circular regarding the corporate reorganization of Clavos which erroneously identified him as continuing to own 250,000 shares in Clavos as of August, 1997, contrary to the public interest.

(b) Background Facts: Corporate Reorganization of Clavos

9. In the summer of 1996, the Chief Executive Officer of Clavos (the “CEO”) retained Harris, on a non-exclusive basis, to find a purchaser for Clavos.
10. At that time, common shares of Clavos were traded on the Canadian Dealing Network (“CDN”). Clavos was essentially an inactive company with some assets in the mining area. The CEO wanted to prepare Clavos as a shell for the purposes of a reverse takeover through which a private company would purchase Clavos. Harris had various contacts in the industry, which he used to determine who might be interested in purchasing Clavos.

11. Harris began making inquiries on behalf of Clavos in the late summer or early fall of 1996. The first party which expressed interest in a deal with Clavos did not complete an agreement. Harris recommended to the CEO that Clavos be 'cleaned up' in order to be more desirable to purchasers. The CEO then took steps to sell any assets of Clavos so that it held only cash and changed the company's name from Clavos Porcupine Mines to Clavos Enterprises in approximately January, 1997.
12. On March 31, 1997, Clavos completed a private placement of 1,000,000 units at \$.35 per unit, each unit consisting of one new common share and one share purchase warrant. At June 30, 1997, the number of issued and outstanding common shares in Clavos was 2,437,704 without giving effect to the exercise of share purchase warrants.
13. Concurrent with the private placement, Harris became a director of Clavos on March 31, 1997, as a nominee of the company which subscribed for the private placement.
14. In late 1996 or early 1997, Harris identified Magnesium Alloy Corporation ("MAC"), a private Ontario company, as a company which might be interested in a deal with Clavos.
15. Over the course of several weeks, Harris met with representatives of MAC, including counsel for MAC and counsel for Clavos, to negotiate the terms of a purchase of Clavos by MAC.
16. Harris and MAC representatives discussed several different price terms in April, 1997. The terms had narrowed to what turned out to be the final price by mid-May.
17. On June 11, 1997, Harris provided a written outline of proposed terms to MAC for review. The terms were approved by Clavos' CEO. Shortly thereafter, terms for a letter of intent to proceed with a corporate reorganization of Clavos were agreed to between Harris, on behalf of Clavos, and MAC. Harris provided the terms to counsel for Clavos, who then prepared a draft letter of intent. This draft letter of intent was distributed to counsel for MAC and copied to Harris by counsel for Clavos on June 24, 1997.
18. The letter of intent dated June 26, 1997 was executed on June 27, 1997 (the "LOI") by Harris on behalf of Clavos and by Congo Minerals Inc. (which would become MAC).

19. The LOI stated that Harris had been retained as Clavos' financial advisor on the reorganization and that Harris would be paid a success fee of \$100,000.00 dependent upon completion of the reverse take-over. Harris was paid this fee through his consulting company after closing.
20. The press release dated June 27, 1997 regarding the LOI stated, *inter alia*, as follows:

Clavos Enterprises Inc. ("Clavos") announced today that it has entered into a letter of intent with a private Ontario company ("Magnesium Alloy") to complete a reorganization that will result in an amalgamation of Clavos and Magnesium Alloy and their continuance as one company ("Amalco") under the laws of Ontario under the name Magnesium Alloy Corporation.

Pursuant to the reorganization, shareholders of Clavos will receive one share of the Amalco for each two common shares of Clavos held on the effective date of the amalgamation. Such shares will represent approximately 10% of the issued and outstanding common shares of Amalco.

The reorganization is subject to a number of conditions including execution of an agreement to give effect to the reorganization, shareholders approval of Clavos and Magnesium Alloy and receipt of any necessary regulatory approvals.
21. As part of the reorganization, it was agreed that the new amalgamated entity would continue under the name Magnesium Alloy and that shareholders of Clavos would receive one new common share of MAC for every two common shares of Clavos.
22. On June 27, 1997 at 3:15 p.m., trading in Clavos was halted pending shareholder approval of the proposal and approval of the application for a listing of the amalgamated company on CDN. When trading halted, Clavos shares were trading at \$.75 CDN.
23. A Notice of Special Shareholders Meeting to be held on September 23, 1997 and Management Information Circular was prepared in August. An Amalgamation Agreement between Clavos and MAC was executed as of October 23, 1997.
24. The share exchange ratio set out in the LOI was the ratio provided for in the amalgamation agreement.

(c) **Particulars of Insider Trading: Sale, Proceeds from Sale and Loss Avoided**

25. As part of the March 1997 private placement referred to above, Harris purchased units consisting of 250,000 shares of Clavos, which he placed in his RRSP account, and 250,000 share purchase warrants. Harris prepared an initial Insider Report which was dated May 21, 1997 and filed with the Commission on July 2, 1997. This Insider Report reflected Harris' ownership of the shares.

26. Harris sold all of his shares in Clavos as follows:

<u>Date</u>	<u>Sale of Clavos Shares (\$CDN)</u>	<u>Gross Proceeds</u>
June 18, 1997	Sold 50,000 at \$.75	\$37,000.00
June 18, 1997	Sold 50,000 at \$.80	\$40,000.00
June 26, 1997	Sold 150,000 at \$.80	<u>\$120,000.00</u>
		\$197,500.00
		Cost: \$87,500.00
		Net Proceeds: \$110,000.00

The average price of the shares on these sales was \$.79 CDN.

27. In the period prior to June, 1997, the trading of Clavos shares was as follows: From October to December, 1996, 3,500 shares traded in total with a price range of \$.30 to \$.35. In the month of February, 1997, 10,000 shares traded at \$.40. There were no other trades until the month of June, 1997, during which a total of 576,600 shares traded in the range of \$.55 to \$.85.

28. Trading in the shares of MAC resumed on January 28, 1998, trading in U.S. dollars, opening at \$.80 US per share, closing at .90 US, with a high that day of \$1.10 (after the two to one Clavos to MAC share consolidation). On January 28, 1998, 54,800 shares traded at an average price of \$.94 U.S.

29. As set out above, Harris' gross proceeds from the sale of Clavos' shares were \$197,500.00. The average trading price for Clavos' shares on January 28, 1998, was

\$.94US. Giving effect to the exchange ratio, had Harris not engaged in the trading described above, Harris would have held 125,000 shares of MAC as a result of the reorganization (\$117,500 US). The average conversion rate from US to CAD dollars on January 28, 1998 was 1.4567 (\$171,162.25 CAD). Based on the foregoing, the loss avoided by Harris as a result of the sale of his shares in Clavos was \$26,337.75.

30. The intention to clean up Clavos as a shell in order to complete a reorganization had been generally disclosed in early 1997. However, until the press release of June 27, 1997, the identity of the party with whom Clavos was negotiating was not public nor were the proposed terms of the reorganization.
31. Harris and Staff agree that prior to the date of Harris' first trades (June 18, 1997), the establishment of the terms of the corporate reorganization of Clavos was sufficiently advanced that it constituted a material fact which had not been generally disclosed.
32. At the time of Harris' trades as set out above, Harris was a "person in a special relationship" with Clavos (as that term is defined in subsection 76(5) of the *Act*) and had knowledge of a material fact regarding Clavos which had not been generally disclosed. As such, Harris' trading in the shares of Clavos constituted a contravention of subsection 76(1) of the *Act* and was conduct contrary to the public interest.

(d) Failure to File Insider Reports and Failure to Correct Information Circular

33. Harris knew of his obligations under the *Act* to file insider reports. Due to an oversight, Harris did not file reports as required under section 107 of the *Act* regarding his sales of Clavos shares on June 18 and 26, 1997. Harris accepts responsibility for this oversight.
34. The Management Information Circular issued in August, 1997 regarding the corporate reorganization of Clavos contained misleading information in that it stated that Harris continued to own 250,000 shares in Clavos. Harris knew that it was important for correct information regarding major shareholders to be disclosed in the Management Information Circular. Harris accepts responsibility for his failure to correct the Management Information Circular.

IV. TERMS OF SETTLEMENT

35. The respondent agrees to the following terms of Settlement:

- (a) Pursuant to clause 2 of subsection 127(1) of the *Act*, Harris will cease trading securities for a period of 24 months effective the date of the Order of the Commission approving the proposed settlement agreement herein.
- (b) Pursuant to clause 3 of subsection 127(1) of the *Act*, any exemptions contained in Ontario securities law will not apply to the respondent for a period of 24 months effective from the date of the Order of the Commission approving the proposed settlement agreement herein.
- (c) Pursuant to clause 6 of subsection 127(1) of the *Act*, the respondent shall be reprimanded.
- (d) Pursuant to clause 7 of subsection 127(1) of the *Act*, the respondent shall resign all positions that he holds as an officer and director of an issuer.
- (e) Pursuant to clause 8 of subsection 127(1) of the *Act*, the respondent be prohibited from becoming or acting as a director or officer of an issuer for a period of 24 months years effective the date of the Order of the Commission approving the proposed settlement agreement herein.
- (f) Pursuant to s. 127.1 of the *Act*, the respondent agrees to pay the sum of \$12,500 in respect of the costs of the investigation and of the hearing.
- (g) the respondent will make a settlement payment of \$39,500.00 to the Ontario Securities Commission for allocation to or for the benefit of such third parties as may be approved by the Minister under section 3.4(2) of the *Act*.
- (h) The respondent will attend in person at the hearing before the Commission to consider the proposed settlement.

V. STAFF COMMITMENT

36. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the *Act* against Harris respecting the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 37 below.
37. If this Settlement Agreement is approved by the Commission, and at any subsequent time Harris fails to honour any of the Terms of Settlement set out in Part IV herein, Staff reserve the right to bring proceedings under Ontario securities law against the respondent based on the facts set out in Part III of this Settlement Agreement, as well as the breach of this Settlement Agreement.

VI. PROCEDURE FOR APPROVAL OF SETTLEMENT

38. Approval of this Settlement Agreement shall be sought at a public hearing of the Commission (the "Settlement Hearing") scheduled for such date as is agreed to by Staff and Harris.
39. Counsel for Staff and counsel for Harris may refer to any part or all of this Settlement Agreement at the Settlement Hearing. Staff and Harris agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing.
40. If this Settlement Agreement is approved by the Commission, Harris agrees to waive his rights under the *Act* to a full hearing, judicial review or appeal of the matter.
41. Whether or not the Settlement Agreement is approved by the Commission, Harris agrees that he will not, in any proceeding, refer to or rely on this Settlement Agreement, the settlement discussions/negotiations, or the process of approval of this Settlement Agreement as the basis of any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

42. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or an Order in the form attached as Schedule "A" is not made by the Commission:

(a) this Settlement Agreement and its terms, including all discussions and negotiations between Staff and Harris leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and Harris; and

(b) except as set out in paragraph 41 above, Staff and Harris shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by this Settlement Agreement or the settlement discussions/negotiations.

VII. DISCLOSURE OF AGREEMENT

43. Except as required above, this Settlement Agreement and its terms will be treated as confidential by Staff and Harris until approved by the Commission, and forever if, for any reason whatsoever, this Settlement Agreement is not approved by the Commission, except with the written consent of Staff and Harris, or as may be required by law.

44. Any obligations of confidentiality attaching to this Settlement Agreement shall terminate upon approval of this settlement by the Commission.

45. Staff and Harris agree that if this Settlement Agreement is approved by the Commission, they will not make any public statement inconsistent with this Settlement Agreement.

VII. EXECUTION OF SETTLEMENT AGREEMENT

46. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

47. A facsimile copy of any signature shall be as effective as an original signature.

DATED AT TORONTO this 4th day of November, 2004.

“Robert Walter Harris”
Robert Walter Harris

“Michael Watson”
Staff of the Commission

Witness

SCHEDULE “A”

IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, c. S.5, as amended

- and -

IN THE MATTER OF
ROBERT WALTER HARRIS

ORDER
(Section 127 and 127.1)

WHEREAS on June 25, 2003, the Ontario Securities Commission issued a Notice of Hearing pursuant to sections 127(1) and 127.1 of the *Securities Act* in respect of Robert Walter Harris (“Harris”);

AND WHEREAS Harris entered into a settlement agreement with Staff of the Commission dated November 4th, 2004 (the “Settlement Agreement”) in which he agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

AND WHEREAS Staff recommend approval of the Settlement Agreement;

AND UPON reviewing the Settlement Agreement and the Notice of Hearing of Staff of the Commission, and upon hearing submissions of Staff and counsel for Harris;

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, attached to this Order as Schedule "A" is hereby approved;
2. pursuant to clause 2 of subsection 127(1) of the *Act*, Harris will cease trading securities for a period of 24 months effective from the date of this Order;
3. pursuant to clause 3 of subsection 127(1) of the *Act*, any exemptions contained in Ontario securities law will not apply to Harris for a period of 24 months effective from the date of this Order;
4. pursuant to clause 6 of subsection 127(1) of the *Act*, Harris shall be reprimanded;
5. pursuant to clause 7 of subsection 127(1) of the *Act*, Harris shall resign all positions that he holds as an officer and director of an issuer;
6. pursuant to clause 8 of subsection 127(1) of the *Act*, Harris shall be prohibited from becoming or acting as a director or officer of an issuer for a period of 24 months effective from the date of this Order;
7. pursuant to section 127.1 of the *Act*, Harris shall pay the sum of \$12,500 to the Ontario Securities Commission by certified cheque in respect of a portion of the costs of the investigation and proceeding in relation to this matter; and

