

# 2002 BCSECCOM 900

## Settlement Agreement

Gordon Tremain

*Securities Act, RSBC 1996, c. 418*

- ¶ 1 The following settlement of issues has been reached between Gordon Tremain (Tremain) and the Executive Director.

### **Agreed Statement of Facts**

- ¶ 2 As the basis for the orders and undertakings referred to in this settlement, Tremain acknowledges the following facts as correct:
1. Technovision Systems Inc. (Technovision) was incorporated in British Columbia on January 19, 1998, and is headquartered in Aldergrove, British Columbia. Technovision is a reporting issuer under the *Securities Act, RSBC 1996, c. 418*.
  2. The shares of Technovision were listed on the Vancouver Stock Exchange on December 15, 1995 and are currently listed on the TSX Venture Exchange.
  3. At all material times, Tremain was the Chairman of the Board, a Director and the Chief Executive Officer of Technovision. Tremain has been in charge of the overall development of Technovision since its incorporation in 1988.
  4. On August 8, 2000, Technovision issued a news release announcing that it had entered into a letter of intent to purchase ItCanada.com Inc. (ITC). ITC held, as its primary asset, options to purchase up to twenty-eight separate Internet service providers (the ISPs). In October 2000, a definitive agreement (the Agreement) was executed between Technovision and ITC.
  5. The options provided for purchases of the ISPs based on 50% cash and 50% shares in a public company. The cash required to exercise all of the options was \$35 million. Technovision was not in a financial position to exercise the 28 options to purchase agreements and intended to renegotiate the terms by offering the ISPs less cash and a greater equity component.

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6. Technovision was able to renegotiate with twenty of the twenty-eight ISPs between August 24, 2000 and September 22, 2000 and it entered into letters of intent with these ISPs. The letters of intent provided that the number of shares to be issued shall be valued at the higher of \$1.10 per share or the closing price on the day of execution of the letter of intent.
7. On August 24, 2000, Technovision issued a news release announcing that it had exercised a specific option agreement to purchase an ISP. This statement was not true. Technovision should have disclosed that only a letter of intent had been entered into. In addition this news release further included a quote from Tremain, which stated that: "This acquisition is the first in a series that will see the company grow from a significant regional ISP to one of the largest independent service providers in the country".
8. Technovision on seven other occasions from August 24, 2000 to September 22, 2000, announced that it had exercised specific option agreements whereas only letters of intent had been signed. In addition, some of these news releases also used the terms "purchase" and "acquisition" to describe the transactions and stated that a specific number of customers had been added to the Technovision customer base.
9. While Technovision was issuing the alleged misleading news releases, its auditor had been reviewing due diligence documentation as provided by ITC and had determined that only three of the ITC ISPs met the five criteria for acquisition. Technovision could however waive these requirements. In addition, the letters of intent expired on October 31, 2000 and this was not disclosed until January 15, 2001.
10. Technovision disclosed on October 17, 2000, that letters of intent had been entered into and no option to purchase agreements had been exercised.
11. On October 17, 2000, Technovision also issued a news release announcing that it had obtained a \$10 million non-revolving term loan (the Loan) from the Royal Bank of Canada (RBC) to finance part of the costs relative to acquiring up to 28 ISPs that are part of the acquisition of ITC.
12. On November 21, 2000, Technovision announced that it had entered into a letter of intent to acquire another major ISP. Technovision made a credit application to the RBC on January 12, 2001, to be able to use \$1.5 million of the \$10 million Loan to acquire this other ISP. The RBC advised Technovision that they were not prepared to fund the acquisition at that time.

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13. On January 15, 2001, Technovision issued a news release announcing that Technovision would be drawing on the Loan with the RBC to fund this acquisition and that this underlined the RBC's policy of allowing Technovision management a great deal of flexibility to negotiate acquisitions on the most advantageous terms. The RBC only agreed that the Loan could be used to acquire this additional ISP on February 8, 2001. The RBC in its approval letter stated that this would be an exception. The Loan expired on November 1, 2001 and this was never disclosed to the public.
14. Tremain acknowledges that the news releases referring to the "exercise of options" were incorrect and misleading. Tremain acknowledges that the retraction of the misleading information in the October 17, 2000, news release was only a first stab at correcting the inaccuracy of the previous news releases. Tremain also acknowledges that the news release of January 15, 2001, was inaccurate.
15. From August 15, 2000 to December 28, 2000, Tremain purchased 408,900 shares of Technovision. Some of these purchases were "high closes" (a trade at a higher price than the previous trade or order where there were no subsequent trades, thereby affecting the market price) and occurred just prior to one of the misleading news releases.
16. Tremain ought reasonably to have known that his participation in the market for Technovision shares as described in paragraph 15, may have involved him engaging in transactions, that created and resulted in a misleading appearance of trading activity in, and an artificial price for, the shares of Technovision from August 15, 2000 to December 28, 2000, contrary to section 57 of the Act.

### **Mitigating Factors**

- ¶ 3 The Executive Director has taken into account the following facts as factors mitigating the sanctions, which would otherwise have applied in the public interest:
  1. Tremain represents that the sole motivation for his trading was to increase his shareholding in Technovision as he believed in the future of the company. Tremain further represents, and his broker concurs, that he was inexperienced in the securities markets and relied on the directions of his broker in the execution of his trades. Tremain lost money on his trading activity. The shares he bought for between \$1.10 and \$1.52 now trade at \$0.10. Tremain still holds the shares he bought from August 15, 2000 to December 28, 2000.

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2. Tremain is 55 years old and has never been an officer or director of a public company other than Technovision. Tremain has resigned as president of Technovision effective March 28, 2002.
3. Tremain has co-operated with the staff of the Commission in its investigation, by providing assistance in addition to that required by the Act.

### **Undertaking**

¶ 4 Tremain undertakes to do the following:

1. to pay to the British Columbia Securities Commission by not later than November 4, 2002, the sum of \$30,000 of which \$15,000 represents a portion of the cost of the investigation; and
2. not to say anything, in writing or orally, which may contradict the terms of this settlement or call those terms into question.

### **Order**

¶ 5 Tremain consents to an order by the Executive Director (the Order) that:

1. Under Section 161(1)(d) of the Act, he resign any position that he holds as a director or officer of any reporting issuer;
2. Under section 161(1)(d) of the Act, he is prohibited from being or acting as a director or officer of any reporting issuer, for a period ending on the later of:
  - (a) three years from the date of the Order, and
  - (b) the date that he successfully completes a course of study satisfactory to the Executive Director concerning the duties and responsibilities of directors and officers of reporting issuers, and
  - (c) the date he pays the sum of \$30,000 to the British Columbia Securities Commission.
3. Under section 161(1)(b) of the Act, he is prohibited from purchasing any securities traded on an exchange or Quotation system, except those under section 46 of the Act, and from trading securities other than those he currently holds, provided that they are traded under section 45(2)(7) of the Act, for a period of three years from the date of the Order.

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### Waiver

¶ 6 Tremain waives any right he may have, under the Act or otherwise, to a hearing and review, judicial review or appeal related to, in connection with, or incidental to this settlement.

¶ 7 October 22, 2002

¶ 8 “Gordon Tremain”  
Gordon Tremain

“Wade Simpson” )  
Witness Signature )  
Wade Simpson )  
Witness Name (please print) )  
1010 – 1030 West Georgia )  
Vancouver, BC )  
Address )  
Barrister )  
Occupation )

¶ 9 October 22, 2002

¶ 10 James Sasha Angus  
A/Executive Director