

IN THE MATTER OF THE SECURITIES ACT,

R.S.O. 1990, C. S. 5, AS AMENDED

-AND-

IN THE MATTER OF JO-ANNE CHANG AND DAVID STONE

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Hearing dated January 16, 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 and s. 127.1(1) and (2) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”), it is in the public interest to, among other things, make an Order:
 - (a) pursuant to subsection 127(1), clause 6 that the respondents Jo-Anne Chang (“Chang”) and David Stone (“Stone”) be reprimanded;
 - (b) pursuant to subsection 127(1) clause 2 that trading in securities by Chang and Stone cease permanently or for such period as specified in the order;
 - (c) pursuant to subsection 127(1) clause 3 that any exemptions contained in Ontario securities law not apply to Chang and Stone permanently or for such period as specified in the order;
 - (d) pursuant to subsection 127(1) clause 7 that Chang and Stone resign one or more positions that they hold or may hold as officer or directors of any issuers;
 - (e) pursuant to subsection 127(1) clause 8 that Chang and Stone be prohibited from becoming or acting as a director or officer of any issuer; and

- (f) pursuant to subsection 127.1 of the Act that Chang and Stone pay the costs of Staff's investigation and the costs of and related to this proceeding incurred by or on behalf of the Commission.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff recommends settlement of the proceeding initiated in respect of Chang and Stone by the Notice of Hearing in accordance with the terms and conditions set out below. Chang and Stone agree to the settlement on the basis of the facts agreed to in Part IV and consent to the making of an Order in the form attached as Schedule "A" on the basis of those facts.
3. The terms of this settlement agreement, including the attached Schedule "A" (collectively, the "Settlement Agreement") will be released to the public only if and when the Settlement Agreement is approved by the Commission.

III. ACKNOWLEDGEMENT

4. Staff, Chang, and Stone agree with the facts set out in Part IV of this Settlement Agreement solely for the purposes of this Settlement Agreement and agree that this Settlement Agreement as to facts and admissions is without prejudice to Staff, Chang or Stone in any other proceeding including, without limitation, any civil, administrative, quasi-criminal or criminal actions or proceedings that may be brought by any person or agency. No other person or agency, or any other respondent in this matter, may raise or rely upon the terms of this Settlement Agreement, any agreement as to facts stated herein, or any admissions made herein, whether or not this Settlement Agreement is approved by the Commission.

IV. FACTS

5. Staff acknowledges that Chang was cooperative during the investigation of this matter and during the process of reaching settlement.

Introduction

6. Chang and Stone have been married for approximately 20 years.

7. Chang was the Director of Investor Relations at ATI, from in or about May 1996 until in or about September 2000. Her duties included communicating with analysts, shareholders, portfolio managers and brokers, drafting and issuing press releases, and responding to press questions. In the course of her duties she received weekly sales summaries.
8. In February 2000, Chang and Stone opened a brokerage account in the Turks and Caicos in the name of "QDOS Capital Corp." ("QDOS"). They held a joint beneficial interest in the sole share of the company.

Relevant Events at ATI

9. On May 16, 2000, senior management at ATI, and Chang, met to review the financial results for the third quarter ending May 31, 2000 ("Q3"), which they continued throughout the week. Upon conclusion of that review, senior management at ATI determined that the results for Q3 were almost certain to fall short of market expectations and determined that it would be appropriate to issue a press release and revised forecast.
10. Over the period May 20, 2000 to May 23, 2000 inclusive, Chang drafted this press release with input from various ATI employees, officers and directors.
11. On May 24, 2000, ATI issued a press release announcing that it would report "lower than expected revenues and a loss for the third quarter ending May 31, 2000."
12. As a result of this announcement, on May 24, 2000, ATI's shares fell from \$25.45 to \$14.75, a drop of 42%.
13. In May 2000, Chang was in a special relationship with ATI and had access to material facts with respect to ATI that had not been generally disclosed.
14. At some point prior to May 10, 2000, Chang informed Stone of material facts with respect to ATI which had not been generally disclosed. Specifically, she communicated to Stone her concerns about ATI's financial performance.

The Transactions in Issue

15. Between May 10 and May 19, 2000, Stone purchased, through the QDOS Canadian dollar account, 1,000 put options in ATI, for a total cost of \$311,180.20.
16. On May 24, 2000, Stone, through the QDOS Canadian dollar account, purchased 100,000 shares in ATI at an average price of \$14.70, exercised 1,000 ATI put option contracts, and then sold 100,000 shares in ATI at an average price of \$27.57.
17. The net profit derived from the trading was \$950,384.80.

Elaysian Holdings Limited

18. On July 3, 2000, Elaysian Holdings Limited was incorporated in the Turks and Caicos.
19. On September 7, 2000, the QDOS Canadian dollar account transferred CDN \$1,277,962.30 (US \$863,196.42) to the QDOS US dollar account.
20. On September 11, 2000, US dollar and Canadian dollar accounts were opened in the name of Elaysian in the Turks and Caicos. A New Client Application Form was completed for the account. The documentation states that the beneficial owners of the Elaysian account were Chang and Stone.
21. On September 12, 2000, the QDOS US dollar account transferred US \$1,036,165.63 out of the account by wire transfer. By the end of October 2000, QDOS had closed its Canadian and US dollar accounts.
22. A wire transfer request dated September 12, 2000 indicates that US \$1,036,165.63 was transferred out of the QDOS account and transferred to the account of a law firm in the Turks and Caicos.
23. Between September 22, 2000 and November 14, 2000, the Elaysian US dollar account received a total of \$1,033,645.89 in deposits.

Sovereign Ltd.

24. Prior to becoming aware of her trading, Staff issued a summons to Chang, compelling her attendance at an examination as a witness. By agreement with her counsel, the date of the examination was scheduled for July 12, 2002.
25. On July 11, 2002, Staff advised Chang, through her counsel at the time, who was also acting as counsel for ATI, that the examination would not be proceeding. Without giving reasons why, Staff also advised counsel that Staff believed he was in a potential conflict-of-interest, and recommended that Chang obtain new counsel. Chang subsequently obtained new counsel.
26. On July 17, 2002, the broker in the Turks and Caicos responsible for the Elaysian accounts emailed a colleague in the Cayman Islands, advising that she would be receiving a call from a lawyer with a Turks and Caicos firm about a client who wanted to “move his assets from TCI to elsewhere”. In the email, the broker stated that the account was in the size of “1.7 mm C\$”.
27. On July 19, 2002, the Turks and Caicos law firm gave instructions to the bank holding the Elaysian account to liquidate the Elaysian account and transfer the holdings for the ultimate credit of the law firm.
28. On July 19, 2002, CDN \$1,633,996.59 was transferred out of the Elaysian Canadian Dollar account by way of wire transfer.
29. On July 22, 2002, the bank employee who had been instructed to make the transfer emailed his Caymans Islands colleague about a referral whose money “had been sent and received at the lawyers”.
30. On July 25, 2002, the broker again sent an email to his Cayman Islands colleague stating that the beneficial owners that he had referred to her the previous week may be under investigation with respect to possible insider trading from a couple of years earlier.
31. On July 26, 2002, the broker sent a fax to the bank instructing them to close the Elaysian account.

32. On August 12, 2002, the broker drafted a letter of reference for Chang and Stone to his Cayman Islands colleague.
33. On August 21, 2002, the broker sent an email to a different colleague in the Cayman Islands regarding the setting up of an account for Stone and Chang.
34. On August 22, 2002, Sovereign Ltd. was incorporated on the Island of Nevis.
35. On August 29, 2002, US and Canadian dollar accounts in the name of Sovereign Ltd. were opened. Corporate trading resolutions for this account list Stone and Chang as the trading and signing officers for the account.
36. On September 5, 2002, the Sovereign Canadian dollar account received \$1,578,330.07 in two separate deposits. The next day these funds were used to purchase Government of Canada Treasury Bills worth \$1,577,347.89.
37. By Directions issued by the Ontario Securities Commission dated December 5, 2003 pursuant to subsection 126(1) of the *Act* (the "Directions"), RBC Dominion Securities and RBC Global were directed to retain and hold all funds, securities or property held in the Sovereign Canadian dollar account until the Commission varied or revoked the Direction or consented to a release of a particular fund, or until the Ontario Superior Court of Justice ordered otherwise. The Directions were continued by orders of the Ontario Superior Court of Justice dated December 11, 2003 and February 10, 2004.
38. Chang and Stone admit and acknowledge that their conduct was contrary to the public interest.
39. Stone admits and acknowledges that the conduct described herein contravened subsection 76(1) of the *Act*.
40. Chang admits and acknowledges that the conduct described herein contravened subsection 76(2) of the *Act*.

V. TERMS OF SETTLEMENT

41. The Respondents agree to the following Terms of Settlement:

- (a) Pursuant to clause 2 of subsection 127(1) of the *Act*, Stone shall cease trading in securities permanently, commencing on April 11, 2005, with the exception that Stone shall be permitted to trade in securities limited to:
 - (i) mutual funds, through a registered dealer, in his registered retirement savings plan accounts, (as defined in the *Income Tax Act (Canada)*) (“RRSP Accounts”);
 - (ii) securities in a managed RRSP Account over which neither Chang nor Stone have discretionary trading authority;
 - (iii) government debt securities; and
 - (iv) securities of an issuer that is not a reporting issuer pursuant to the securities law of any jurisdiction in Canada.
- (b) Pursuant to clause 7 of subsection 127(1) of the *Act*, Stone shall resign any position as a director or officer of a reporting issuer commencing April 11, 2005.
- (c) Pursuant to clause 8 of subsection 127(1) of the *Act*, Stone shall be permanently prohibited from becoming or acting as a director or officer of a reporting issuer commencing on April 11, 2005.
- (d) Pursuant to clause 6 of subsection 127(1) of the *Act*, Stone shall be reprimanded.
- (e) Pursuant to clause 2 of subsection 127(1) of the *Act*, Chang shall cease trading in securities for a period of twenty years, commencing on April 11, 2005, with the exception that Chang shall be permitted to trade in securities limited to:
 - (i) mutual funds, through a registered dealer, in her RRSP Accounts;
 - (ii) securities in a managed RRSP Account over which neither Chang nor Stone have discretionary trading authority;
 - (iii) government debt securities; and

- (iv) securities of an issuer that is not a reporting issuer pursuant to the securities law of any jurisdiction in Canada.
- (f) Pursuant to clause 7 of subsection 127(1) of the *Act*, Chang shall resign any position as a director or officer of a reporting issuer commencing April 11, 2005.
- (g) Pursuant to clause 8 of subsection 127(1) of the *Act*, Chang shall be prohibited from becoming or acting as a director or officer of a reporting issuer for a period of ten years, commencing on April 11, 2005.
- (h) Pursuant to clause 6 of subsection 127(1) of the *Act*, Chang shall be reprimanded.
- (i) Chang and Stone will pay the following amounts to the Commission (collectively, the "Settlement Amounts")
 - (i) \$950,384.80 as disgorgement of monies obtained as a result of the non-compliance with Ontario securities law and for the allocation to or for the benefit of third parties under section 3.4(2) of the *Act*
 - (ii) \$126,820 as disgorgement of interest accrued on monies obtained as a result of non-compliance with Ontario securities law and for the allocation to or for the benefit of third parties under section 3.4(2) of the *Act*
 - (iii) pursuant to section 127.1 of the *Act*, \$100,000 in respect of a portion of the costs of the investigation and hearing in relation to his matter; and
 - (iv) \$311,180.20 for allocation to or for the benefit of third parties under section 3.4(2) of the *Act*.
- (j) Pursuant to section 126(7) of the *Act*, Chang and Stone will apply to the Commission for an Order:
 - (i) varying the Directions and authorizing and directing RBC Dominion Securities Inc. and RBC Dominion Securities Global Limited to pay \$1,488,385 to the Commission, in satisfaction of the Settlement Amounts; and

- (ii) providing that immediately upon the making of the payment of the Settlement Amounts as set out in (j)(i), the Directions shall be revoked.
- (k) notwithstanding subparagraphs (a) and (e), Chang and Stone shall be permitted to trade for 30 days from the date of the Order in order to dispose of securities owned by Chang and/or Stone as of the date of the Order.

VI. STAFF COMMITMENT

- 42. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceedings under Ontario securities law against Chang or Stone respecting any conduct or alleged conduct of Chang or Stone in relation to the facts set out in Part IV of this Settlement Agreement. This Settlement Agreement constitutes full answer to the allegations contained in the Notice of Hearing.

VII. PROCEDURE FOR APPROVAL OF SETTLEMENT

- 43. Approval of this Settlement Agreement shall be sought at a public hearing of the Commission (the "Settlement Hearing") scheduled for April 11 , 2005 at 2:00 p.m.
- 44. Counsel for Staff and counsel for Chang and Stone may refer to any part or all of this Settlement Agreement at the Settlement Hearing. Staff, Chang, and Stone agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing.
- 45. If this Settlement Agreement is approved by the Commission, Chang and Stone agree to waive their rights under the *Act* to a full hearing, judicial review or appeal of the matter.
- 46. Whether or not the Settlement Agreement is approved by the Commission, Chang and Stone agree that they will not, in any proceeding, refer to or rely on the Settlement Agreement, the settlement discussions and 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.

47. 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 Chang and Stone leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff, Chang, and Stone; and

(b) except as set out in paragraph 46 above, Staff, Chang, and Stone 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 discussion/negotiations.

VIII. DISCLOSURE OF AGREEMENT

48. Except as required above, this Settlement Agreement and its terms will be treated as confidential by Staff, Chang, and Stone 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, Chang, and Stone, or as may be required by law.

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

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

VIII. EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED AT TORONTO this “9” th day of April, 2005.

“Jo-Anne M. Chang”

Jo-Anne Chang

“Michael Watson”

Ontario Securities Commission

“David Stone”

David Stone

“Alexander Cobb”

Witness

SCHEDULE “A”

IN THE MATTER OF THE SECURITIES ACT,

R.S.O. 1990, C. S. 5, AS AMENDED

-AND-

IN THE MATTER OF JO-ANNE CHANG AND DAVID STONE

ORDER

(Section 127 and 127.1)

WHEREAS on January 16, 2003, the Ontario Securities Commission (the “Commission”) issued a Notice of Hearing pursuant to sections 127(1) and 127.1 of the *Securities Act* in respect of Jo-Anne Chang (“Chang”) and David Stone (“Stone”);

AND WHEREAS Chang and Stone entered into a settlement agreement with Staff of the Commission dated April 8, 2005 (the “Settlement Agreement”) in which they agreed to a proposed settlement of the proceedings commenced by the Notice of Hearing, subject to the approval of the Commission;

AND WHEREAS Staff recommends 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 Chang and Stone;

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*, Stone shall cease trading in securities permanently, commencing on April 11, 2005, with the exception that Stone shall be permitted to trade in securities limited to:
 - (a) mutual funds, through a registered dealer, in his registered retirement savings plan accounts (as defined in the *Income Tax Act (Canada)*) ("RRSP Accounts");
 - (b) securities in a managed RRSP Account over which neither Chang nor Stone have discretionary trading authority;
 - (c) government debt securities; and
 - (d) securities of an issuer that is not a reporting issuer pursuant to the securities law of any jurisdiction in Canada.
3. Pursuant to clause 7 of subsection 127(1) of the *Act*, Stone shall resign any position as a director or officer of a reporting issuer commencing April 11, 2005.
4. Pursuant to clause 8 of subsection 127(1) of the *Act*, Stone shall be permanently prohibited from becoming or acting as a director or officer of a reporting issuer commencing on April 11, 2005.
5. Pursuant to clause 6 of subsection 127(1) of the *Act*, Stone shall be reprimanded.
6. Pursuant to clause 2 of subsection 127(1) of the *Act*, Chang shall cease trading in securities for a period of twenty years, commencing on April 11, 2005, with the exception that Chang shall be permitted to trade in securities limited to:
 - (a) mutual funds, through a registered dealer, in her RRSP Accounts;
 - (b) securities in a managed RRSP Account over which neither Chang nor Stone have discretionary trading authority;
 - (c) government debt securities; and

- (d) securities of an issuer that is not a reporting issuer pursuant to the securities law of any jurisdiction in Canada.
7. Pursuant to clause 7 of subsection 127(1) of the *Act*, Chang shall resign any position as a director or officer of a reporting issuer commencing April 11, 2005.
 8. Pursuant to clause 8 of subsection 127(1) of the *Act*, Chang shall be prohibited from becoming or acting as a director or officer of a reporting issuer for a period of ten years, commencing on April 11, 2005.
 9. Pursuant to clause 6 of subsection 127(1) of the *Act*, Chang shall be reprimanded.
 10. Chang and Stone will pay the following amounts to the Commission (collectively, the “Settlement Amounts”)
 - (a) \$950,384.80 as disgorgement of monies obtained as a result of the non-compliance with Ontario securities law and for the allocation to or for the benefit of third parties under section 3.4(2) of the *Act*
 - (b) \$126,820 as disgorgement of interest accrued on monies obtained as a result of non-compliance with Ontario securities law and for the allocation to or for the benefit of third parties under section 3.4(2) of the *Act*
 - (c) pursuant to section 127.1 of the *Act*, \$100,000 in respect of a portion of the costs of the investigation and hearing in relation to his matter; and
 - (d) \$311,180.20 for allocation to or for the benefit of third parties under section 3.4(2) of the *Act*.
 11. Pursuant to section 126(7) of the *Act*, Chang and Stone will apply to the Commission for an Order:
 - (a) varying the Directions and authorizing and directing RBC Dominion Securities Inc. and RBC Dominion Securities Global Limited to pay \$1,488,385 to the Commission, in satisfaction of the Settlement Amounts; and

(b) providing that immediately upon the making of the payment of the Settlement Amounts as set out in 11(a), the Directions shall be revoked.

12. notwithstanding subparagraphs (a) and (e), Chang and Stone shall be permitted to trade for 30 days from the date of the Order in order to dispose of securities owned by Chang and/or Stone as of the date of the Order

DATED at Toronto this 11th day of April, 2005.
