

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

-AND-

**IN THE MATTER OF
MOMENTAS CORPORATION, HOWARD RASH,
ALEXANDER FUNT, SUZANNE MORRISON
AND MALCOLM ROGERS**

**SETTLEMENT AGREEMENT
(MALCOLM ROGERS)**

I. INTRODUCTION

1. By Notice of Hearing dated April 3, 2006, the Ontario Securities Commission (“the Commission”) announced that it proposed to hold a hearing to consider whether, pursuant to sections 127 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 to make an order approving the settlement agreement entered into between Staff of the Commission and the Respondent, Malcolm Rogers (“Rogers”).

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff recommend settlement of the allegations against Rogers, in accordance with the terms and conditions set out below. Rogers agrees to the settlement on the basis of the facts agreed to as provided in Part III and consents to the making of an order against him in the form attached as Schedule “A” on the basis of the facts set out in Part III.

3. 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. AGREED FACTS

4. Staff and Rogers agree with the facts set out in Part III for the purpose of this settlement proceeding only.

A. The Respondent

5. From July 2003 to May 1, 2005, Rogers held the position of Chief Executive Officer (“CEO”) of Momentas Corporation (“Momentas”) and held the position of director from July 2003 to August 10, 2005.
6. Following the incorporation of Momentas in July 2003, Rogers’ involvement consisted primarily of reviewing software systems that Momentas was purportedly proposing to develop, training some of the operators on the proposed software systems and reviewing simulations of the proposed software. Rogers’ involvement in the company was limited thereafter.

B. The Sale of Momentas Securities

7. Between August 2003 and June 2005, Momentas sold ‘Series A Secured Convertible Debentures’ of Momentas (“Convertible Debentures”) to residents of Ontario, British Columbia and Alberta pursuant to its offering memorandum, as amended April 1, 2004 (the “Offering Memorandum”).

8. The Offering Memorandum, signed by Rogers in his capacity as CEO, was distributed to prospective investors along with other promotional material regarding the company, including (commencing in 2004) a CD Rom recording of a presentation by Rogers to investors.
9. The Offering Memorandum describes the business of Momentas as involving the development and licensing of an automated proprietary stock trading system (“ARF”), the trading by Momentas of foreign currencies, and potential acquisitions by Momentas of other businesses.
10. The majority of Momentas’ employees were directly involved in the sale of Convertible Debentures through telephone solicitation with no other employment responsibilities. Momentas and its officers, directors or employees, including Rogers, were not registered with the Commission in any capacity.
11. In selling the Convertible Debentures, Momentas purportedly relied upon the exemption from registration contained in OSC Rule 45-501 with respect to the sale of securities to accredited investors (the “Accredited Investor Exemption”). Momentas filed forms 45-501 F1 with the Commission reporting the sales of Convertible Debentures as required by Rule 45-501.
12. Momentas raised approximately \$7.8 million from the sale of Convertible Debentures. Of this amount, approximately \$2.95 million was raised from residents of Ontario.

C. Rogers' Resignation From Momentas

13. On May 1, 2005, Rogers resigned from his position as CEO of Momentas. Rogers submitted his resignation letter directly to Howard Rash ("Rash") and Alexander Funt ("Funt"), the founders and directing minds of Momentas. Rogers' resignation was effective immediately.
14. Unknown to Rogers at the time, approximately 55% of the proceeds of the offering was used to fund the costs of the offering; approximately 15% was used for the stated business purpose as set out in the Offering Memorandum; and the balance, approximately 30% of the offering, was received personally by Rash and Funt as "management draws". In total, Rash and Funt received \$2.56 million from the \$7.8 million raised from investors.
15. On June 9, 2005, the Commission made a temporary order that, *inter alia*, Momentas cease trading in its securities and that Suzanne Morrison, Rash and Funt cease trading in any securities (the "Temporary Cease Trade Order"). The Temporary Cease Trade Order was further extended by orders of the Commission pending the conclusion of the within proceedings.
16. Rogers was not subject to the Temporary Cease Trade Order or the orders extending the Temporary Cease Trade Order.

17. On July 14, 2005, following a hearing to determine whether it was in the public interest to further extend the Temporary Cease Trade Order against Momentas, the Commission concluded that, in selling the Convertible Debentures, Momentas “had been acting as a market intermediary and distributing its securities without being registered”.
18. Subsequent to the extension of the temporary orders by the Commission, Rogers became aware that Rash and Funt had personally received approximately \$2.56 million of the \$7.8 million raised from investors.
19. On August 10, 2005, Rogers notified Rash in writing of his resignation, effective immediately, as a director of Momentas. Rogers resigned, in part, on the basis that Rash and Funt would not accept Rogers’ proposal to reinvest the funds they had received as “management draws” back into the company so that it could operate in a manner that would seek to benefit the debenture holders.
20. With the exception of approximately \$30,000 frozen by Directions issued by the Commission on October 18, 2005, which were extended by the Ontario Superior Court of Justice, there are no funds remaining from the offering.

D. Permitting, Authorizing or Acquiescing

21. While in the position of CEO and as a director of Momentas, Rogers knew that most of the employees of Momentas were directly involved in the sale of Convertible Debentures through telephone solicitation and had no other employment responsibilities.

22. Rogers relied on the founders and directing minds of Momentas, Rash and Funt, to ensure that the company's activities, as structured, were in compliance with Ontario securities law and that they had received legal advice from outside counsel in that regard. Rogers took no independent steps as the CEO to inform himself with respect to those matters.

E. Mitigating Factors

23. Rogers is 63 years old and has no prior disciplinary record with the Commission.
24. Rogers has cooperated fully with Staff of the Commission. He submitted to a voluntary interview and provided documents in respect of Momentas.
25. Rogers personally invested \$104,500 in Momentas by purchasing Convertible Debentures. Momentas has ceased operations and has ceased interest payments to its debenture holders. Rogers does not know whether his investment will be recoverable from Momentas.
26. Rogers' role with Momentas significantly decreased after the initial start-up of the company.

IV. CONDUCT CONTRARY TO THE PUBLIC INTEREST

27. Rogers was an officer and director of Momentas. In failing to take steps to determine whether the activities of Momentas complied with Ontario securities law, Rogers failed to appropriately discharge his duties as an officer and director of an issuer offering securities to members of the public and acquiesced in Momentas's breach of section 25 of the Act.

28. Roger's conduct as described above was in contravention of Ontario securities law and was contrary to the public interest.

V. TERMS OF SETTLEMENT

29. Rogers agrees to the following terms of settlement, to be set out in an order by the Commission pursuant to section 127(1) of the Act:

- (a) pursuant to paragraph 7 of subsection 127(1) of the Act, Rogers shall forthwith resign any positions that he holds as an officer and/or director of any issuer, except that which he holds with his current employer, namely XtraKare Corporation of America Inc. or its affiliates; and
- (b) pursuant to paragraph 8 of subsection 127(1) of the Act, Rogers is prohibited from becoming or acting as an officer and/or director of any issuer for 3 years, effective from the date of the order of the Commission approving the Settlement Agreement, except in acting as an officer and director with his current employer, namely XtraKare Corporation of America Inc. or its affiliates.

30. Rogers agrees to attend, in person, at the hearing before the Commission on a date to be determined by the Secretary to the Commission to consider the Settlement Agreement, or such other date as may be agreed to by the parties for the scheduling of the hearing to consider the Settlement Agreement.

31. Rogers also agrees that he will testify as a witness for Staff at any proceeding commenced by Staff before the Commission in respect of the sale of securities of Momentas.

VI. STAFF COMMITMENT

32. If this settlement is approved by the Commission, Staff will not initiate any other proceeding under Ontario securities law against Rogers in respect of the facts set out in Part III of the Settlement Agreement, subject to the provisions of paragraph 37 below.

VII. PROCEDURE FOR APPROVAL OF SETTLEMENT

33. Approval of this Settlement Agreement shall be sought at a hearing of the Commission scheduled on a date agreed to by Staff and Rogers.
34. Counsel for Staff or for Rogers may refer to any part, or all, of the Settlement Agreement at the Settlement Hearing. Staff and Rogers agree that the Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing, unless the parties later agree that further evidence should be submitted at the Settlement Hearing.
35. If the Settlement Agreement is approved by the Commission, Rogers agrees to waive his right to a full hearing, judicial review or appeal of the matter under the Act.
36. Staff and Rogers agree and undertake that if the Settlement Agreement is approved by the Commission, they will not make any statement inconsistent with the Settlement Agreement.

37. If this Settlement Agreement is approved by the Commission and, at any subsequent time, Rogers fails to honour any of the Terms of Settlement set out in Part V, Staff reserve the right to bring proceedings under Ontario securities law against Rogers based on, but not limited to, the facts set out in Part III of the Settlement Agreement, as well as the breach of the Settlement Agreement.
38. Whether or not the Settlement Agreement is approved by the Commission, Rogers agrees that he will not, in any proceeding, refer to or rely upon the 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.

VIII. DISCLOSURE OF SETTLEMENT AGREEMENT

39. The Settlement Agreement and its terms will be treated as confidential by Staff and Rogers until approved by the Commission, and forever if, for any reason whatsoever, the Settlement Agreement is not approved by the Commission, except with the written consent of Staff and Rogers, or as may be required by law.
40. Any obligations of confidentiality shall terminate upon approval of the Settlement Agreement by the Commission.

IX. EXECUTION OF SETTLEMENT AGREEMENT

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

DATED this 3rd day of April, 2006

Signed in the presence of: A. Crawley

“Malcolm Rogers”

Malcolm Rogers

Staff of the Ontario Securities Commission

“Michael Watson”

Michael Watson
Director, Enforcement Branch