

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

- AND -

IN THE MATTER OF XPLORE TECHNOLOGIES CORP.

**STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission make the following allegations:

I. THE RESPONDENT

1. Xplore Technologies Corp. (“Xplore” or the “Company”) is a corporation amalgamated under the laws of Canada. It is listed on the Toronto Stock Exchange (“TSX”) and is a reporting issuer in Ontario and other provinces in Canada.

II. BACKGROUND

2. Xplore was incorporated under the laws of Ontario in August 1996 and was continued under the *Canada Business Corporations Act* and amalgamated under such Act in March 2000. Xplore is engaged in the business of the development, integration and marketing of rugged mobile wireless Tablet PC computing systems. Xplore’s products enable the extension of traditional computing systems to a range of field and on-site personnel, regardless of location or environment. Using a range of wireless communication mediums together with the Company’s rugged computing products, the Company’s customers are able to receive, collect, analyze, manipulate and transmit information in a variety of environments not suited to traditional non-

rugged computing devices. Xplore's customers are in the following markets: utility, warehousing/logistics, public safety, field service, transportation, manufacturing, route delivery, military and homeland security. The company sells its product through distributors referred to as Value Added Resellers ("VARs") who have existing sales and local resource capabilities. The VARs have sales distribution agreements with Xplore and work closely with Xplore's sales force to identify and sell its products to end consumers.

3. Xplore's registered office is in Ontario and its head office was in Ontario until August 2004, when its head office was consolidated with its operations and management functions in Austin, Texas.

III. ALLEGATIONS

4. Staff allege that Xplore filed financial statements for fiscal 2002 (year ended March 31, 2002) through to fiscal 2004, and for the first quarter ended June 30, 2004, that were not prepared in accordance with generally accepted accounting principles ("GAAP") and were materially misleading. In particular, in fiscal 2002, approximately \$10 million of sales to VARs were accounted for as revenue, but should have been accounted for as inventory held by VARs. The overstatement in revenue had the effect of materially reducing the net loss for the year, and correspondingly overstating the shareholders' equity as of March 31, 2002. The comparative financial statements filed for fiscal 2003, fiscal 2004, and the interim statements for the first quarter ended June 30, 2004 continued to be misstated as a result of the initial overstatement of revenue, and the resultant misstatements in the accounts receivable balance, the inventory account and the shareholders equity (deficiency).

IV. IMPROPER REVENUE RECOGNITION

5. Revenue recognition under GAAP

Section 3400 of the *CICA Handbook – Accounting* deals with the timing of recognition of revenue in the financial statements of enterprises. Sections 3400.06 and 3400.07 state:

.06 “Revenue from sales and service transactions should be recognized when the requirements as to performance set out in paragraphs 3400.07 and 3400.08 are satisfied, provided that at the time of performance ultimate collection is reasonably assured.”

.07 “In a transaction involving the sale of goods, performance should be regarded as having been achieved when the following conditions have been fulfilled:

- a) the seller of the goods has transferred to the buyer the significant risks and rewards of ownership, in that all significant acts have been completed and the seller retains no continuing managerial involvement in, or effective control of, the goods transferred to a degree usually associated with ownership; and*
- b) reasonable assurance exists regarding the measurement of the consideration that will be derived from the sale of goods, and the extent to which goods may be returned.*

6. In respect of its 2002 fiscal year, Xplore filed financial statements disclosing revenue of approximately \$19.7 million. Included in this amount was approximately \$10 million of revenue improperly recognized under GAAP (as more fully described below). In fiscal 2003 and 2004, Xplore took back inventory representing approximately \$7.5 million of revenue receivable from its VARs. The approximately \$7.5 million receivable taken back was part of the original approximately \$10 million of overstated revenue accounted for in fiscal 2002. The difference between the approximately \$10 million of improperly recognized revenue and the subsequent revenue reversal of approximately \$7.5 million represents product for which Xplore was paid during 2003 and 2004 and for which revenue should have been appropriately recognized at that time. The “take-back” transactions were recorded as a reduction in revenue and accounts receivable.

7. The approximately \$10 million which was recognized as revenue in 2002 (out of the \$19.7 million of total revenue in such fiscal year) and the \$7.5 million reduction of revenue transaction recorded in 2003 and 2004 did not comply with GAAP. With respect to the approximately \$10 million of improperly recognized revenue, the risks and rewards of ownership had not been transferred by Xplore to the VARs. There was still ongoing involvement with the product, and ultimate collection was not reasonably assured. The payment terms set out in the VAR agreements were generally not observed. In particular, the VARs did not pay substantially in accordance with the terms of the VAR agreements, nor did Xplore charge interest on the

unpaid balance. Xplore did not require payment according to the terms of the agreement. In essence, there was an implied understanding that payments were not due by the VARs until such time as the products were sold to the end customer. In short, the VARs acted as agents for Xplore and held inventory on consignment.

8. The overstated revenue in respect of the 2002 fiscal year in turn resulted in understated revenue in respect of the 2003 and 2004 fiscal years (which reflected the “take back” transaction described above and other consequential adjustments). Xplore’s financial statements for each of the 2002, 2003 and 2004 fiscal years were audited by Deloitte & Touche LLP and were accompanied by unqualified auditor’s reports.

9. In April 2005, Deloitte & Touche LLP resigned as Xplore’s auditors, and new auditors were retained. Such resignation was not as a result of any disagreement or unresolved issue. Restated audited comparative financial statements have been subsequently filed in November 2005 for each of the fiscal years 2002, 2003 and 2004, and restated interims were filed for the three month period and nine month period ended December 31, 2004.

10. The restated financial statements reflected (as described above) that revenue in respect of the 2002 fiscal year was materially overstated and that revenue in respect of the subsequent fiscal years was materially understated. As a result, the financial statements for each such fiscal year, taken separately, included material misstatements, although the effect of the misstatements in the financial statements in respect of the 2003 and 2004 fiscal years was to adjust for the overstatement in respect of the 2002 fiscal year (Xplore hereby acknowledging that the cumulative result as aforesaid did not alter its obligations under the Act to ensure that each such financial statement be free of material misstatements when filed).

V. CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND CONTRARY TO THE PUBLIC INTEREST

11. Xplore filed comparative financial statements for fiscal 2002, 2003, and 2004, and interim statements for the quarter ended June 30, 2004, that reflected the accounting treatments described above, were materially misleading and were not prepared in accordance with GAAP. By way of example, the financial statements in respect of the 2002 fiscal year included a material misstatement of revenue and therefore contrary to sections 77 and 78 of the Act. By filing such financial statements, Xplore breached Ontario securities law and acted contrary to the public interest.

DATED at Toronto this 23rd day of January, 2006.