

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

AND

DARREN DELAGE

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Ontario Securities Commission (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 *Securities Act*, R.S.O. 1990, c. S-5, as amended (the “Act”), it is in the public interest for the Commission to make certain orders in respect of Darren Delage [the “Respondent”].

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission (“Staff”) agree to recommend settlement of the proceeding commenced by Notice of Hearing dated March 31, 2008 (the “Proceeding”) against the Respondent according to the terms and conditions set out in Part VI of this Settlement Agreement. The Respondent agrees to the making of an order in the form attached as Schedule “A”, based on the facts set out below.

PART III - AGREED FACTS

3. For this proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, the Respondent agrees with the facts as set out in Part III of this Settlement Agreement.

(a) Background

4. Polar Securities Inc. (“Polar Securities”) was established in 1991 and is a registered Investment Dealer and Futures Commission Merchant, whose business included the management of hedge funds.

5. Polaris Energy Offshore Master Fund (the “Polaris Fund”) was established in 2003 and was a \$25 million offshore, non-prospectus qualified hedge fund managed by Polar Securities. The Polaris Fund described itself as a broadly diversified, market neutral, long/short energy equity hedge fund. The investors in the Polaris Fund included North Pole Capital, another hedge fund managed by Polar Securities, and external investors.

6. Delage is a resident of Oakville, Ontario. Delage was employed by Polar Securities from April 2004 to July 15, 2005 to advise and trade on behalf of the Polaris Fund. Delage was not registered with the Commission in any capacity. During his employment, Delage executed the majority of the trades for the Polaris Fund. Delage is currently registered with the Commission as an Associate Advising Officer and Trading Officer with another registered firm.

7. Environmental Applied Research Technology House-Earth (Canada) Corporation (“EAR”) was a stock that traded on the Canadian Venture Exchange (“CDNX”) under the stock symbol “EAR”. On November 4, 2005, EAR was renamed TORR Canada Inc.

Trading on the CDNX closes at 4:00 each weekday. After hours trading is permitted until 5:00 at the closing price of the shares.

8. On June 23, 2005, the Polaris Fund participated in a private placement of EAR units. The Polaris Fund purchased approximately 2.75 million units at a cost of \$0.10 per unit. Each unit consisted of one common share and one share purchase warrant of the corporation, with each share purchase warrant exercisable for one common share at a price of \$0.13 (the "Private Placement"). Pursuant to Ontario securities law, there was a four month restriction on the resale of these shares. This private placement was recommended for the Polaris Fund by an employee of Polar Securities.

(b) Delage's trading activity in EAR shares

9. Between June 27, 2005 and July 12, 2005, Delage entered into numerous purchases of freely-tradable EAR shares, which were reported on the public market via CDNX, when he knew or ought to have known that the trading could contribute to a misleading price in EAR shares.

10. On June 27, 2005, EAR opened at \$0.18 per share and closed at \$0.24 per share. Delage entered eleven purchase orders for a total of 210,000 EAR shares starting at approximately 3:32 p.m. The buy orders were limit orders, with the exception of the final 5,000 shares that were at market (or \$0.245), at prices of \$0.190 for 40,000 shares, \$0.195 for 25,000 shares, \$0.210 for 60,000 shares, \$0.230 for 50,000 shares and \$0.240 for 30,000 shares. The fills resulted in ten upticks (share purchases at a price higher than the last reported trade) and a new high for 2005 (a share price higher than EAR had previously traded for in 2005). During the time of Delage's trading, based on the last board lot traded prior to Delage's first trade, the share price increased from \$0.15 to \$0.24 per share. The volume weighted average price (the average price of Delage's trades based on the amount traded at each price) for Delage's trades was \$0.1979 per share.

11. On June 28, 2005, EAR opened at \$0.24 per share and closed at \$0.215 per share. Delage entered two purchase orders for a total of 125,000 EAR shares starting at approximately 3:54 p.m. The buy orders were limit orders to buy 125,000 shares at a price limit of \$0.250. The fills resulted in five upticks. During the time of Delage's trading, the share price increased from \$0.18 to \$0.215 per share. The volume weighted average price for Delage's trades was \$0.2092 per share.

12. On June 29, 2005, EAR opened at \$0.20 per share and closed at \$0.20 per share. Delage entered four purchase orders for a total of 100,000 EAR shares starting at approximately 3:53 p.m. The purchase orders were limit orders to buy 100,000 shares at a price limit of \$0.210 for 50,000 shares and \$0.200 for 50,000 shares (of which a total of 95,000 EAR shares were acquired). The fills resulted in one uptick. On this day, there was no net effect on the price of EAR shares. The volume weighted average price for Delage's trades was \$0.2018 per share.

13. On June 30, 2005, EAR opened at \$0.175 per share and closed at \$0.20 per share. Delage entered purchase orders for EAR shares starting at approximately 2:50 p.m., of which 20,000 EAR shares were filled. The fills resulted in two upticks. During the time of Delage's trading, the share price increased from \$0.175 to \$0.20 per share. The volume weighted average price for Delage's trades was \$0.195 per share.

14. On July 11, 2005, EAR opened at \$0.22 per share and closed at \$0.21 per share. Delage entered two purchase orders for 5,000 EAR shares starting at approximately 3:34 p.m. The buy order was a limit order to buy 10,000 shares at a price limit of \$0.22. One order of 5,000 shares was filled at a price of \$0.21 just prior to the market closing at the same price as the previous trade, while the other order was not filled.

15. On July 12, 2005, EAR opened at \$0.20 per share and closed at \$0.22 per share. Delage entered his first purchase order for 5,000 EAR shares at 9:42 a.m. Later that same day, Delage entered four more purchase orders for a total of 25,000 EAR shares starting

at approximately 3:46 p.m. The fills resulted in two upticks. During the time of Delage's trading, the share price increased from \$0.20 to \$0.22 per share.

16. On June 27 and 28, 2005, Delage's trading dominated the volume of trading in EAR shares in the last 30 minutes of trading. On June 29 and 30, 2005 and July 12, 2005, Delage's trading represented 100 per cent of the volume of trading in EAR shares in the last 30 minutes of trading.

(c) Effect of trading on Polaris Fund

17. The Polaris Fund was valued monthly in part on the basis of the closing price of the securities held in the Polaris Fund on the last trading day of the month.

(d) Termination of Delage

18. On July 6, 2005, as a result of inquiries initiated by an employee of Polar Securities, Polar Securities commenced an investigation into Delage's trading activity in EAR shares at the end of June, 2005. Delage's employment was terminated, effective July 15, 2005.

PART IV - THE RESPONDENT'S POSITION

19. The Respondent requests that the settlement hearing panel consider the following mitigating circumstances:

20. The Respondent is 35 years of age. Prior to commencing employment with Polar in April 2004, Delage did not have any prior experience working in the securities industry in Canada, except for a summer job during his undergraduate studies in 1994.

21. Prior to Delage's first purchase of EAR, EAR was a relatively thinly traded security.

22. The average daily volume of trading in EAR during the month of June 2005, prior to Delage's first day of trading on June 27, 2005, was 43,800 shares per day.

23. The price of EAR was generally increasing prior to Delage's first purchase of EAR. Between Monday, June 13, 2005 to Friday, June 24, 2005, EAR's closing prices increased from \$0.12 to \$0.18.

24. The Respondent is currently registered as an Associate Advising Officer and Trading Officer of a registered investment counsel and portfolio manager and limited market dealer.

25. The Respondent has never been the subject of any prior disciplinary proceeding.

PART V - CONDUCT CONTRARY TO THE PUBLIC INTEREST

26. Delage engaged in an intentional pattern of trading in EAR shares, described in paragraphs 10-17, in circumstances where he knew or ought to have known that the trading could contribute to a misleading price for EAR shares.

27. The Respondent's conduct was contrary to the public interest.

PART VI - TERMS OF SETTLEMENT

28. The Respondent agrees to the terms of settlement listed below.

29. The Commission will make an order pursuant to section 127(1) and section 127.1 of the Act that:

- (a) The settlement agreement is approved;

- (b) The registration granted to the Respondent under Ontario securities law be suspended for a period of 4 months commencing on the date of the Commission's order, and that the following term and condition be imposed on the Respondent's registration thereafter: the Respondent shall be subject to supervision by a registered officer (advising and trading) in the category of investment counsel and portfolio manager for a period of 2 years;
- (c) Trading in any securities by the Respondent cease for a period of 4 months commencing on the date of the Commission's order, except that the Respondent may trade in securities in one RRSP account wholly beneficially owned by the Respondent and held at a full service registered dealer (which account the Respondent will identify in writing to the Staff of the Ontario Securities Commission), if the securities are
- (i) securities referred to in clause 1 of subsection 35(2) of the Act;
 - (ii) in the case of securities other than those referred to in paragraph (i) above:
 - 1. the securities are listed and posted for trading on The Toronto Stock Exchange or the New York Stock Exchange; and
 - 2. the Respondent does not own directly or indirectly through another person or company or through any person or company acting on his behalf, more than one (1) percent of the outstanding securities of the class or series of the class in question;
- (d) The Respondent be reprimanded;
- (e) The Respondent complete the Conduct and Practices course of the Canadian Securities Institute within one year of the date of the Commission's order;

- (f) The Respondent pay the costs of the Commission's investigation, in the amount of \$7,000.00.

30. The Respondent agrees to personally make any payments ordered above by certified cheque when the Commission approves this Settlement Agreement. The Respondent will not be reimbursed for, or receive a contribution toward, this payment from any other person or company.

31. The Respondent 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 29(b) and (c) above. These prohibitions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

PART VII - STAFF COMMITMENT

32. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding under Ontario securities law in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 33 below.

33. If the Commission approves this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against the Respondent. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement.

PART VIII – PROCEDURE FOR APPROVAL OF SETTLEMENT

34. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission according to the procedures set out in this Settlement Agreement and the Commission's Rules of Practice.

35. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on the Respondent's conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.

36. If the Commission approves this Settlement Agreement, the Respondent agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

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

38. Whether or not the Commission approves this Settlement Agreement, the Respondent will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART IX – DISCLOSURE OF SETTLEMENT AGREEMENT

39. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:

- (a) this Settlement Agreement and all discussions and negotiations between Staff and the Respondent before the settlement hearing takes place will be without prejudice to Staff and the Respondent; and
- (b) Staff and the Respondent will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.

40. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality. If the Commission does not approve the Settlement Agreement, both parties must continue to keep the terms of the Settlement Agreement confidential, unless they agree in writing not to do so or if required by law.

PART X – EXECUTION OF SETTLEMENT AGREEMENT

41. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.

42. A fax copy of any signature will be treated as an original signature.

Dated this “13th” day of January, 2009

“M.Scott”
Witness

“Darren Delage”
Darren Delage

Dated this 13th day of January, 2009

STAFF OF THE ONTARIO
SECURITIES COMMISSION

“Peggy Dowdall-Logie”

Per: ”K. Daniels”

Schedule A

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

AND

DARREN DELAGE

ORDER

WHEREAS on March 31, 2008 the Commission issued a Notice of Hearing pursuant to section 127 of the *Securities Act* (the “Act”) in respect of Darren Delage’s trading in the shares of Environmental Applied Research Technology House-Earth (Canada) Corporation;

AND WHEREAS on March 31, 2008, Staff of the Commission filed a Statement of Allegations;

AND WHEREAS Darren Delage entered into a settlement agreement dated January , 2009 (the “Settlement Agreement”) in relation to the matters set out in the Statement of Allegations;

AND WHEREAS the Commission issued a Notice of Hearing dated January , 2009 setting out that it proposed to consider the Settlement Agreement;

UPON reviewing the Settlement Agreement, the Notice of Hearing, the Statement of Allegations, and upon considering submissions from counsel for Darren Delage 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, PURSUANT TO SECTIONS 127 AND 127.1 OF THE ACT, THAT:

- (a) the Settlement Agreement is hereby approved;
- (b) The registration granted to the Respondent under Ontario securities law is suspended for a period of 4 months commencing on the date of this order, and the following term and condition be imposed on the Respondent’s

- registration thereafter: the Respondent shall be subject to supervision by a registered officer (advising and trading) in the category of investment counsel and portfolio manager for a period of 2 years.
- (c) Trading in any securities by the Respondent shall cease for a period of 4 months commencing on the date of the Commission's order, except that the Respondent may trade in securities in one RRSP account wholly beneficially owned by the Respondent and held at a full service registered dealer (which account the Respondent will identify in writing to the Staff of the Ontario Securities Commission), if the securities are
- (i) securities referred to in clause 1 of subsection 35(2) of the Act;
 - (ii) in the case of securities other than those referred to in paragraph (i) above:
 - 1. the securities are listed and posted for trading on The Toronto Stock Exchange or the New York Stock Exchange; and
 - 2. the Respondent does not own directly or indirectly through another person or company or through any person or company acting on his behalf, more than one (1) percent of the outstanding securities of the class or series of the class in question;
- (d) The Respondent is reprimanded;
- (e) The Respondent shall complete the Conduct and Practices course of the Canadian Securities Institute within one year of the date of the Commission's order;
- (f) The Respondent shall pay the costs of the Commission's investigation, in the amount of \$7,000.00.

Dated at Toronto, Ontario this _____ day of January, 2009
