



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 MEGA-C POWER CORPORATION, RENE PARDO,
GARY USLING, LEWIS TAYLOR SR., LEWIS TAYLOR JR., JARED TAYLOR,
COLIN TAYLOR AND 1248136 ONTARIO LIMITED**

**SETTLEMENT AGREEMENT BETWEEN STAFF OF THE
ONTARIO SECURITIES COMMISSION AND GARY USLING**

I. INTRODUCTION

1. By Notice of Hearing dated November 16, 2005 (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) under clause 2 of s. 127(1) of the Act, that trading in securities by the Respondent, Gary Usling (“Usling”), cease permanently or for such other period as specified by the Commission;
 - (b) under clause 3 of s. 127(1) of the Act, that any exemptions contained in Ontario securities law do not apply to Usling permanently or for such a period as the Commission may order;
 - (c) under clause 6 of s. 127(1) of the Act, that Usling be reprimanded;

- (d) under clause 7 of s. 127(1) of the Act, that Usling, if acting as a director or officers of any issuer resign one or more positions that he may hold as a director or officer of an issuer;
- (e) under clause 8 of s. 127(1) of the Act, that Usling is prohibited from becoming or acting as director or officer of any issuer;
- (f) under clause 9 of s. 127(1) of the Act, that Usling pay an administrative penalty for each failure to comply with Ontario securities law;
- (g) under clause 10 of s. 127(1) of the Act, that Usling disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law;
- (h) under s. 127.1 of the Act, that Usling pay the costs of Staff's investigation and the costs of, or related to, the proceeding that are incurred by or on behalf of the Commission; and
- (i) such further orders as the Commission considers appropriate.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff recommends settlement of the proceeding initiated in respect of the Respondent, Gary Usling ("Usling"), in accordance with the terms and conditions set out below. Usling agrees to the settlement on the basis of the facts agreed to in Part IV and consents 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. STAFF ACKNOWLEDGEMENT

4. For the purpose of this settlement only, Usling agrees with the facts set out in Part IV. Usling expressly denies that this Settlement Agreement is intended to be an admission of civil liability by Usling to any person or company and Usling expressly denies any such admission of civil liability.

IV. STATEMENT OF FACTS

(i) Background

5. Mega-C Power Corporation (“Mega-C”), formerly known as Net Capital Ventures Corporation, was incorporated in the State of Nevada on February 26, 2001. At all material times, Mega-C’s principal offices were located in Vaughan, Ontario. Mega-C described itself as being in the business of developing and commercializing a hybrid capacitor/battery (the “Technology”).
6. Usling was a founding shareholder of Mega-C and at all material times was the Chief Financial Officer (“CFO”) and a director of Mega-C. Usling is a Chartered Account. Usling has never been registered in any capacity whatsoever with the Commission
7. Usling was the CFO and a director of NetProfitEtc Inc. (“NetProfit”)

(ii) Unregistered Trading

8. As of September 2001, Mega-C issued from treasury approximately 14.5 million shares. Of that issuance, approximately 12.3 million shares were issued to Rene Pardo and/or NetProfit. Usling and companies owned or controlled by him received in excess of 1.25 million Mega-C shares from the Mega-C treasury issuance. Usling provided approximately 50 persons and companies with Mega-C shares to replace shares they had acquired in NetProfit.
9. Usling subsequently participated in the further trading of Mega-C shares to members of the public. In particular, in and around June, 2002, Usling attended demonstrations of the Technology given to potential investors and participated in soliciting them to invest.

(iii) Illegal Distribution

10. At no time did Mega-C file a preliminary prospectus or prospectus with the Commission and obtain the appropriate receipts from the Director, as required by section 53 of the Act.

(iv) U.S. Bankruptcy Proceedings

11. On April 6, 2004, Mega-C was petitioned for relief under Chapter 11 of Title 11 of the *U.S. Bankruptcy Code*. On May 13, 2004, the U.S. Bankruptcy Court in Nevada entered an Order granting Mega-C relief under Chapter 11 of the *Bankruptcy Code* (In *Re: Mega-C Power Corporation*, Case Number BK-N-04-50962-GWZ) (the “Insolvency Proceedings”).
12. Usling filed claims of interest in the Insolvency Proceedings in relation to claims for shares in Mega-C. In addition, Usling had an indirect and/or beneficial interest in certain claims of interest in shares filed in the Insolvency Proceedings: (collectively, “Claims of Interest”). Usling advised Staff that but for the Claims of Interest, he has no indirect or beneficial interest in any other claims in the Insolvency Proceedings. By way of written Notice to the Liquidation Trustee, Usling abandoned his interest in the foregoing Claims of Interest, and has lost the value of his holdings in Mega-C.

(v) Respondent’s Acknowledgements

13. Usling admits and acknowledges that his conduct described herein was contrary to the public interest.
14. Usling admits and acknowledges that his conduct described herein contravened section 25 of the Act and that no exemptions were available to him.
15. Usling admits and acknowledges that his conduct described herein contravened section 53 of the Act and that no exemptions were available to him.

V. RESPONDENT'S POSITION

16. For the purpose of this settlement only, Staff do not dispute the facts set out in this Agreement as Usling's position. However, this does not constitute an admission by Staff and does not bind Staff for the purpose of this proceeding against the remaining Respondents in this proceeding.
17. Usling worked part-time for Mega-C but did not receive a salary for his work and did not maintain an office at the Mega-C premises in Vaughan.
18. Usling relied upon assurances from another respondent in these proceedings that legal advice had been obtained and there was no legal impediment to the trading of shares in Mega-C in Ontario.
19. Usling recognizes that he ought to have taken further steps to confirm the legal advice given and his own ability to engage in acts constituting the trading of securities without registration.
20. Usling reasonably believed that the Technology was commercially viable, and relied upon a written report of independent testing performed by a respected Canadian electrochemist that confirmed that the Technology had "attractive possibilities" for further investment and commercial development.
21. Usling is not currently a director or officer of a reporting issuer.
22. In addition to the loss of the value of his holdings in Mega-C, Usling has incurred approximately \$1 million in legal fees in connection with various proceedings arising from his involvement in Mega-C which he has paid personally.

VI. TERMS OF SETTLEMENT

23. Usling agrees to settle this matter on the basis of the following terms of settlement:

- (a) pursuant to clause 6 of subsection 127(1) of the Act, Usling shall be reprimanded;
- (b) pursuant to clause 8 of subsection 127(1) of the Act, Usling shall be prohibited from becoming or acting as director or officer of any reporting issuer for two years.

VII. STAFF COMMITMENT

- 24. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Usling in relation to the facts set out in Part IV of this Settlement Agreement.
- 25. If this Settlement Agreement is approved by the Commission and at any subsequent time Usling fails to honour the terms of settlement contained in paragraph 23 of this Settlement Agreement, Staff reserve the right to bring proceedings against Usling based on the facts set out in Part IV of this Settlement Agreement, and based on the breach of this Settlement Agreement.

VIII. APPROVAL OF SETTLEMENT

- 26. Approval of this Settlement Agreement shall be sought at a hearing of the Commission (the "Settlement Hearing") to be scheduled.
- 27. Counsel for Staff and counsel for Usling may refer to any part or all of this Settlement Agreement at the Settlement Hearing. Staff and Usling agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing.
- 28. If this Settlement Agreement is approved by the Commission, Usling agrees to waive his rights under the Act to a full hearing, judicial review or appeal of the matter.
- 29. Whether or not the Settlement Agreement is approved by the Commission, Usling agrees that he 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.

30. 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 Usling leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and Usling;
 - (b) Staff and Usling 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; and
 - (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 Usling or as may be required by law.
31. Except as required above, this Settlement Agreement and its terms will be treated as confidential by Staff and Usling 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 and Usling, or as may be required by law.
32. Any obligations of confidentiality attaching to this Settlement Agreement shall terminate upon approval of this settlement by the Commission.
33. Staff and Usling agree that, if this Settlement Agreement is approved by the Commission, they will not make any public statement inconsistent with this Settlement Agreement.

IX. EXECUTION OF SETTLEMENT AGREEMENT

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

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

Dated at Toronto this 16th day of September, 2009.

“Wolfgang Kyser”
Witness: _____

“Gary Usling”

Name: Gary Usling

Dated at Toronto this _____ day of September, 2009.

**STAFF OF THE ONTARIO SECURITIES
COMMISSION**

“Tom Atkinson”

Name: Tom Atkinson
Title: Director of Enforcement

SCHEDULE "A"

**IN THE MATTER OF THE *SECURITIES ACT*,
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O R D E R

WHEREAS on November 16, 2005, the Commission issued a Notice of Hearing pursuant to sections 127 and 127.1(1) and (2) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), accompanied by Staff's Statement of Allegations, in relation to the Respondents;

AND WHEREAS Gary Usling entered into a settlement agreement dated September ●, 2009 (the "Settlement Agreement") in which he agreed to a settlement of the proceeding commenced by the Notice of Hearing dated November 16, 2005, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement and Staff's Statement of Allegations, and upon hearing submissions from counsel for Staff and the Respondent;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS ORDERED THAT:

1. the Settlement Agreement between Gary Usling and Staff of the Commission is approved;
2. pursuant to paragraph 127(6) of the Act, Gary Usling is reprimanded; and
3. pursuant to paragraph 127(8) of the Act, Gary Usling is prohibited for two years from becoming or acting as a director or officer of a reporting issuer.

DATED at Toronto this day of September, 2009.
