

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

- and -

**IN THE MATTER OF ANDREW CHEUNG**

**SETTLEMENT AGREEMENT**

**I. INTRODUCTION**

1. By Notice of Hearing dated March 15, 2005, the Ontario Securities Commission (the “Commission”) announced that it would hold a hearing on April 26, 2005 to consider whether pursuant to section 127 of the Ontario *Securities Act*, R.S.O. 1990, c.S.5, as amended (the “Act”) it is in the public interest to make an order that:

- (a) pursuant to section 127(1) clause 2 of the Act, Andrew Cheung (“Cheung”) cease trading in securities until he has filed all reports in respect of changes in his direct or indirect beneficial ownership of or control over 01 Communiqué Laboratory Inc. (“01 Communiqué”) for 2003 and 2004, as required by section 107 (2) of the Act;
- (b) pursuant to section 127(1) clause 6 of the Act, Cheung be reprimanded;
- (c) pursuant to section 127(1) clause 9 of the Act, Cheung pay an administrative penalty;
- (d) pursuant to section 127.1 of the Act, Cheung pay a portion of the costs of the investigation and this proceeding; and
- (e) such other order as the Commission may deem appropriate.

## **II. JOINT SETTLEMENT RECOMMENDATION**

2. Staff of the Commission (“Staff”) recommend settlement of the proceeding initiated in respect of Cheung in accordance with the terms and conditions set out below. Cheung 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. For the purposes of this Settlement Agreement, Cheung agrees with the facts set out in Part III.

4. 01 Communiqué is a reporting issuer in Ontario.

5. Cheung has been the president of 01 Communiqué since October 7, 1992. Cheung is the beneficial owner of a company called Global Genius Investments Ltd. (“GGI”).

6. Between November 14, 2003 and October 7, 2004, GGI conducted 21 transactions in the shares of 01 Communiqué.

7. Section 107(2) of the Act required Cheung to file a report of each change in his direct or indirect beneficial ownership of the reporting issuer, 01 Communiqué. Section 107(2) required Cheung to file the reports within 10 days from the day the change took place.

8. Notwithstanding that GGI executed 21 trades in 01 Communiqué between November 2003 and October 2004, Cheung had not filed any section 107(2) reports in respect of those trades as of March, 2005, when this proceeding was commenced.

9. As at April 19, 2005, Cheung has filed all reports in respect of the 21 GGI transactions in 01 Communiqué shares which occurred between November 14, 2003 and October 7, 2004.

### **Position of Cheung**

10. Notwithstanding that he is the beneficial owner of GGI, it is Cheung's position that he was not aware of the aforementioned trades by GGI until he was interviewed by Staff on November 19, 2004 because the trades were carried out by his sister, Christina Cheung.

### **Conduct Contrary to the Public Interest**

11. By failing to file insider trading reports as required by section 107(2), Cheung breached Ontario securities law and engaged in conduct contrary to the public interest.

### **IV. TERMS OF SETTLEMENT**

12. Cheung agrees to the following terms of settlement:

- (a) the Commission will make an order under clause 9 of section 127(1) of the Act requiring Cheung to pay an administrative penalty of \$5,000.00; and
- (b) the Commission will make an order under section 127.1 of the Act requiring Cheung to pay \$3,500.00 in costs.

### **V. STAFF COMMITMENT**

13. If this Settlement Agreement is approved by the Commission, Staff will not initiate any proceeding under Ontario securities law in respect of any conduct or alleged conduct of Cheung in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 17 below.

### **VI. PROCEDURE FOR APPROVAL OF SETTLEMENT**

14. Approval of this Settlement Agreement shall be sought at the public hearing of the Commission scheduled for Tuesday, April 26, 2005, or such other date as may be agreed to by Staff and Cheung in accordance with the procedures described in this Settlement Agreement.

15. Staff and Cheung agree that if this Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted respecting the respondents in this matter, and Cheung agrees to waive his rights to a full hearing, judicial review, or appeal of the matter under the Act.

16. Staff and Cheung agree that if this Settlement Agreement is approved by the Commission, neither Staff nor Cheung will make any public statement inconsistent with this Settlement Agreement.

17. If Cheung fails to honour the agreement contained in paragraph 12 of this Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against Cheung based on the above-noted failure to file section 107(2) reports and based on the breach of this Settlement Agreement.

18. 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, each of Staff and Cheung will 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, unaffected by this Settlement Agreement or the settlement negotiations.

19. Whether or not this Settlement Agreement is approved by the Commission, Cheung agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

## **VII. DISCLOSURE OF AGREEMENT**

20. The terms of this Settlement Agreement will be treated as confidential by all parties hereto 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 both Cheung and Staff or as may be required by law.

21. Any obligations of confidentiality shall terminate upon approval of this Settlement Agreement by the Commission.

**VIII. EXECUTION OF SETTLEMENT AGREEMENT**

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

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

**DATED** this 20<sup>th</sup> day of April, 2005

**Signed in the presence of:**

“ENDORSEMENT GUARANTEED  
ROYAL BANK OF CANADA  
Dixie & Meyerside Branch, Mississauga, ON  
G. Goncalves”

\_\_\_\_\_  
**Witness**

“Andrew Cheung”

\_\_\_\_\_  
**Andrew Cheung**

**DATED** this 20<sup>th</sup> day of April, 2005

STAFF OF THE ONTARIO SECURITIES

Per:

“Michael Watson”

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**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 ANDREW CHEUNG**

**O R D E R**  
**(Sections 127 and 127.1)**

**WHEREAS** on March 15, 2005, the Ontario Securities 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 respect of Andrew Cheung (“Cheung”);

**AND WHEREAS** Cheung entered into a Settlement Agreement with Staff of the Commission dated April 1, 2005 (the “Settlement Agreement”) in which he agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

**AND UPON** reviewing the Settlement Agreement and the Notice of Hearing and Statement of Allegations of Staff of the Commission, and upon hearing submissions from counsel for Cheung 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 THAT:**

- (a) Pursuant to section 127(1) clause 9 of the Act Cheung pay an administrative penalty of \$5,000.00; and

(b) Pursuant to section 127.1 of the Act Cheung pay \$3,500.00 in costs.

Dated at Toronto this 26th day of April, 2005

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