

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

- AND -

**IN THE MATTER OF
MATTHEW SCOTT SINCLAIR**

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Ontario Securities Commission (the “Commission”) will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to sections 127 and 127.1 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 certain orders in respect of Matthew Scott Sinclair (the “Respondent” or “Sinclair”).

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission (“Staff”) agree to recommend settlement of the proceeding commenced by Notice of Hearing (the “Proceeding”) against the Respondent according to the terms and conditions set out in Part V of this Settlement Agreement. The Respondent agrees to the making of an order in the form attached as Schedule “A”, based on the facts set out below.

PART III – AGREED FACTS

3. For this proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, the Respondent agrees with the facts as set out in Part III of this Settlement Agreement.

A. The Respondent

4. At all material times, Merchant Capital Group Inc. (“MCGI”) was a reporting issuer in Ontario with its head office in Toronto.
5. At all material times, Sinclair was the Chairman, President, Chief Executive Officer and directing mind of MCGI.
6. Sinclair was registered with the Commission in the category of Director on May 1, 2003 and Chief Executive Officer (Non-Trading) on April 29, 2004. Sinclair’s registration was held through Merchant Capital Wealth Management Corp. (“Merchant Capital Wealth Management”), a Mutual Fund Dealer and Limited Market Dealer.
7. MCGI controlled, either directly or indirectly, the following corporations: Merchant Capital Wealth Management, Merchant Capital Securities Corporation (“MCSC”), @rgentum Management & Research Corporation and Applied Carbon Technology (America), Inc.

B. The Management Cease Trade Order

8. On May 21, 2002, MCGI issued a press release which announced that it would be unable to file its audited financial statements for the year ended December 31, 2001, on or prior to May 21, 2002 as required under Ontario securities law. MCGI acknowledged that: “[i]t is anticipated that the Ontario Securities Commission (the “OSC”) will forthwith impose a management cease trade order with respect to the securities of [MCGI]. Should [MCGI] fail to SEDAR file its financial statements on or before July 22, 2002[,] the OSC may impose a cease trade order that all trading in securities of [MCGI] cease for such period specified in the OSC order[.]”

9. On May 23, 2002, the Commission issued a Temporary Management Cease Trade Order against Sinclair and other directors, officers and insiders of MCGI prohibiting each from trading in securities of MCGI given MCGI's failure to file audited financial statements (the "TMCTO").
10. On June 5, 2002, the TMCTO was extended by the Commission until such time as the Commission received all filings by MCGI as required pursuant to Ontario securities law or until further order of the Commission (the "MCTO"). The MCTO remains in effect.

C. The Cease Trade Order

11. On July 23, 2002, the Commission issued a Temporary Cease Trade Order against MCGI for its continued failure to file audited financial statements (the "TCTO").
12. On August 2, 2002, the TCTO was extended by the Commission until further order of the Commission revoking it (the "CTO"). The CTO remains in effect.

D. Breach of the Cease Trade Order

(a) Private Placement of Convertible Debentures

13. On July 15, 2002, MCGI issued a press release announcing that it intended to privately issue up to \$4 million worth of convertible debentures (the "Convertible Debentures").
14. The Convertible Debentures offered by MCGI were for 3-year term with a 14% annual interest rate, payable semi-annually, and were convertible to MCGI common shares over the 3-year term at the option of the debenture holder and based on a prescribed timetable.

15. MCGI's offering was intended to raise up to \$7 million, of which MCGI represented in its offering documents that \$3 million had already been raised as of December 27, 2001. The proceeds of MCGI's offering were to be used for capital expenditures for MCGI's subsidiaries and for working capital for MCGI.
16. No prospectus was filed by MCGI nor was a receipt issued by the Commission in respect of the Convertible Debentures.
17. Between August 1, 2002 and March 5, 2003, MCGI received at least \$500,000 through the sale of the Convertible Debentures. The Convertible Debentures were signed by Sinclair on behalf of MCGI.

(b) Restructuring of Convertible Debentures

18. In or around August 2004, Sinclair, on behalf of MCGI and MCSC, made a proposal to the Convertible Debenture holders for the "effective restructuring" of the securities.
19. Under the terms of the proposal, the Convertible Debenture holders would sell their Convertible Debentures to MCSC for the original principal amount of the Convertible Debenture. In exchange, MCSC would issue a matching convertible debenture with the exception that the maturity date would be extended and the conversion feature would be amended to provide for conversion into the common shares of MCSC or a related company, if and when MCSC, or a related company, completed a public listing of its securities (the "MCSC Convertible Debentures").
20. Upon acceptance of the terms of the proposal and upon executing a convertible debenture agreement with MCSC, holders of the Convertible Debentures would become holders of MCSC Convertible Debentures.
21. The proposal of Convertible Debentures for MCSC Convertible Debentures was facilitated by MCGI at the direction of Sinclair. At the material period, Sinclair was also the directing mind of MCSC.

PART IV – CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST

22. Sinclair admits and acknowledges that the sales of the Convertible Debentures between August 1, 2002 and March 5, 2003 constituted trades in securities by MCGI and Sinclair.
23. Sinclair admits and acknowledges that the restructuring of the Convertible Debentures in 2004, as proposed and facilitated by MCGI, MCSC and Sinclair, constituted acts in furtherance of trades by them within the meaning of the Act.
24. Sinclair admits and acknowledges that the sales of the Convertible Debentures and the MCSC Convertible Debentures were made by MCGI, MCSC and Sinclair in breach of section 53 of the Act.
25. Furthermore, by trading in securities while it was subject to the TCTO and CTO, MCGI breached the respective cease trade orders and therefore contravened Ontario securities law. Sinclair admits to having authorized, permitted or acquiesced in the trading by MCGI and is therefore deemed to also have contravened Ontario securities law.
26. The conduct of MCGI and Sinclair was contrary to Ontario securities law and contrary to the public interest.

PART V – TERMS OF SETTLEMENT

27. The Respondent agrees to the terms of settlement listed below.
28. The Commission will make an order pursuant to section 127(1) and section 127.1 of the Act that:
 - (a) the Settlement Agreement is approved;
 - (b) Sinclair be reprimanded;

- (c) Sinclair be prohibited from becoming or acting as an officer or director of a reporting issuer until the later of (a) ten (10) years from the date of approval of the Settlement Agreement and (b) the date he completes a course acceptable to Staff regarding the duties of directors and officers of reporting issuers;
- (d) Sinclair cease trading in securities for a period of ten (10) years, with the exception that Sinclair be permitted to trade in securities within a single account for a registered retirement savings plan (as defined in the *Income Tax Act* (Canada)) in which he has sole legal and beneficial ownership and interest, provided that:
 - (i) the securities are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund which is a reporting issuer;
 - (ii) Sinclair does not own legally or beneficially more than one percent of the outstanding securities of the class or series of the class in question; and
 - (iii) Sinclair must carry out any permitted trading through a registered dealer and through one account opened in his name only and must close any other accounts;
- (e) any exemptions contained in Ontario securities law do not apply to Sinclair for a period of ten (10) years, except for any exemptions necessary to allow the trading in securities permitted in paragraph (d) above;
- (f) any registration granted to Sinclair under Ontario securities law be terminated;
- (g) Sinclair resign all positions he holds as a director or officer of a registrant;

- (h) Sinclair be prohibited from becoming or acting as a director, officer or employee of a registrant permanently;
 - (i) Sinclair pay the sum of \$15,000 towards Staff's costs relating to the investigation and hearing of this matter; and
 - (j) Sinclair not be reimbursed for, or receive a contribution toward, any payment ordered above from any other person or company.
29. Sinclair will attend, in person, at the hearing before the Commission to consider the proposed settlement.

PART VI – STAFF COMMITMENT

- 30. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding under Ontario securities law in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 31 below.
- 31. If the Commission approves this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against the Respondent. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement.

PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

- 32. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for Friday, April 3, 2009, or on another date agreed to by Staff and the Respondent, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Practice.
- 33. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on the Respondent's

conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.

34. If the Commission approves this Settlement Agreement, the Respondent agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.
35. If the Commission approves this Settlement Agreement, neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.
36. Whether or not the Commission approves this Settlement Agreement, the Respondent will not use, in any proceeding, this Settlement 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.

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

37. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:
 - i. this Settlement Agreement and all discussions and negotiations between Staff and the Respondent before the settlement hearing takes place will be without prejudice to Staff and the Respondent; and
 - ii. Staff and the Respondent will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.

38. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality. If the Commission does not approve the Settlement Agreement, both parties must continue to keep the terms of the Settlement Agreement confidential, unless they agree in writing not to do so or if required by law.

PART IX – EXECUTION OF SETTLEMENT AGREEMENT

39. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.
40. A fax copy of any signature will be treated as an original signature.

Dated this 2nd day of April, 2009.

"Matthew Scott Sinclair"

Respondent

"Michael Donsky"

Witness

"Tom Atkinson"

Director, Enforcement Branch

SCHEDULE “A”

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

- AND -

**IN THE MATTER OF
MATTHEW SCOTT SINCLAIR**

ORDER

(Sections 127 and 127.1)

WHEREAS on June 16, 2008, the Ontario Securities Commission (the “Commission”) issued a Notice of Hearing and related Statement of Allegations (the “Notice of Hearing”) against Matthew Scott Sinclair (the “Respondent” or “Sinclair”);

AND WHEREAS the Respondent has entered into a settlement agreement with Staff of the Commission dated April 2 , 2009 (the “Settlement Agreement”) in relation to the matters set out in the Notice of Hearing;

UPON reviewing the Notice of Hearing and Settlement Agreement, and upon hearing submissions from counsel for Sinclair 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:

- (a) the Settlement Agreement is approved;
- (b) Sinclair is reprimanded by the Commission;
- (c) Sinclair is prohibited from becoming or acting as an officer or director of a reporting issuer until the later of (a) ten (10) years from the date of approval of the Settlement Agreement and (b) the date he completes a course acceptable to Staff regarding the duties of directors and officers of reporting issuers;

- (d) Sinclair cease trading in securities for a period of ten (10) years, with the exception that Sinclair be permitted to trade in securities within a single account for a registered retirement savings plan (as defined in the *Income Tax Act* (Canada)) in which he has sole legal and beneficial ownership and interest, provided that:
- (i) the securities are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange or NASDAQ (or their successor exchanges) or are issued by a mutual fund which is a reporting issuer;
 - (ii) Sinclair does not own legally or beneficially more than one percent of the outstanding securities of the class or series of the class in question; and
 - (iii) Sinclair must carry out any permitted trading through a registered dealer and through one account opened in his name only and must close any other accounts;
- (e) any exemptions contained in Ontario securities law do not apply to Sinclair for a period of ten (10) years, except for any exemptions necessary to allow the trading in securities permitted in paragraph (d) above;
- (f) any registration granted to Sinclair under Ontario securities law be terminated;
- (g) Sinclair resign all positions he holds as a director or officer of a registrant;
- (h) Sinclair be prohibited from becoming or acting as a director, officer or employee of a registrant permanently;
- (i) Sinclair pay the sum of \$15,000 towards Staff's costs relating to the investigation and hearing of this matter;
- (j) Sinclair not be reimbursed for, or receive a contribution toward, any payment

ordered above from any other person or company

Dated at Toronto this _____ day of _____, 2009.

Wendell S. Wigle, Q.C.

Suresh Thakrar