

## **STATEMENT OF ADMITTED FACTS**

1. Pursuant to the Deferred Prosecution Agreement dated June 3, 2008, the party entering into the Deferred Prosecution Agreement and admitting to this Statement of Admitted Facts, as set forth herein, is ESI Entertainment Systems, Inc. (“ESI”).

### **Corporate History and Structure**

2. On December 9, 1999, in their capacity as officers of a company called Riptide Technologies, Inc. (“Riptide”), Michael Meeks and Tony Greening incorporated a Canadian federal company called e-Success Incorporated (“e-Success”) on behalf of Riptide’s shareholders. On February 27, 2006, e-Success changed its name to ESI Entertainment Systems, Inc. (“ESI”). On March 22, 2006, ESI issued shares of common stock to the public through an initial public offering on the Toronto Stock Exchange. Greening serves as CEO of ESI and Chairman of the Board; Meeks serves as President and as a director.
3. ESI was incorporated as a holding company with three wholly-owned subsidiaries, each of which is operated separately. Citadel Commerce Corp. (“Citadel”) provides payment processing services and risk detection products to internet merchants, primarily in the online gaming industry. ESI Integrity Inc. provides real-time auditing, fraud control, and risk management systems to government licensed or operated gaming operators in North and South America, Europe, Asia, and Africa, including lotteries and pari-mutuel organizations. PlayLine Inc. provides video gaming systems for non-internet gambling businesses, such as casinos and cruise lines.

### **Citadel’s Business**

4. In May 2002, Citadel (then a subsidiary of e-Success) began processing payments for internet gambling websites, including but not limited to Cassava, Microgaming, Cryptologic and others. These gambling websites were primarily located outside the United States. The primary users of Citadel’s payment processing services were customers in the United States, including customers in the Southern District of New York. Through Citadel, these internet gambling businesses provided to United States customers via the internet real-money gambling services, such as sports betting, casino, and poker games, in violation of various federal and state laws in the United States. Citadel provided a system where United States customers could log on to an internet gambling website to transfer United States currency from the customer’s United States bank account to accounts maintained by or on the behalf of the particular internet gambling business, which the customer could then use to place bets. Citadel did not and does not operate any gaming sites.
5. In its 2003 fiscal year (February 28, 2002 through February 28, 2003), Citadel processed approximately 231,000 transactions for approximately 45,000 customers located in the United States, and Citadel’s gross revenue generated from those transactions was

approximately \$1.4 million, with net revenue of approximately \$76,000.<sup>1</sup> In fiscal year 2004, Citadel processed approximately 791,000 transactions for approximately 115,000 customers located in the United States, and Citadel's gross revenue generated from those transactions was approximately \$3.8 million, with net revenue of approximately \$1.4 million. In fiscal year 2005, Citadel processed approximately 2,000,000 transactions for 375,000 customers located in the United States, and Citadel's gross revenue generated from those transactions was approximately \$7.5 million, with net revenue of approximately \$2.9 million. In fiscal year 2006, Citadel processed approximately 3,600,000 transactions for 655,000 customers located in the United States, and Citadel's gross revenue generated from those transactions was approximately \$14 million, with net revenue of approximately \$3.7 million.

6. By February 2006, when ESI went public, Citadel offered its payment processing services to dozens of gaming merchants and more than 500,000 customers located in the United States. At that time, the majority of Citadel's individual customers were located in the United States, including the Southern District of New York. The majority of Citadel's merchant customers, by revenue, were internet gambling operators located outside of the United States.
7. As of February 2006, ESI estimated that it derived approximately 80% of its revenue from its Citadel subsidiary. ESI further estimated that between 90% and 95% of Citadel's revenues were from providing payment processing services to customers in the United States using internet gambling sites.
8. In fiscal year 2007, Citadel processed approximately 3,500,000 transactions for approximately 750,000 customers located in the United States, and Citadel's gross revenue generated from those transactions was approximately \$19 million.
9. In total, from fiscal year 2003 through fiscal year 2007, Citadel processed internet gambling related payments in the amount of \$2.02 billion for United States customers.

#### Licensing and Regulation

10. At no time did ESI or its Citadel subsidiary obtain a license from any state government or register with the federal government to operate a money transmittal business in the United States, as is required by Title 18, United States Code, Section 1960. Citadel Commerce UK Ltd., a subsidiary company, since November 30, 2006 has been licensed and regulated by the Financial Services Authority ("FSA") in the United Kingdom, and has authority to operate in all member countries of the European Economic Area. Citadel Commerce UK Ltd. is also licensed as a Money Transmitter in the United Kingdom.

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<sup>1</sup> Citadel accounted revenues in Canadian dollars. Because the Canadian and United States dollars have been trading at close to parity in recent months, Canadian earnings, for convenience, are stated herein in United States dollars at a 1-to-1 ratio.

## Citadel's Money Processing Mechanisms

11. Until January 2007, Citadel customers located in the United States were able to transfer funds to and from internet gambling websites through Citadel by several means, as set forth below:
  - a) Electronic Check: Citadel customers could authorize Citadel to transfer funds from their checking accounts to an internet gambling website by using "electronic checks." Citadel's internet gambling-related merchants allowed United States customers to click a link from the merchant's website to initiate the Citadel electronic check. When Citadel received a customer authorization, it would direct an Originating Depository Financial Institution ("ODFI") to transfer funds from the customer's checking account to an automated clearing house ("ACH") processor (the "ACH Processor"). The ACH Processor, via the ODFI, would then transfer such funds to Citadel by depositing these funds into accounts held by Citadel at First Regional Bank. After maintaining an appropriate amount in reserve for each merchant (to address potential charge-backs or non-sufficient funds issues), Citadel would transfer monies owed to offshore accounts maintained by the internet gambling merchants.
  - b) E-Wallet: Citadel customers were also able to fund an "e-wallet" account known as "myCitadel" which would serve to store monetary value for the Citadel customer, and which the Citadel customer could then use to send payments to internet gambling merchants. To establish a myCitadel account, a consumer would visit Citadel's website and provide personal information sufficient for Citadel to verify the individual's identity. The account could be funded by a transfer from the individual's bank account by electronic check, as described above. For a brief period, United States consumers could also use credit cards to fund their myCitadel accounts. Once funded, the consumer could make a payment to an internet gambling merchant by having the consumer's funds transferred to the merchant's myCitadel wallet or by requesting a check through the ACH network as described above.

## The Legality of Citadel's Business

12. In connection with the activities set forth above, ESI, through its subsidiary Citadel and through certain employees and directors, understood that various laws in the United States prohibited the money transfer services Citadel offered to customers in the United States and the payment processing services Citadel offered to United States customers engaged in internet gambling. Indeed, in its IPO prospectus, ESI stated in substance the following: that criminal laws exist in the United States that prohibit persons from promoting certain forms of gambling; that criminal laws exist in the United States that prohibit the transmission of funds that are known to have been derived from criminal activity or are intended to promote criminal activity; and that companies similar to Citadel are required to receive money transmitting licenses to operate in particular states but that Citadel had not sought such licenses because they are typically denied to business

associated with gambling. ESI further acknowledged in its prospectus that the United States could seek to enforce these laws against Citadel.

13. By reason of the foregoing, ESI, through Citadel and through certain employees and directors, agreed to engage in business activities which violated the Wire Act (18 U.S.C. § 1084), the prohibition of illegal gambling businesses statute (18 U.S.C. § 1955), the laundering of monetary instruments statute (18 U.S.C. § 1956), and the prohibition of unlicensed money transmitting businesses statute (18 U.S.C. § 1960), all in violation of 18 U.S.C. § 371.
14. Citadel continued to serve the United States market until mid-January 2007, when Stephen Eric Lawrence and John David Lefebvre of NETeller plc were arrested on federal criminal charges. Immediately after these arrests, Citadel stopped offering its services to customers located in the United States and subsequently began cooperating with the investigation of the Office of the United States Attorney for the Southern District of New York.