



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
RAJEEV THAKUR**

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 approve this Settlement Agreement and to make certain orders in respect of Rajeev Thakur (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 January 9, 2009 (the "Proceeding") against the Respondent according to the terms and conditions set out in Part IV 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.

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.

PART III – AGREED FACTS

A. Overview

4. The Respondent is a resident of Ontario and is a former employee of Celestica Inc. ("Celestica"). Celestica is listed on the Toronto Stock Exchange ("TSX") and the New York Stock Exchange ("NYSE").

5. Between January 28, 2003 and February 20, 2003, between April 21, 2004 and April 23, 2004, and between July 20, 2005 and July 22, 2005, the Respondent purchased and sold securities of Celestica ("the Trades"). At the time of the Trades, the Respondent was in a special relationship, as defined in s. 76(5)(c) of the Act, with Celestica and had knowledge of material information with respect to Celestica that had not been generally disclosed. In particular, the Respondent was aware of Celestica's financial results before those results were generally disclosed which constituted insider contrary to section 76(1) of the Act.

B. Background

6. During the time that he made the Trades, the Respondent was a manager with Integrated Services and a Director of Outsourcing Strategies at Celestica. In 2002, the Respondent had completed 3 ½ years in a position as a Manager with Investor Relations at Celestica. During the time that he held this position, the Respondent was exposed to the subtleties of market response to earnings announcements.

C. Particulars

(a) *Celestica*

7. Celestica is a company that delivers electronic manufacturing services. It operates, globally, a highly sophisticated manufacturing network providing a broad range of services to leading Original Equipment Manufacturers. In 2005, it had revenue in excess of U.S. \$8.4 billion. It is a reporting issuer in Ontario. As a reporting issuer, Celestica is obliged to provide periodic reporting of its financial results pursuant to the provisions of the Act.

(b) *Celestica's Disclosure of Financial Results and the Respondent's Trades*

8. On January 28, 2003, Celestica announced its Q4 2002 results. The earnings were weaker than expected and the economic outlook predicted by the company was soft.

9. As a result of the announcement, Celestica's share price fell by 22% from U.S. \$14.74 to U.S. \$11.50.

10. Between January 21, 2003 and January 24, 2003, the Respondent purchased 851 put options (representing 85,100 underlying shares) through AMEX facilities. On February 20, 2003, the Respondent exercised the options by purchasing 70,000 shares, by using 11,888 shares which he held and by shorting 3,212 shares (the sum of 70,000; 11,888; and 3,212 totals 85,100).

11. As a result of these trades, the Respondent earned a profit of approximately CDN \$204,924.69.

12. After the close of trading on April 22, 2004, Celestica announced improved Q1 2004 financial results. As a result, the share price increased by 17.6% from U.S. \$16.75 to U.S. \$19.69 on the NYSE on a volume of over 9 million shares.

13. On April 21, 2004 and April 22, 2004, the Respondent purchased 65,900 shares of Celestica at CDN \$22.25 to CDN \$22.71 per share on the TSX. He did this in his brokerage account and his RRSP account. In his RRSP account, he liquidated his holdings, which had been, until that time, invested in the BMO Premium Money Market Fund for CDN \$125,800, in two tranches, which sales settled on April 16 and April 21, 2004. On April 23, 2004, the day after Celestica's announcement, the Respondent sold the 65,900 shares at prices ranging from CDN \$26.68 per share to CDN \$27.05 per share.

14. As a result of these trades, the Respondent made a profit of approximately CDN \$305,898, consisting of approximately CDN \$280,000 in his brokerage account, and approximately CDN \$23,898 in his RRSP account. In his RRSP account, he reinvested CDN \$150,000 into the BMO Premium Money Market Fund, which settled on April 26, 2004.

15. After the close of trading on July 21, 2005, Celestica announced lower revenues and earnings for Q2, 2005 as compared to the same period in the prior year.

16. As a result of the announcement, Celestica's share price declined by 16%. On the NYSE, the price declined from U.S. \$14.37 to U.S. \$12.17.

17. On July 20, 2005 (the day before the announcement) and July 21, 2005 (the day of the announcement), the Respondent shorted 45,000 shares. He covered his position on July 22, 2005 (the day after the announcement). As a result of his trades, Thakur earned a profit of approximately CDN \$131,233.60.

18. As a result of the Trades, the Respondent made a profit of approximately CDN \$642,056.29.

(c) *Discussion of Material Non-Public Information by Celestica Executives*

19. In advance of Celestica's financial results, Celestica's senior executives discussed the impending financial results in e-mail communications. Celestica senior management also prepared draft conference call scripts days prior to the announcements in which the impending earnings announcements were discussed. Anyone reading these scripts would be able to determine whether there was a positive or negative earnings announcement pending.

(d) *The Respondent's Unauthorized Access to Non-public Material Information*

20. At the time that the Respondent made the Trades, he had unauthorized access to the e-mail of all members of Celestica including senior management. During the course of Staff's investigation, it was determined by IT personnel at Celestica that the Respondent had the means to gain unauthorized access to the e-mail accounts of all members of Celestica including the legal department and management. Staff's investigation also revealed that the Respondent had used his unauthorized access to e-mail. IT personnel at Celestica found that the Respondent had downloaded a number of e-mails and electronic files of senior management onto his computer. There were only two persons at Celestica who had the capacity to offer such access to the Respondent: one of them was the Respondent's sister who also worked at Celestica in the capacity of a Technology Infrastructure Analyst.

21. During the course of Staff's investigation, it was discovered by IT personnel at Celestica that the Respondent's sister had sent the Respondent an e-mail containing the unauthorized access protocol. This access was made available to the Respondent during 2001, and updates in the access protocol, as well as the codes necessary to use the protocol, were made available at subsequent times.

22. Prior to making the Trades, the Respondent accessed e-mail communications among Celestica's senior management and acquired non-public material information concerning Celestica's impending earnings announcements. As a result, the Respondent, who was in a special relationship with Celestica, purchased and sold securities of Celestica whilst possessed of knowledge of material information that had not been generally disclosed.

PART IV - TERMS OF SETTLEMENT

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

24. 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) trading in any securities by the Respondent cease permanently from the date of the approval of the Settlement Agreement, except that the Respondent is permitted to trade only in mutual fund securities in one account on his own behalf through a registered dealer to whom he must provide a copy of the Order made by the Commission at the time he opens or modifies this account and trade only in mutual fund securities in one account on behalf of his registered retirement savings plan through a registered dealer to whom he must provide a copy of the Order made by the Commission at the time he opens or modifies this account;
- (c) acquisition of any securities by the Respondent is prohibited permanently from the date of the approval of the Settlement Agreement, except that the Respondent is permitted to acquire mutual fund securities in one account on his own behalf through a registered dealer to whom he must provide a copy of the Order made

by the Commission at the time he opens or modifies this account and to acquire mutual fund securities in one account on behalf of his registered retirement savings plan through a registered dealer to whom he must provide a copy of the Order made by the Commission at the time he opens or modifies this account;

- (d) Notwithstanding paragraphs (b) and (c) above, the Respondent shall have 60 days from the date of this Order to effect liquidating trades of any non-mutual fund securities that he owns beneficially or over which he exercises direction or control. The Respondent shall provide a record of any non-mutual fund securities that he owns beneficially or over which he exercises direction or control to Staff and will provide evidence to Staff that he has liquidated all non-mutual fund securities that he owns beneficially or over which he exercises discretion or control within 60 days from the date of this Order;
- (e) Any exemptions contained in Ontario securities law do not apply to the Respondent permanently except that he is permitted to trade or acquire mutual funds through a registered dealer as specified in paragraphs (b) and (c) above;
- (f) The Respondent is to be reprimanded;
- (g) The Respondent shall resign any positions that the Respondent holds as a director or officer of any issuer;
- (h) The Respondent is prohibited permanently from becoming or acting as a director or officer of any registrant or issuer;
- (i) The Respondent disgorge to the Commission the amount of \$642,056.29, being the amount of the profit made by the Respondent

by the Trades, to be allocated under s. 3.4(2)(b) of the Act to or for the benefit of third parties;

- (j) The Respondent agrees to pay an administrative penalty to the Commission the amount of \$481,542.22 to be allocated under s. 3.4(2)(b) of the Act for the benefit of third parties; and,
- (k) The Respondent agrees to pay costs in the amount of \$25,000 to the Commission.

25. The Respondent agrees to personally satisfy any payments ordered when the Commission approves this Settlement Agreement. The Respondent will not be reimbursed for, or receive a contribution toward, these payments from any other person or company.

26. 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-paragraph 23 (a) to (h) above.

PART V - STAFF COMMITMENT

27. 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 28 below.

28. 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 VI - PROCEDURE FOR APPROVAL OF SETTLEMENT

29. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for May 15, 2009, or on another date agreed to by Staff and the Respondent, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Practice.

30. 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.

31. 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.

32. 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.

33. 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 VII - DISCLOSURE OF SETTLEMENT AGREEMENT

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

(i) 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

(ii) 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.

35. 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 VIII - EXECUTION OF SETTLEMENT AGREEMENT

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

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

Dated this 15th day of May, 2009.

“R. THAKUR”

Respondent

“SETH WEINSTEIN”

Witness

“TOM ATKINSON”

Director, Enforcement Branch



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SCHEDULE "A"

**IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, c. S.5, as amended**

AND

IN THE MATTER OF RAJEEV THAKUR

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

WHEREAS on January 9, 2009, the 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"), accompanied by Staff's Statement of Allegations, in relation to the Respondent, Rajeev Thakur ("Thakur");

AND WHEREAS Thakur entered into a settlement agreement dated May 15, 2009 (the "Settlement Agreement") in which he agreed to a settlement of the proceeding commenced by the Notice of Hearing dated January 9, 2009, 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 Respondent acknowledges that the facts set out in Part III of the Settlement Agreement constituted insider trading contrary to section 76(1) of the Act;

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 Thakur and Staff of the Commission is approved;
2. pursuant to paragraph 127(2) of the Act, trading in any securities by Thakur cease permanently from the date of the approval of the Settlement Agreement, except that he is permitted to trade only in mutual fund securities in one account on his own behalf through a registered dealer to whom he must provide a copy of the Order made by the Commission at the time he opens or modifies this account and trade only in mutual fund securities in one account on behalf of his registered retirement savings plan through a registered dealer to whom he must provide a copy of the Order made by the Commission at the time he opens or modifies this account;
3. pursuant to paragraph 127(2.1) of the Act, acquisition of any securities by Thakur is prohibited permanently from the date of the approval of the Settlement Agreement, except that he is permitted to acquire mutual fund securities in one account on his own behalf through a registered dealer to whom he must provide a copy of the Order made by the Commission at the time he opens or modifies this account and to acquire mutual fund securities in one account on behalf of his registered retirement savings plan through a registered dealer to whom he must provide a copy of the Order made by the Commission at the time he opens or modifies this account;
4. Notwithstanding paragraphs (2) and (3) above, Thakur shall have 60 days from the date of this Order to effect liquidating trades of any non-mutual fund securities that he owns beneficially or over which he exercises direction or control. Thakur shall provide a record of any non-mutual fund securities that he owns beneficially or over which he exercises direction or control to Staff and will provide evidence to Staff that he has liquidated all non-mutual fund securities that he owns beneficially or over which he exercises discretion or control within 60 days from the date of this Order;

5. pursuant to paragraph 127(3) of the Act, any exemptions contained in Ontario securities law do not apply to Thakur permanently except that he is permitted to trade or acquire mutual funds through a registered dealer as specified in paragraphs (2) and (3) above;
6. pursuant to paragraph 127(6) of the Act, Thakur is reprimanded;
7. pursuant to paragraph 127(7) of the Act, Thakur shall resign any positions that he holds as a director or officer of any issuer;
8. pursuant to paragraph 127(8) of the Act, Thakur is prohibited permanently from becoming or acting as a director or officer of any registrant or issuer;
9. pursuant to paragraph 127(10) of the Act, Thakur shall disgorge to the Commission the amount of \$642,056.29, being the amount of the profit made by him to be allocated under s. 3.4(2)(b) of the Act to or for the benefit of third parties;
10. pursuant to paragraph 127(9) of the Act, Thakur shall pay an administrative penalty to the Commission in the amount of \$481,542.22, to be allocated under s. 3.4(2)(b) of the Act to or for the benefit of third parties; and
11. pursuant to section 127.1 of the Act, Thakur agrees to pay costs in the amount of \$25,000 to the Commission.

DATED at Toronto this 15th day of May, 2009.
