

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

- and -

IN THE MATTER OF NELSON CHARLES SMITH

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 Nelson Charles Smith ("Smith") of this proceeding, pursuant to sections 127 and 127.1 of the Act, which approval will be sought jointly by Staff and Smith;
 - (b) to make an order that the respondent Smith be reprimanded; and

- (c) to make an order that the respondent Smith pay costs to the Commission.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff agree to recommend settlement of the proceeding initiated in respect of the respondent Smith by the Notice of Hearing in accordance with the terms and conditions set out below. Smith 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. Solely for the purpose of this proceeding, Smith 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. Smith is, and has been registered since March 26, 2001, as a trading officer with the titles of Vice-President and Managing Director, Head of Investment Banking. Smith was registered as a trading officer with the title of Vice-President from November 9, 1995 to

January 30, 1997, and from January 30, 1997 to March 26, 2001 as Vice-President and Director of Investment Banking for the Media, Entertainment & Leisure Group.

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

GTR GROUP INC.

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.

1. Investments by Yorkton Group in GTI

10. In March 1997, Capital Canada Limited (“CCL”) made a presentation to representatives of Yorkton concerning an opportunity to participate in the acquisition and financing of GTI. In this presentation, CCL expressed the view that individuals at Yorkton should acquire shares in GTI as a sign of their good faith.
11. In response to this presentation, ultimately Yorkton acquired 250,000 common shares, representing approximately 6% of outstanding common shares of GTI. Yorkton then transferred those shares for value to various persons and entities including Smith and other senior officers of Yorkton (collectively, the "Yorkton Group").

2. Xencet

12. Xencet was incorporated in 1993 as a “junior capital pool” under the name Patch Ventures Inc. ("Patch"). In 1994, Patch acquired all of the issued and outstanding shares of Legacy Manufacturing Corporation pursuant to a reverse take-over, following which the name of the company was changed to Legacy Storage Systems International Inc. (“Legacy”). In 1995, Legacy’s shares were listed and posted for trading on the TSE.
13. Since 1995, Yorkton has regularly acted as underwriter and financial advisor for Xencet and its predecessor companies and was also a security holder. In particular, Yorkton was the underwriter in respect of two special warrant offerings of Legacy completed in May 1995 and December 1995, and the underwriter in respect of the unit offering of Legacy completed in March 1996. Yorkton also acted as financial advisor to Legacy in connection with the acquisition by Legacy of shares and assets of Rexon Inc., completed in March 1996. Legacy subsequently changed its name to Tecmar Technologies International Inc. in December 1996. In January 1998, its name again was changed to Xencet Investments Inc. (“Xencet”) in connection with the proposed sale of the last of its operating businesses.

14. Upon completion of the sale of the last of Xencet's operating businesses, 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. Failing that, the shares of Xencet would be de-listed.

3. Xencet and GTI RTO

15. In March 1998, employees of Yorkton other than Smith reviewed possible merger or RTO candidates and reported the results of the review to the Xencet Board.
16. Through 1997 and into 1998, representatives of GTI met with Smith and other Yorkton employees, on various occasions to discuss the timing of an initial public offering of GTI and the company's financing requirements. As described below, in March 1998 and the months that followed, certain Yorkton senior officers and investment bankers, including Smith, were acting as financial advisors to GTI.
17. On or about April 16, 1998, Smith and other Yorkton employees, met with the President of GTI for a general business update on GTI. Smith arranged for the GTI President to give a presentation to Yorkton's then President on or about April 24, 1998.
18. At the meeting on April 24, 1998, GTI was advised of a TSE-listed company that was looking for merger or acquisition candidates. Shortly after this meeting, discussions ensued concerning a possible transaction, and the identity of Xencet was disclosed to GTI.
19. During April and May 1998, GTI was in discussions with Movies & Games 4 Sale, L.P. ("M4S"), a Dallas-based private limited partnership engaged in the same type of business as GTI, with respect to the possible combination of the businesses of GTI and M4S.

20. In early May, Xencet and GTI, negotiated the share exchange ratio in respect of the three businesses, such that Xencet, GTI and M4S were agreed to be valued as one-third interests of the proposed business combination.
21. On or about June 12, 1998, it was determined by the interested parties that the proposed merger/RTO would no longer include M4S as a party to the transaction.
22. On or about June 16, 1998, Xencet and GTI reached an agreement in respect of the share exchange ratio for the proposed RTO of GTI and Xencet. The parties agreed to a 50/50 share exchange ratio. The share exchange ratio agreed to by the parties was not publicly announced at this time. The information concerning the share exchange ratio agreed to by Xencet and GTI was available to Smith in or about mid-June 1998 by virtue of his role in supervising the work of Yorkton investment bankers on the RTO. On Friday, June 19, 1998, Xencet and GTI also entered into a confidentiality agreement, and began to exchange information under that agreement on Monday, June 22, 1998.
23. In order to proceed with the proposed RTO, GTI also approached the shareholders of GTI and requested that the original shareholders, which included Smith, purchase shares from the founder of GTI.
24. On June 30, 1998, Smith purchased 2,660 common shares of GTI.
25. 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.

26. 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. as of November 11, 1998. Following the RTO, the common shares of Xencet/GTR traded on the TSE at prices substantially above the price of the GTI shares purchased by Smith on June 30, 1998.

CONDUCT CONTRARY TO THE PUBLIC INTEREST

27. Smith's conduct was contrary to the public interest by reason of the following:

Smith's purchase of GTI shares on June 30, 1998 placed Smith in a conflict of interest given his position as a registrant, the nature of his involvement in assisting GTI with its financing, and either Smith's knowledge of undisclosed information in respect of the proposed RTO or the availability to Smith of such undisclosed information by virtue of his role in assisting GTI on the proposed RTO.

IV. TERMS OF SETTLEMENT

28. Smith agrees to the following terms of settlement:

- (a) at the time of approval of this settlement agreement, Smith will make a voluntary payment to the Commission in the amount of \$15,000, 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 Smith be reprimanded; and

- (c) that the Commission make an order under subsection 127.1(1)(b) of the Act that at the time of approval of this Settlement, Smith 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.

V. CONSENT

29. Smith 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

30. If this settlement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Smith respecting the facts set out in Part III of this Settlement Agreement. If the related settlement entered into between Staff and Yorkton Securities Inc. dated December 14, 2001 is approved by the Commission (the "Yorkton Settlement Agreement"), Staff will not initiate any other proceeding under the Act against Smith respecting the facts set out in Part III of the Yorkton Settlement Agreement.

VII. APPROVAL OF SETTLEMENT

31. 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 Smith (the "Settlement Hearing").
32. Counsel for Staff or for Smith may refer to any part, or all, of this Settlement Agreement at the Settlement Hearing. Staff and Smith agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing.

33. If this settlement is approved by the Commission, Smith agrees to waive his rights to a full hearing, judicial review or appeal of the matter under the Act.
34. Staff and Smith agree that if this settlement is approved by the Commission, they will not make any public statement inconsistent with this Settlement Agreement.
35. 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 Smith leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff and Smith;
 - (b) Staff and Smith 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 Smith, or as may be required by law; and
 - (d) Smith 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

36. Except as permitted under paragraph 35 above, this Settlement Agreement and its terms will be treated as confidential by Staff and Smith 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 Smith, or as may be required by law.
37. Any obligations of confidentiality shall terminate upon approval of this settlement by the Commission.

IX. EXECUTION OF SETTLEMENT AGREEMENT

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

DATED this 17th day of December, 2001.

WITNESS

NELSON CHARLES SMITH

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 NELSON CHARLES SMITH

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 Nelson Charles Smith ("Smith");

AND WHEREAS Smith entered into a settlement agreement dated December 17, 2001 (the "Settlement Agreement") in which he 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 Smith 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, Smith is hereby reprimanded; and
3. pursuant to subsection 127.1(2)(b) of the Act, at the time of approval of this Settlement, Smith 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.
