

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

- and -

IN THE MATTER OF ALKARIM JIVRAJ

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Hearing dated December 17, 2001 (the "Notice of Hearing"), the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing to consider whether, pursuant to sections 127(1) 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:
 - (a) to make an order approving the proposed settlement entered into between Staff of the Commission ("Staff") and Alkarim Jivraj ("Jivraj") of this proceeding, pursuant to sections 127 and 127.1 of the Act, which approval will be sought jointly by Staff and Jivraj;
 - (b) to make an order that the respondent Jivraj be reprimanded;
 - (c) to make an order that the respondent Jivraj pay costs to the Commission.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff agree to recommend settlement of the proceeding initiated in respect of the respondent Jivraj by the Notice of Hearing in accordance with the terms and conditions set out below. Jivraj 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. STATEMENT OF FACTS

ACKNOWLEDGEMENT

3. For the purpose of this proceeding only Jivraj agrees with the facts as set out in this Part III.

FACTS

YORKTON SECURITIES INC.

4. Yorkton Securities Inc. ("Yorkton") is registered as, among other things, a broker and investment dealer under the Act and is a member of, among other things, The Toronto Stock Exchange (the "TSE") and the Investment Dealers Association of Canada (the "IDA"). Yorkton is an employee-owned firm with over 600 employees. Yorkton is a wholly-owned subsidiary of Yorkton Financial Inc.
5. Jivraj is an investment banker who has been employed at Yorkton since 1996. In 1998, Jivraj was employed by Yorkton as an Associate working under the supervision of the head of investment banking. Later, Jivraj was registered as an approved, non-trading officer with the title of Vice-President and Director from May 24, 2000 to March 12,

2001. Since March 12, 2001 Jivraj has been registered as an approved, non-trading officer with the title of Vice-President and Managing Director, Technology Investment.

6. The conduct of Jivraj that is the subject matter of this Settlement Agreement occurred prior to February 2001 (the “Material Time”).

XENCET AND GTI RTO

7. GTR Group Inc. (“GTR”) was the continuing company formed through the reverse take-over (the “RTO”) by Games Trader Inc. (“GTI”) of the listed “shell” then known as Xencet Investments Inc. (“Xencet”) in October 1998 and the concurrent exchange of securities with shareholders of 1308129 Ontario Inc. (“1308129”). Effective September 5, 2001, GTR changed its name to Mad Catz Interactive Inc. During the Material Time GTR was a reporting issuer in British Columbia, Alberta and Ontario and its common shares were listed and posted for trading on the TSE under the symbol GTR.
8. During the Material Time GTR carried on business through two operating subsidiaries. Through the first of those subsidiaries (which carried on business under the name “Games Trader”), GTR was a supplier of video games to mass merchant and specialty retailers in the United States and Canada, with its principal business activity being the sourcing, refurbishing, repackaging and distribution of previously played video game software. Through the second of those subsidiaries, GTR designed, developed, manufactured (through third parties) and marketed interactive video game control devices and accessories.
9. GTI was, until it was taken public through the RTO, a closely-held company that carried on the business later operated under the “Games Trader” name.
10. Xencet Investments Inc. (“Xencet”) was a TSE listed company. In mid February 1998, Xencet had no significant operations. It held cash and cash equivalents in excess of \$7.5

million. Its only other asset was a listing on the TSE. To preserve this listing, the TSE required that Xencet enter into a legally binding agreement by August 18, 1998 to acquire an operating business that, if completed, would result in Xencet meeting the original listing requirements of the TSE.

11. In or about late July 1998, Jivraj was formally assigned to the Xencet/GTI RTO transaction, although Jivraj had information regarding the RTO prior to that date. Jivraj's primary responsibility was to close the financing transaction concurrent with the RTO.
12. On July 31, 1998, Xencet and GTI entered into an acquisition agreement (the "Acquisition Agreement"), as amended and restated on August 20, 1998, providing for the acquisition of all the issued and outstanding common shares of GTI, pursuant to securities exchange agreements to be entered into with the holders of GTI common shares in exchange for units of Xencet comprised of common shares and a fractional number of common share purchase warrants.
13. The share ratio agreed to by Xencet and GTI, as reflected in the Acquisition Agreement, was as follows:

"On the terms and subject to the conditions set out herein and in the Securities Exchange Agreement, the transactions contemplated by this Agreement shall be effected by the implementation of the following steps on the Closing Date:

- (a) Xencet shall acquire all of the GTI Securities from the GTI Securityholders in exchange for an aggregate of:
 - (i) 10,300,000 Xencet Common Shares; and
 - (ii) 1,000,000 Xencet Series A Warrants;
- (b) Peter Kozicz shall receive options to purchase 514,884 common shares of Xencet exercisable until April 7, 2000 for the Kozicz Options held by him, it being the intent that the options to be granted to Peter Kozicz will be granted at the market price of the common shares of Xencet, as agreed to with the TSE, and that the accrued gain in the Kozicz Options, being the excess of the exercise price per share of the options to be granted by Xencet to Peter Kozicz over \$0.4017 (the

“Excess Amount”) will be treated as a pre-payment of a portion of the exercise price per share payable under such options equal to the Excess Amount per share of the options to be granted to Peter Kozicz, so that Peter Kozicz is in the same economic position as if he continued to hold the Kozicz Options, and the TSE shall have approved the issuance of such options on the foregoing terms on or before August 12, 1998.”

The Acquisition Agreement and the terms contained therein were not then publicly available.

14. In mid-1998, Jivraj became aware that several senior Yorkton officers had purchased shares in GTI.
15. In mid-1998, Jivraj approached Yorkton’s then President and proposed that Yorkton’s then President sell to him common shares in GTI. Yorkton’s then President agreed to sell a portion of his position in GTI, subject to shareholder approval of the transfer to Jivraj.
16. On August 19, 1998, Jivraj completed the purchase of 2,217 common shares of GTI from the holding company of Yorkton’s then President, for \$1,441.05. The transfer was approved by a shareholder’s resolution dated August 19, 1998.
17. The RTO Transaction was publicly announced by Xencet on August 26, 1998, which announcement included disclosure of the share exchange ratio agreed to by Xencet and GTI as reflected in the Acquisition Agreement, as amended and restated on August 20, 1998. The RTO was completed by October 30, 1998, and the name of the company was changed to Games Traders Inc. (“GTR”) as of November 11, 1998. Following the RTO, the common shares of Xencet/GTR traded on the TSE at prices above the price of the GTI shares purchased by Jivraj in August of 1998. However, the shares of GTI acquired by Jivraj were subject to an escrow agreement and were not traded by Jivraj until March, 2000.

CONDUCT CONTRARY TO THE PUBLIC INTEREST

18. Jivraj's purchase of GTI shares was contrary to the public interest given his position as an investment banker, the nature of his involvement in assisting GTI with its financing, and either Jivraj's knowledge of undisclosed information in respect of the proposed RTO or the availability to Jivraj of such undisclosed information by virtue of his role in assisting GTI on the proposed RTO.

IV. TERMS OF SETTLEMENT

19. Jivraj agrees to the following terms of settlement:
- (a) at the time of approval of this settlement agreement, Jivraj will make a voluntary payment to the Commission in the amount of \$10,000, such payment to be allocated to such third parties as the Commission may determine for purposes that will benefit Ontario investors;
 - (b) that the Commission make an order under subsection 127(1)(6) of the Act that Jivraj be reprimanded; and
 - (c) that the Commission make an order under subsection 127.1(1)(b) of the Act that Jivraj make payment to the Commission in the amount of \$5,000 in respect of the costs of the Commission's investigation in relation to this proceeding, such payment to be made at the time of approval of this settlement.

V. CONSENT

20. Jivraj hereby consents to an order of the Commission incorporating the provisions of Part IV above in the form of an order attached as Schedule "A".

VI. STAFF COMMITMENT

21. If this settlement is approved by the Commission, Staff will not initiate any other proceeding under the *Securities Act*, R.S.O. 1990, c. S.5 against Jivraj respecting the facts set out in Part III of this Settlement Agreement.

VII. APPROVAL OF SETTLEMENT

22. Approval of the settlement set out in this Settlement Agreement shall be sought at the public hearing of the Commission scheduled for December 19, 2001, or such other date as may be agreed to by Staff and the respondent (the "Settlement Hearing").
23. Counsel for Staff or for Jivraj may refer to any part, or all, of this Settlement Agreement at the Settlement Hearing. Staff and Jivraj agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing.
24. If this settlement is approved by the Commission, Jivraj agrees to waive his rights to a full hearing, judicial review or appeal of the matter under the Act.
25. Staff and Jivraj agree that if this settlement is approved by the Commission, they will not make any public statement inconsistent with this Settlement Agreement.
26. If, for any reason whatsoever, this settlement 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 Jivraj leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and Jivraj;

- (b) Staff and Jivraj 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;
- (c) the terms of this Settlement Agreement will not be referred to in any subsequent proceeding, or disclosed to any person except with the written consent of Staff and Jivraj , or as may be required by law; and
- (d) Jivraj agrees that he will not, in any proceeding, refer to or rely upon 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.

VIII. DISCLOSURE OF AGREEMENT

- 43. Except as permitted under paragraph 42 above, this Settlement Agreement and its terms will be treated as confidential by Staff and Jivraj until approved by the Commission, and forever if, for any reason whatsoever, this settlement is not approved by the Commission, except with the written consent of Staff and Jivraj, or as may be required by law.
- 44. Any obligations of confidentiality shall terminate upon approval of this settlement by the Commission.

IX. EXECUTION OF SETTLEMENT AGREEMENT

45. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.
46. A facsimile copy of any signature shall be as effective as an original signature.

DATED this 17th day of December, 2001.

WITNESS

ALKARIM JIVRAJ

DATED this 17th day of December, 2001.

**STAFF OF THE
ONTARIO SECURITIES COMMISSION**

(Per) _____
Michael Watson
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 ALKARIM JIVRAJ

ORDER

WHEREAS on December 17, 2001, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127(1) and 127.1 of the *Securities Act*, R.S.O. 1990 c. S.5, as amended (the "Act") in respect of Alkarim Jivraj ("Jivraj");

AND WHEREAS Alkarim Jivraj ("Jivraj") entered into a settlement agreement dated December 17, 2001 (the "Settlement Agreement") in which it agreed to a proposed settlement of the proceeding, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement and the Statement of Allegations of Staff of the Commission ("Staff"), and upon hearing submissions from counsel for Jivraj and from Staff;

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 dated December 17, 2001, attached to this Order, is hereby approved;
2. pursuant to subsection 127(1)(6) of the Act, Jivraj is hereby reprimanded; and
3. pursuant to subsection 127.1(2)(b) of the Act, at the time of approval of this settlement, Jivraj is ordered to pay \$5,000 to the Commission in respect of a portion of the Commission's costs with respect to this matter.

DATED at Toronto this 19th day of December, 2001.
