



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

- and -

**IN THE MATTER OF THE
COMMODITY FUTURES ACT
R.S.O. 1990, c. C.20, AS AMENDED**

- and -

**AXCESS AUTOMATION LLC,
AXCESS FUND MANAGEMENT, LLC, AXCESS FUND, L.P.,
GORDON ALAN DRIVER, DAVID RUTLEDGE, 6845941 CANADA INC. carrying on
business as ANESIS INVESTMENTS, STEVEN M. TAYLOR,
BERKSHIRE MANAGEMENT SERVICES INC. carrying on business as
INTERNATIONAL COMMUNICATION STRATEGIES, 1303066 ONTARIO LTD.
carrying on business as ACG GRAPHIC COMMUNICATIONS,
MONTECASSINO MANAGEMENT CORPORATION,
REYNOLD MAINSE, WORLD CLASS COMMUNICATIONS INC.
and RONALD MAINSE**

**SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
and RONALD MAINSE**

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(1) and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “*Securities Act*”) and sections 60 and 60.1 of the *Commodity Futures Act*, R.S.O. 1990, c. C. 20, as amended (the “*Commodity Futures Act*”) it is in the public interest for the Commission to make certain orders in respect of Ronald Mainse (“Ronald”).

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission (“Staff”) agree to recommend settlement of the proceeding to be commenced by Notice of Hearing (the “Proceeding”) against Ronald according to the terms and conditions set out in Part VI of this Settlement Agreement. Ronald 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, Ronald agrees with the facts as set out in Part III of this Settlement Agreement.

(a) Background

4. In the period July 2007 to March 2009 (the “Material Time”), Ronald was the President of a Christian non-profit charitable organization with which he continues to be employed in a senior capacity. Ronald is 47 years old, an Ontario resident and has never been registered with the Commission nor employed in any capacity as, or on behalf of, a market participant.

5. Reynold Mainse (“Reynold”) is Ronald’s brother. Reynold is 48 years old, is an Ontario resident and has never been registered with the Commission nor employed in any capacity as, or on behalf of, a market participant. During the Material Time, Reynold was the sole director and President of World Class Communications Inc., which had contracts with the Christian non-profit charitable organization to lead and promote international humanitarian aid missions.

6. David Rutledge (“Rutledge”) is a cousin of Ronald and Reynold. Rutledge is an ordained minister and was a pastor for nearly 20 years. From 2003 to 2008, Rutledge worked for the same Christian non-profit charitable organization as Ronald. Rutledge is 46 years old, an Ontario resident and has never been registered with the Commission nor employed in any capacity as, or on behalf of, a market participant.

7. Ronald first met Gordon Alan Driver (“Driver”) in 1977 when he was a teenager and Driver was employed with the Christian non-profit charitable organization. Driver is 52 years old. After Driver ceased to be employed by the Christian non-profit charitable organization,

Ronald had no communication with Driver for approximately 25 years. In 2005, their friendship was renewed when Driver moved into the same neighbourhood as Ronald and started attending the same church. Driver is a Canadian citizen who resides in both Ontario and Las Vegas, Nevada.

8. Driver is the owner and directing mind of Axxess Automation LLC (“Axxess Automation”), which is a Nevada based software development company he founded in 1987. Driver is also the founder of Axxess Fund Management LLC (“Axxess Fund Management”) and was registered as an associated person and principal with the United States Commodity Futures Trading Commission (“CFTC”) beginning in September 2008. Axxess Automation, Axxess Fund Management and Driver have never been registered with the Commission.

(b) Axxess Automation Investment

9. In the summer of 2007, Ronald learned from Reynold that Driver was trading using proprietary software he had developed. Ronald expressed an interest in becoming involved in this investment opportunity.

10. Ronald was advised that in order for Driver to invest on his behalf, he would be required to invest a minimum amount. On behalf of his family, Ronald made an initial investment of USD 31,200.00 in the Axxess Automation Investment in July 2007. The primary characteristics of the Axxess Automation Investment as represented by Driver were:

- a) Driver would trade e-mini S&P 500 futures through Axxess Automation, using the funds provided by the investor; and
- b) the investor would recoup the entire investment, plus 25% of the returns generated by the investment (with the remaining 75% of the return on investment to be kept by Driver).

11. Ronald and Rutledge decided that together they should approach friends and family to come up with \$25,000.00 to participate in the Axxess Automation Investment. This initial plan evolved into an agreement between Ronald and Rutledge to form an investor group, which ultimately comprised 45 investors (the “Rutledge/Ronald Group”). Most of the investors were

family and friends.

12. During the Material Time, a total of USD 86,200.00 was invested in the Axxess Automation Investment by investors introduced by Ronald. This included the initial investment made in July 2007 by Ronald and his family, as well as: 1) an investment made by Rutledge using money loaned to him by Ronald; 2) investments made by Ronald's sister; and 3) an investment made by a tenant residing in a downstairs apartment in Ronald's home.

13. During the Material Time, Ronald attended two meetings at which Driver discussed the Axxess Automation Investment with potential and current investors. One meeting was attended by approximately 5 persons (including Ronald, Rutledge and Ronald's sister) to discuss making an initial investment. The other meeting was held in Ronald's home and was attended by approximately 10 persons (all friends and family of Ronald and/or Rutledge) who were current investors in the Axxess Automation Investment. The purpose of this meeting was to discuss the status of the investment and how the profits that Driver claimed he was generating in the Axxess Automation Investment could be used for charitable purposes.

14. At the request of Driver, those investors who were introduced to the Axxess Automation Investment by Ronald were provided by Ronald with a letter of agreement (the "Letter of Agreement") outlining the terms of the Axxess Automation Investment.

15. Ronald was made privy to all pertinent information concerning the investors in the Rutledge/Ronald Group as a result of receiving investment statements and spreadsheets from Rutledge and Driver.

16. On three occasions when Rutledge was away or otherwise unavailable, Ronald corresponded directly with Driver on behalf of members of the Rutledge/Ronald Group in order to facilitate the investors' redemption requests.

17. In late October 2008, Ronald learned from Rutledge that he had consulted a lawyer who suggested that the Axxess Automation Investment may be "offside" certain securities laws. In particular, the lawyer expressed concerns with certain commission payments being made by Driver to Ronald and Rutledge which they had been told were being made from Driver's own share of the profits being earned in the Axxess Automation Investment. As a result, Ronald and

Rutledge advised Driver of the lawyer's concerns. Driver assured them that the investment was not "offside", but that in order to take on new investors and grow, it was necessary for him to be licensed by the CFTC. Ronald nevertheless advised that as a consequence of the advice received from the lawyer, he no longer wanted to receive any further commission payments, and that any subsequent payments would be received as returns on his investment. Ronald received an additional USD 30,000.00 after October 2008, which he thought was a return on his investment. After October 2008, no new investors were introduced by Ronald to the Axxess Automation Investment.

(c) Axxess Fund Investment

18. Further to Driver's efforts to be licensed, he advised Ronald and Rutledge that he was forming the Axxess Fund Investment which was to involve the sale of limited partnership units in the Axxess Fund, L.P. ("Axxess Fund"). Axxess Fund Management was the general partner and commodity pool operator for the Axxess Fund Investment. The primary characteristics of the Axxess Fund Investment were:

- a) limited partnership units in the Axxess Fund could be purchased for USD 250,000.00 if the general partner, Axxess Fund Management, determined that the investor was eligible to participate; and
- b) investors' funds would be used to buy and sell futures contracts, futures options and other forms of investments.

19. Ronald had no involvement in either the formation of the Axxess Fund Investment nor the sale of limited partnership units. On one occasion, further to an inquiry made by his sister respecting her eligibility to participate in the Axxess Fund Investment, Ronald made an inquiry of Driver and subsequently corresponded with his sister notifying her that Driver had said that she had been accepted in the Axxess Fund Investment.

(d) Total Sales and Commissions Received

20. A total of approximately USD 2,051,199.39 was invested by the Rutledge/Ronald Group in the Axxess Automation Investment. Of that total, investors introduced by Ronald, as described in paragraph 12 above, invested a total of USD 86,200.00, which included USD

31,200.00 invested by Ronald's family (including his wife and children), USD 45,000.00 invested by his sister, USD 5,000.00 by his friend and downstairs tenant, and USD 5,000.00 invested by Ronald on behalf of his cousin Rutledge. Of the amounts obtained by Driver from the Rutledge/Ronald Group, approximately USD 746,507.00 was paid back to the Rutledge/Ronald Group investors by Driver during the Material Time.

21. In respect of the Axxess Automation Investment, Driver told Ronald and Rutledge that he would provide a 5% commission to the "point person" who assumed the administrative responsibility in liaising with the investors who formed the group. Driver made it clear that this commission would only be paid from Driver's 75% share of the profits he was to earn (after taxes) from the Axxess Automation Investment. If no profit was earned, regardless of the investments made by the Rutledge/Ronald Group, no commissions would be paid. Ronald and Rutledge agreed to split the 5% commissions that were paid to the Rutledge/Ronald Group.

22. During the Material Time, Ronald received a total of approximately CAD 138,176.88 from Driver as a result of his involvement in the Axxess Automation Investment.

PART IV - THE RESPONDENT'S POSITION

23. Ronald requests that the settlement hearing panel consider the following mitigating circumstances:

- a) that since the inception of Staff's investigation Ronald has fully cooperated, attending at a voluntary interview on March 19, 2009 and providing Staff with all relevant documents in his control or possession;
- b) that on April 13, 2009, Ronald gave Staff a personal undertaking whereby he agreed: not to engage in any activities in relation to the Axxess Automation Investment, the Axxess Fund Investment and/or Driver; to produce his personal bank statements in which any payments were received from Driver; and to place in trust an amount equal to any payments received from Driver, pending any order to be made by the Commission respecting the direction of these funds;

- c) that consistent with Ronald's intention behind participating in the Axxess Automation Investment, Ronald used a significant portion of the funds received from Driver to make charitable donations;
- d) that Ronald acknowledges that as a result of the trust he placed in Driver, coupled with his own lack of knowledge respecting investing in securities, he failed to exercise adequate due diligence respecting the propriety of participating in the Axxess Automation Investment;
- e) that during the Material Time, Ronald was not aware of any fraudulent activity being engaged in by Driver;
- f) that during the Material Time, Ronald was of the belief that Driver was using investor funds in a manner consistent with the Letter of Agreement and that the funds received by Ronald from Driver were derived from trading profits;
- g) that like other investors who contributed to the Axxess Automation Investment, and having regard to the intention to disgorge any monies received from Driver, Ronald and his family have lost the principal which they invested in the Axxess Automation Investment (USD 31,200.00);
- h) that as a consequence of his involvement in the Axxess Automation Investment Ronald was publicly admonished and temporarily suspended from active duty by his employer; and
- i) that Ronald has never been the subject of any prior securities-related disciplinary proceeding.

**PART V – BREACH OF *COMMODITY FUTURES ACT* AND
CONDUCT CONTRARY TO THE PUBLIC INTEREST (*SECURITIES ACT*)**

24. Ronald's activities in respect of the Axxess Automation Investment constituted trading in

contracts without registration in respect of which no exemption was available, contrary to section 22 of the *Commodity Futures Act*, and in respect of the *Securities Act*, was contrary to the public interest and harmful to the integrity of the capital markets.

PART VI - TERMS OF SETTLEMENT

25. Ronald agrees to the terms of settlement set out below.
26. The Commission will make an order pursuant to section 127(1) and section 127.1 of the *Securities Act* and sections 60 and 60.1 of the *Commodity Futures Act* that:
- a) The settlement agreement is approved;
 - b) pursuant to clause 2 of subsection 127(1) of the *Securities Act*, Ronald shall cease trading in any securities for a period of 8 years, with the exception that Ronald is permitted to trade securities for the account of his registered retirement savings plan as defined in the *Income Tax Act*, 1985, c.1 as amended (the "*Income Tax Act*");
 - c) pursuant to clause 2.1 of subsection 127(1) of the *Securities Act*, Ronald shall cease acquisitions of any securities for a period of 8 years, except acquisitions undertaken in connection with Ronald's registered retirement savings plan account (as defined in the *Income Tax Act*);
 - d) pursuant to clause 3 of subsection 127(1) of the *Securities Act*, any exemptions in Ontario securities law do not apply to Ronald for a period of 8 years, except to the extent such exemption is necessary for trades undertaken in connection with Ronald's registered retirement savings plan account (as defined in the *Income Tax Act*);
 - e) pursuant to clause 3 of section 60(1) of the *Commodity Futures Act*, any exemptions contained in Ontario commodity futures law do not apply to Ronald for a period of 8 years;
 - f) pursuant to clause 7 of section 127(1) of the *Securities Act* and clause 7 of

section 60(1) of the *Commodity Futures Act* that Ronald resign any position that he holds as a director or officer of a reporting issuer;

- g) pursuant to clause 8 of section 127(1) of the *Securities Act* and clause 8 of section 60(1) of the *Commodity Futures Act* that Ronald be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 8 years;
- h) pursuant to clause 9 of section 60(1) of the *Commodity Futures Act* that Ronald pay an administrative penalty of CAD 10,000.00 to or for the benefit of third parties in accordance with section 3.4(2)(b) of the *Securities Act*;
- i) pursuant to clause 10 of section 60(1) of the *Commodity Futures Act* that Ronald disgorge to the Commission CAD 138,176.88 to or for the benefit of third parties in accordance with section 3.4(2)(b) of the *Securities Act*; and
- j) pursuant to section 60.1 of the *Commodity Futures Act* that Ronald pay the costs of the investigation and the hearing in the amount of CAD 700.00.

27. Ronald agrees to personally make any payments ordered above by certified cheque when the Commission approves this Settlement Agreement. Ronald will not be reimbursed for, or receive a contribution toward, this payment from any other person or company.

28. Ronald undertakes to consent to a regulatory order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the prohibitions set out in paragraph 26 above. These prohibitions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

PART VII - STAFF COMMITMENT

29. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding against Ronald under Ontario securities law in relation to the facts set out in Part III

of this Settlement Agreement, subject to the provisions of paragraph 36 below.

30. If the Commission approves this Settlement Agreement and Ronald fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against him. 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 VIII – PROCEDURE FOR APPROVAL OF SETTLEMENT

31. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission according to the procedures set out in this Settlement Agreement and the Commission's Rules of Practice.

32. Staff and Ronald agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on Ronald's conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.

33. If the Commission approves this Settlement Agreement, Ronald agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

34. If the Commission approves this Settlement Agreement, no party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

35. Whether or not the Commission approves this Settlement Agreement, Ronald 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 IX – DISCLOSURE OF SETTLEMENT AGREEMENT

36. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:

- (a) this Settlement Agreement and all discussions and negotiations between Staff and Ronald before the settlement hearing takes place will be without prejudice to Staff and Ronald; and
- (b) Staff and Ronald will 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.

37. All 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, all 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 X – EXECUTION OF SETTLEMENT AGREEMENT

38. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.

39. A fax copy of any signature will be treated as an original signature.

Dated this 4th day of August, 2010

“Jay Naster”

 Witness

“Ronald Mainse”

 Ronald Mainse

Dated this 9th day of August, 2010

STAFF OF THE ONTARIO SECURITIES
 COMMISSION

"Tom Atkinson"

Per: Tom Atkinson

SCHEDULE “A”

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

- and -

**IN THE MATTER OF THE
COMMODITY FUTURES ACT
R.S.O. 1990, c. C.20, AS AMENDED**

- and -

**AXCESS AUTOMATION LLC,
AXCESS FUND MANAGEMENT, LLC, AXCESS FUND, L.P.,
GORDON ALAN DRIVER, DAVID RUTLEDGE, 6845941 CANADA INC. carrying on
business as ANESIS INVESTMENTS, STEVEN M. TAYLOR,
BERKSHIRE MANAGEMENT SERVICES INC. carrying on business as
INTERNATIONAL COMMUNICATION STRATEGIES, 1303066 ONTARIO LTD.
carrying on business as ACG GRAPHIC COMMUNICATIONS,
MONTECASSINO MANAGEMENT CORPORATION,
REYNOLD MAINSE, WORLD CLASS COMMUNICATIONS INC.
and RONALD MAINSE**

ORDER

WHEREAS on _____, 2010, the Commission issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S. 5, as amended (the “*Securities Act*”) and sections 60 and 60.1 of the *Commodity Futures Act* (the “*Commodity Futures Act*”) in respect of the conduct of, among others, Ronald Mainse (“Ronald”);

AND WHEREAS on _____, 2010, Staff of the Commission filed a Statement of Allegations in respect of the same matter;

AND WHEREAS Ronald entered into a settlement agreement dated _____, 2010 (the “Settlement Agreement”) in relation to the matters set out in the Statement of Allegations;

AND WHEREAS the Commission issued a Notice of Hearing dated _____, 2010 setting out that it proposed to consider the Settlement Agreement;

UPON reviewing the Settlement Agreement, the Notice of Hearing, the Statement of Allegations, and upon considering submissions from counsel for Ronald and from 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, PURSUANT TO SECTIONS 127(1) AND 127.1 OF THE SECURITIES ACT AND SECTIONS 60 AND 60.1 OF THE COMMODITY FUTURES ACT, THAT:

- (a) the Settlement Agreement is hereby approved;
- (b) pursuant to clause 2 of subsection 127(1) of the *Securities Act*, Ronald shall cease trading in any securities for a period of 8 years, with the exception that Ronald is permitted to trade securities for the account of his registered retirement savings plan account as defined in the *Income Tax Act*, 1985, c.1 as amended (the “*Income Tax Act*”);
- (c) pursuant to clause 2.1 of subsection 127(1) of the *Securities Act*, Ronald shall cease acquisitions of any securities for a period of 8 years, except acquisitions undertaken in connection with his registered retirement savings plan account (as defined in the *Income Tax Act*);
- (d) pursuant to clause 3 of subsection 127(1) of the *Securities Act*, any exemptions in Ontario securities law do not apply to Ronald for a period of 8 years, except to the extent such exemption is necessary for trades undertaken in connection with his registered retirement savings plan account (as defined in the *Income Tax Act*);
- (e) pursuant to clause 3 of section 60(1) of the *Commodity Futures Act*, any exemptions contained in Ontario commodity futures law do not apply to Ronald for a period of 8 years;
- (f) pursuant to clause 7 of section 127(1) of the *Securities Act* and clause 7 of section 60(1) of the *Commodity Futures Act* that Ronald resign any position that he holds as a director or officer of a reporting issuer;
- (g) pursuant to clause 8 of section 127(1) of the *Securities Act* and clause 8 of section 60(1) of the *Commodity Futures Act* that Ronald be prohibited from becoming or acting as a director or officer of any reporting issuer for a period of 8 years;

- (h) pursuant to clause 9 of section 60(1) of the *Commodity Futures Act* that Ronald pay an administrative penalty of CAD 10,000.00 to or for the benefit of third parties in accordance with section 3.4(2)(b) of the *Securities Act*;
- (i) pursuant to clause 10 of section 60(1) of the *Commodity Futures Act* that Ronald disgorge to the Commission CAD 138,176.88 to or for the benefit of third parties in accordance with section 3.4(2)(b) of the *Securities Act*; and
- (j) pursuant to section 60.1 of the *Commodity Futures Act* that Ronald pay the costs of the investigation and the hearing in the amount of CAD 700.00.

Dated at Toronto, Ontario this day of 2010.
