



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 CARMINE DOMENICUCCI**

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**SETTLEMENT AGREEMENT BETWEEN STAFF AND CARMINE DOMENICUCCI**

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**PART I - INTRODUCTION**

1. The Commission will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the Act, it is in the public interest for the Commission to approve this Settlement Agreement and to make certain orders in respect of Carmine Domenicucci ("Domenicucci").

**PART II - JOINT SETTLEMENT RECOMMENDATION**

2. Staff agree to recommend settlement of the proceeding initiated by the Notice of Hearing dated March 23, 2012 against Domenicucci (the "Proceeding") in accordance with the terms and conditions set out below. Domenicucci consents to the making of an order in the form attached as Schedule "A", based on the facts set out below.

### **PART III - AGREED FACTS**

#### **Background**

3. Domenicucci is a resident of Ottawa, Ontario. Domenicucci was registered as a trading officer in the category of limited market dealer with Oasis Park Investments Ltd. (“Oasis”) from July 18, 2006 to August 25, 2009. Domenicucci was also a shareholder and the designated compliance officer of Oasis.
4. From May 10, 2006 to July 1, 2009, Domenicucci was the sole officer and director of G8 Resorts Management Inc. (“G8 Resorts”). G8 Resorts is an Ontario company incorporated on May 10, 2006 and was formerly named 1686980 Ontario Ltd.
5. G8 Resorts was the general partner for Minas Investments Limited Partnership (“Minas”), a limited partnership registered under the *Limited Partnerships Act*, R.S.O. 1990, c.L.16 (the “*Limited Partnerships Act*”) on June 3, 2008.
6. G8 Resorts was also the *de facto* general partner for GEMS Capital Limited Partnership II (“GEMS II”), a limited partnership registered under the *Limited Partnerships Act* on January 6, 2009. G8 Resorts was identified as the general partner for GEMS II in the GEMS II Offering Memorandum (the “GEMS II OM”) that was delivered to investors.
7. Ciccone Group Inc. is an Ontario company incorporated on August 18, 1992 that was formerly named 990509 Ontario Inc. (collectively referred to as “Ciccone Group”). During the Material Time, Vincent Ciccone, a resident of Cambridge, Ontario and a childhood friend of Domenicucci, was the sole officer and director of Ciccone Group. Ciccone Group purported to be one of the fastest growing niche financial venture companies in Canada.
8. 990509 Ontario Inc. (now known as Ciccone Group) was identified as the fund manager (the “GEMS II Fund Manager”) in the GEMS II OM.
9. Ciccone Group was assigned into bankruptcy on November 30, 2010, at which time it owed over \$17 million to investors.

10. None of G8 Resorts, Minas or GEMS II was registered with the Commission in any capacity during the period September 2008 to June 2009 (the “Material Time”).

**A. Trading without Registration and Distribution of Securities without a Prospectus**

**(i) Minas**

11. During the period October 2008 to May 2009, Minas raised approximately \$1.9 million from the issuance and sale of Minas limited partnership units (“Minas securities”) to approximately 43 investors.

12. Commencing in or about September 2008 to May, 2009, G8 Resorts and Domenicucci engaged in acts in furtherance of trades of Minas securities and thereby traded in Minas securities. In particular, as the General Partner and the sole officer and director of the General Partner, G8 Resorts and Domenicucci respectively caused Minas to trade in its securities. In addition, Domenicucci prepared the Offering Memorandum used in connection with the sale of Minas securities to investors (the “Minas OM”).

13. Domenicucci traded in Minas securities when no exemption was available which was contrary to the scope of his registration. G8 Resorts traded in Minas securities without registration.

14. The sale of Minas securities were trades in securities not previously issued and were therefore distributions. Domenicucci and G8 Resorts traded in Minas securities when a preliminary prospectus and a prospectus had not been filed for Minas and receipts had not been issued for them by the Director.

**(ii) GEMS II**

15. During the period February 2009 to October 2009, GEMS II raised approximately \$6.2 million from the issuance and sale of GEMS II limited partnership units (“GEMS II securities”) to approximately 30 investors.

16. Commencing in or about January 2009 to June 2009, G8 Resorts and Domenicucci engaged in acts in furtherance of the trades in GEMS II securities and thereby traded in GEMS II securities. In particular, as the General Partner and the sole officer and director of the General Partner, G8 Resorts and Domenicucci respectively caused GEMS II to trade in its securities. In addition, Domenicucci prepared the GEMS II OM used in connection with the sale of GEMS II securities to investors.

17. Domenicucci traded in GEMS II securities when no exemption was available which was contrary to the scope of his registration. G8 Resorts traded in GEMS II securities without registration.

18. The sale of GEMS II securities were trades in securities not previously issued and were therefore distributions. Domenicucci and G8 Resorts traded in GEMS II securities when a preliminary prospectus and a prospectus had not been filed for GEMS II and receipts had not been issued for them by the Director.

## **B. Misleading and Untrue Statements in Minas OM and GEMS II OM**

### **(i) The Minas OM**

19. The Minas OM contained statements which Domenicucci knew or reasonably ought to have known, were, in a material respect and at the time and in light of the circumstances under which they were made, misleading and did not state a fact that was required to be stated or was necessary to make the statements not misleading, contrary to subsection 126.2(1) of the Act and contrary to the public interest. In particular:

- (a) Domenicucci knew at the time of the drafting of the Minas OM that the funds raised from the Minas distribution were to be invested with Gordon Driver (“Driver”), the principal of Axxess Automation LLC (“Axxess”). However, neither Driver’s name nor Axxess’s name appears anywhere in the Minas OM. Instead the Minas OM includes details about three investment advisors to the fund manager and that these advisors were being supported by a network of traders, analysts and operations staff when Domenicucci knew or reasonably ought to have known that this network did not exist;

- (b) During the period in which the Minas OM was being provided to investors, Domenicucci was sending Minas investor funds to Ciccone Group in exchange for Ciccone Group Promissory Notes on the basis that Ciccone Group would be investing the money in Axxess. However, there is no mention of any of this in the Minas OM;
- (c) The Minas OM states that the General Partner of the Fund Manager is an experienced computer scientist, which statement was not true at the time it was made. There was no General Partner to the Fund Manager. The only other General Partner involved in the Minas distribution was G8 Resorts. Domenicucci was the sole officer and director of G8 Resorts at the time of the Minas distribution and he knew that G8 Resorts was not an experienced computer scientist; and
- (d) Domenicucci signed a Certificate to the Minas OM to the effect that the Minas OM contained no misrepresentations when he knew or reasonably ought to have known that this statement was not true.

20. The misleading statements referred to above would reasonably be expected to have a significant effect on the market price or value of the Minas securities.

**(ii) The GEMS II OM**

21. The GEMS II OM contained statements which Domenicucci knew or reasonably ought to have known, were, in a material respect and at the time and in light of the circumstances under which they were made, misleading and did not state a fact that was required to be stated or was necessary to make the statements not misleading, contrary to subsection 126.2(1) of the Act and contrary to the public interest. In particular:

- (a) Domenicucci is referred to in the GEMS II OM as an investment advisor to the GEMS II Fund Manager. This reference remained in the GEMS II OM which continued to be distributed to investors when Domenicucci knew or reasonably ought to have known that he was not fulfilling that function;
- (b) The GEMS II OM also stated that three investment advisors to the fund were supported by an experienced network of traders, analysts and operations staff when Domenicucci knew or reasonably ought to have known that this statement was not true; and

- (c) The GEMS II OM contained a certificate signed by Domenicucci to the effect that the GEMS II OM contained no misrepresentations. Domenicucci knew or reasonably ought to have known that this statement was not true.

22. The misleading statements referred to above would reasonably be expected to have a significant effect on the market price or value of the GEMS II securities.

**C. Advising in Securities without Registration**

23. Domenicucci is listed in the GEMS II OM as one of three principal advisors to the fund manager. Based on the investment strategy of GEMS II which included buying and selling long and short positions in securities and the description of Domenicucci in the GEMS II OM, Domenicucci held himself out in the GEMS II OM as engaging in the business of advising others as to investing in or the buying or selling of securities without being registered with the Commission to advise in securities.

**D. Benefits received by Domenicucci**

24. Minas and GEMS II investor funds were used, in part, to pay management fees and/or professional fees to G8 Resorts and/or Linkline International Ltd (“Linkline”), an Ontario corporation owned and controlled by Domenicucci and, of the amounts paid to G8 Resorts and Linkline, Domenicucci personally received approximately \$100,000 as draws.

**E. Breach of Ontario Securities Law**

25. By engaging in the conduct described above, Domenicucci admits and acknowledges that he contravened Ontario securities law during the Material Time in the following ways:

- (a) Domenicucci traded in Minas and GEMS II securities when no exemption was available and thereby traded outside the scope of his registration, contrary to subsection 25(1)(a) of the Act (as that subsection existed during the Material Time) and contrary to the public interest;

- (b) G8 Resorts traded in Minas and GEMS II securities without being registered to trade in securities, contrary to subsection 25(1)(a) of the Act (as that subsection existed during the Material Time) and contrary to the public interest;
- (c) Domenicucci and G8 Resorts traded in Minas securities when a preliminary prospectus and a prospectus had not been filed for Minas and receipts had not been issued for them by the Director, contrary to subsection 53(1) of the Act and contrary to the public interest;
- (d) Domenicucci and G8 Resorts traded in GEMS II securities when a preliminary prospectus and a prospectus had not been filed and receipts had not been issued for them by the Director, contrary to subsection 53(1) of the Act and contrary to the public interest;
- (e) The Minas OM contained statements which Domenicucci and G8 Resorts knew or reasonably ought to have known, were, in a material respect and at the time and in light of the circumstances under which they were made, misleading and did not state a fact that was required to be stated or was necessary to make the statements not misleading and which would reasonably be expected to have a significant effect on the market price or value of Minas securities, contrary to subsection 126.2(1) of the Act and contrary to the public interest;
- (f) The GEMS II OM contained statements which Domenicucci and G8 Resorts knew or reasonably ought to have known, were, in a material respect and at the time and in light of the circumstances under which they were made, misleading and did not state a fact that was required to be stated or was necessary to make the statements not misleading and which would reasonably be expected to have a significant effect on the market price or value of GEMS II securities, contrary to subsection 126.2(1) of the Act and contrary to the public interest;

- (g) Domenicucci engaged in advising without being registered to advise in securities contrary to subsection 25(1)(c) of the Act (as that subsection existed during the Material Time) and contrary to the public interest; and
- (h) Domenicucci, as a director and officer of G8 Resorts during the Material Time, authorized, permitted or acquiesced in the commission of the violations of subsections 25(1)(a), 53(1) and 126.2(1) of the Act, as set out above, by G8 Resorts pursuant to section 129.2 of the Act and contrary to the public interest.

**F. Conduct contrary to the public interest**

26. Domenicucci admits and acknowledges that he acted contrary to the public interest by contravening Ontario securities law as set out above.

**G. Additional Facts**

27. Domenicucci did not directly solicit investors or sell Minas or GEMS II securities to investors, other than in relation to a sale of Minas securities to his brother as the initial partner in Minas.

28. Domenicucci has advised Staff that he intends on paying the amounts referred to in subparagraphs 31(h), (i) and (j) in full and has agreed to a payment plan designed to enable him to make full payment.

**PART IV – RESPONDENT’S POSITION**

29. The Respondent requests that the settlement hearing panel also consider the following:

- (a) The majority of Minas investor funds were paid to Ciccone Group in exchange for Ciccone Group Promissory Notes on the basis that Ciccone Group would be investing the money in Axxess;
- (b) Domenicucci states he erroneously believed that the distribution of Minas securities qualified for the Offering Memorandum exemption applicable in

Manitoba, where all of the Minas investors resided with the exception of Domenicucci's brother, However, Domenicucci now understands that this exemption was not available in view of the misrepresentations contained in the Minas OM; and

- (c) Domenicucci states that he was not involved in the administration of the funds received from GEMS II investors, other than in opening the initial bank accounts.

#### **PART V - TERMS OF SETTLEMENT**

- 30. Domenicucci agrees to the terms of settlement listed below.
- 31. The Commission will make an order, pursuant to subsection 127(1) of the Act, that:
  - (a) the Settlement Agreement is approved;
  - (b) trading in any securities by Domenicucci shall cease permanently from the date of the order approving this Settlement Agreement (the "Order");
  - (c) the acquisition of any securities by Domenicucci is prohibited permanently from the date of this Order;
  - (d) any exemptions contained in Ontario securities law do not apply to Domenicucci permanently from the date of this Order;
  - (e) Domenicucci is reprimanded;
  - (f) Domenicucci is prohibited for a period of fifteen (15) years from the date of this Order from becoming or acting as a director or officer of any reporting issuer or registrant;
  - (g) Domenicucci is prohibited permanently from the date of this Order from becoming or acting as a registrant;

- (h) Domenicucci shall pay to the Commission an administrative penalty in the amount of \$50,000 for his failure to comply with Ontario securities law, to be paid to or for the benefit of third parties in accordance with subsection 3.4(2) of the Act;
- (i) Domenicucci shall disgorge to the Commission the amount of \$100,000 obtained as a result of his non-compliance with Ontario securities law, to be paid to or for the benefit of third parties in accordance with subsection 3.4(2) of the Act;
- (j) Domenicucci shall pay costs to the Commission in the amount of \$5,000 payable by way of certified cheque on the date of this Order; and
- (k) Until the entire amount of payments set out in paragraphs (h), (i) and (j) are paid in full, the provisions of paragraph (f) shall continue in force without any limitation as to time period.

32. In regards to the payments referred to in sub-paragraphs 31(h) and (i) above, Domenicucci agrees to make a payment of \$17,000 by certified cheque or bank draft on the date of this Order. Domenicucci further agrees to pay at least \$19,000 every three months thereafter by way of certified cheque or bank draft until the amounts set out in sub-paragraphs 31(h) and (i) are paid in full.

33. Domenicucci 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 sub-paragraphs 31(b) to (g) above.

**PART VI - STAFF COMMITMENT**

34. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Domenicucci in relation to the facts set out in Part III herein, subject to the provisions of paragraph 35 below.

35. If this Settlement Agreement is approved by the Commission, and at any subsequent time Domenicucci fails to honour the terms of the Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against Domenicucci based on, but not limited to, the facts set out in Part III herein as well as the breach of the Settlement Agreement. In addition, if this Settlement Agreement is approved by the Commission and Domenicucci fails to honour the financial terms of the Settlement Agreement, the Commission is entitled to bring any proceedings necessary to recover the amounts set out in subparagraphs 31(h), (i) and (j) above.

**PART VII - PROCEDURE FOR APPROVAL OF SETTLEMENT**

36. Approval of this Settlement Agreement will be sought at a hearing of the Commission scheduled on a date to be determined by the Secretary to the Commission, or such other date as may be agreed to by Staff and Domenicucci for the scheduling of the hearing to consider the Settlement Agreement.

37. Staff and Domenicucci agree that this Settlement Agreement will constitute the entirety of the agreed facts to be submitted at the settlement hearing regarding Domenicucci's conduct, unless the parties agree that further facts should be submitted at the settlement hearing.

38. If this Settlement Agreement is approved by the Commission, Domenicucci agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

39. If this Settlement Agreement is approved by the Commission, neither party will make any public statement that is inconsistent with this Settlement Agreement or inconsistent with any additional agreed facts submitted at the settlement hearing.

40. Whether or not this Settlement Agreement is approved by the Commission, Domenicucci agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the settlement negotiations 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.

**PART VIII - DISCLOSURE OF SETTLEMENT AGREEMENT**

41. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the order attached as Schedule "A" is not made by the Commission:

- (a) this Settlement Agreement and its terms, including all settlement negotiations between Staff and Domenicucci and leading up to its presentation at the settlement hearing, shall be without prejudice to Staff and Domenicucci; and
- (b) Staff and Domenicucci shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by the Settlement Agreement or the settlement discussions/negotiations.

42. The terms of this Settlement Agreement will be treated as confidential by all parties hereto until approved by the Commission. Any obligations of confidentiality shall terminate upon the commencement of the public hearing to obtain approval of this Settlement Agreement by the Commission. The terms of the Settlement Agreement will be treated as confidential forever if the Settlement Agreement is not approved for any reason whatsoever by the Commission, except with the written consent of Domenicucci and Staff or as may be required by law.

**PART IX - EXECUTION OF SETTLEMENT AGREEMENT**

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

44. A facsimile copy of any signature will be as effective as an original signature.

Dated this 24<sup>th</sup> day of March, 2012.

Signed in the presence of:

*“Chantal Gobeil”*  
Witness

*“Carmine Domenicucci”*  
\_\_\_\_\_  
Carmine Domenicucci

**STAFF OF THE ONTARIO SECURITIES COMMISSION**

*“Tom Atkinson”*  
\_\_\_\_\_  
**Tom Atkinson**  
**Director, Enforcement Branch**

Dated this 23<sup>rd</sup> day of March, 2012.



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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 CARMINE DOMENICUCCI**

**ORDER  
(Subsections 127(1) and 127.1(1))**

**WHEREAS** on March 23, 2012, the Ontario Securities Commission (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 "Act") in connection with the allegations set out in the Statement of Allegations of Staff of the Commission ("Staff") dated March 23, 2012;

**AND WHEREAS** Domenicucci entered into a Settlement Agreement with Staff of the Commission dated March 24, 2012 (the "Settlement Agreement") in which Domenicucci agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

**AND WHEREAS** on March 26, 2012, the Commission issued a Notice of Hearing pursuant to section 127 of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve a settlement agreement entered into between Staff and Domenicucci;

**AND UPON** reviewing the Settlement Agreement, the Notice of Hearing, and the Statement of Allegations of Staff, and upon hearing submissions from Staff and Domenicucci;

**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) pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by Domenicucci cease permanently from the date of this Order;
- (c) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of securities by Domenicucci is prohibited permanently from the date of this Order;
- (d) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Domenicucci permanently from the date of this Order;
- (e) pursuant to clause 6 of subsection 127(1) of the Act, Domenicucci is reprimanded;
- (f) pursuant to clauses 8 and 8.2 of subsection 127(1) of the Act, Domenicucci is prohibited for a period of fifteen (15) years from the date of this Order from becoming or acting as a director or officer of any reporting issuer or registrant;
- (g) pursuant to clause 8.5 of subsection 127(1) of the Act, Domenicucci is prohibited permanently from the date of this Order from becoming or acting as a registrant;
- (h) pursuant to clause 9 of subsection 127(1) of the Act, Domenicucci shall pay to the Commission an administrative penalty in the amount of \$50,000 for his failure to comply with Ontario securities law to be paid to or for the benefit of third parties in accordance with subsection 3.4(2) of the Act;
- (i) pursuant to clause 10 of subsection 127(1) of the Act, Domenicucci shall disgorge to the Commission the amount of \$100,000 obtained as a result of his non-compliance with Ontario securities law to be paid to or for the benefit of third parties in accordance with subsection 3.4(2) of the Act;

- (j) pursuant to section 127.1 of the Act, Domenicucci shall pay costs to the Commission in the amount of \$5,000 payable by way of certified cheque on the date of this Order;
- (k) with respect to the amounts ordered to be paid above at paragraphs (h) and (i), Domenicucci shall make a payment of \$17,000 by certified cheque or bank draft on the date of this Order and at least \$19,000 by way of certified cheque or bank draft every three months thereafter until the amounts set out in paragraphs (h) and (i) are paid in full; and
- (l) until the entire amount of payments set out in paragraphs (h), (i) and (j) are paid in full, the order in paragraph (f) above shall continue in force without any limitation as to time period.

**DATED AT TORONTO** this            day of March, 2012.

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