

THE SECURITIES ACT

)

Order No. 3757

)

Section 19(5)

)

May 23, 2002

MICHAEL BIRCH

WHEREAS:

**(A)** On April 9, 2002, The Manitoba Securities Commission ("Commission") issued a Notice of Hearing ("Notice") giving notice of its intention to hold a hearing to consider, *inter alia*, whether or not it was in the public interest to grant an order pursuant to subsection 19(5) of The Securities Act ("Act") with respect to Michael Birch ("Birch");

**(B)** Staff of the Commission and Birch entered into a Settlement Agreement (a copy of which is attached as Schedule "A") dated May 10, 2002 ("Settlement Agreement"), which proposed settlement of the proceedings initiated by the Notice, subject to the approval of the Commission;

**(C)** Birch has consented to the issuance of this Order and has waived his right to a full hearing;

**(D)** On May 22, 2002, the Commission held a hearing ("Settlement Hearing") to consider whether or not to approve the Settlement Agreement;

**(E)** At the Settlement Hearing the Commission approved the Settlement Agreement and is of the opinion that it is in the public interest to make this order.

IT IS ORDERED:

1. THAT the Settlement Agreement, Schedule "A", be and the same is hereby approved.

2. THAT, pursuant to subsection 19(5) of the Act:

(a) subsections 19(1) and 19(3) of the Act do not, with respect to such of the trades referred to in those subsections, apply to Birch; and

(b) subsection 19(2) of the Act does not, with respect to such securities referred to in that subsection, apply to Birch,

for a period of one year from the date of this Order.

**3. THAT** Birch pay to the Commission as a contribution to costs the amount of \$500.00 forthwith.

BY ORDER OF THE COMMISSION

Director, Legal and Enforcement

Settlement Agreement

Michael Birch

and

The Staff of The Manitoba Securities Commission

The Manitoba Securities Commission  
1130 - 405 Broadway  
Winnipeg, Manitoba  
R3C 3L6

SETTLEMENT AGREEMENT

A. Introduction

A1. On April 9<sup>th</sup>, 2002, The Manitoba Securities Commission (the "Commission") issued a notice of hearing (the "Notice of Hearing") giving notice of its intention to hold a hearing under The Securities Act (the "Act") in respect of Michael Birch ("Birch") to consider:

1. whether or not it is in the public interest to order, pursuant to section 19(5) of The Securities Act (the "Act"), that:

(a) subsections 19(1) and 19(3) of the Act do not, with respect to such of the trades referred to in those subsections, apply to Birch;

(b) subsection 19(2) of the Act does not, with respect to such securities referred to in that subsection, apply to Birch;

2. whether or not it is in the public interest to order that the respondent pay the costs of and incidental to the hearing;

3. such further and other matters and the making of such further and other orders as the Commission may deem appropriate.

A2. Discussions have been held between the respondent and staff of the Commission ("Staff") in an effort to settle the matters set out in the Notice of Hearing and Statement of Allegations (the "Proceedings"). A settlement (the "Settlement") has been reached based on the terms and conditions set forth in the herein agreement (the "Settlement Agreement").

A3. Pursuant to the Settlement, Staff agrees to recommend to the Commission that the Proceedings initiated against the respondent be resolved and disposed of in accordance with the terms and conditions of this Settlement Agreement as set forth below. The respondent consents to the Settlement and to the making of the consent order referred to in paragraph D. below, on the terms and conditions set forth in this Settlement Agreement.

#### B. Statement of Facts

B1. Michael Birch was a resident of Manitoba. First Nations Group Ltd. was a corporation incorporated under the laws of Alberta.

B2. At all material times, none of Birch or First Nations Group Ltd. were registered to trade in securities under the Act.

B3. At all material times, First Nations Group Ltd. had not filed a preliminary prospectus or a prospectus with The Manitoba Securities Commission (the "Commission"), nor had it applied for or been granted an exemption order under section 20 of the Act.

B4. At all material times, First Nations Group Ltd. had not filed any reports under section 7 of the Regulation to the Act or any notice under section 91 of the Regulation to the Act with respect to any trades under section 19 of the Act or sections 90 or 91 of the Regulation.

B5. In early 1997, Mike Geletchuk ("Geletchuk") was teaching at Garden Hill, in Manitoba. Geletchuk knew Birch who was running the local store.

B6. Birch was a Director and the Chairman of the Board of Directors of First Nations Group Ltd. and was also a shareholder owning 2,000,000 shares.

B7. Geletchuk heard about the company First Nations Group Ltd. from Birch.

B8. In discussions in early 1997, Birch verbally provided information that First Nations Group Ltd. was to be set up in Alberta and that money was being raised in the hope of going public. As to the price of shares, the first group of shares would be at \$0.50 per share and the second group would be double that at \$1.00 per share.

B9. There was going to be a public offering in September of 1997, at the Alberta Stock Exchange, and the price of shares would then be \$1.00. Birch indicated that you could double your money by buying now.

B10. Purchases were to be made in blocks of about 10,000 shares each. Payment could be made by cash or cheque.

B11. Geletchuk purchased 20,000 shares at a total cost of \$10,000. The purchase was paid for by cheque dated May 22, 1997, payable to First Nations Group Ltd., in the amount of \$10,000.00.

B12. Geletchuk eventually received a share certificate evidencing 20,000 Class "A" Common Shares in First Nations Group Ltd..

B13. The company did not succeed.

#### C. Acknowledgements

C1. Birch acknowledges and agrees that he traded in securities without having been registered and without prospectus in contravention of sections 6 and 37 of the Act and that such conduct is contrary to the public interest.

#### D. Terms of Settlement

D1. In order to effect a resolution of the issues raised by the Notice of Hearing, Staff and the respondent have entered into this Settlement Agreement. Upon this basis, Staff seek an order (the "Consent Order") from the Commission that:

1. The Settlement Agreement be approved.

2. Pursuant to subsection 19(5) of the Act:

(a) subsections 19(1) and 19(3) of the Act do not, with respect to such of the trades referred to in those subsections, apply to Birch; and

(b) subsection 19(2) of the Act does not, with respect to such securities referred to in that subsection, apply to Birch;

for a period of one year from the date of the Consent Order.

3. Birch pay to the Commission as a contribution to costs the amount of \$500.00, to be paid forthwith upon the pronouncement of the Consent Order.

D2. Birch has provided full reimbursement to Geletchuk of the \$10,000.00 invested by Geletchuk in First Nations Group Ltd..

D3. On June 8, 2001, Birch plead guilty to one count of trading without registration and one count of trading without prospectus pertaining to the aforementioned trade to Geletchuk. On September 28, 2001, Birch was sentenced to a fine in the amount of \$400.00 per count for a total fine of \$800.00, plus costs and surcharges of an additional \$400.00.

#### E. Procedure for Approval of Settlement

E1. The approval of this Settlement Agreement and the making of the Consent Order set out in this Settlement Agreement shall be sought at a public hearing pursuant to the Notice of Hearing.

E2. Staff and the respondent agree that if this Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted to the Commission in connection with the Proceedings and the respondent hereby waives his right to a full hearing and appeal of this matter.

E3. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the Consent Order referred to in paragraph D. above is not made by the Commission, Staff will be entitled to proceed with the hearing commenced by the Notice of Hearing unaffected by this Settlement Agreement or the settlement discussions. If this Settlement Agreement is not approved or the Consent Order set out in paragraph D. above is not made by the Commission, the terms of this Settlement Agreement will not be raised in the Proceedings or in any other proceeding.

E4. Staff and the respondent agree that if this Settlement Agreement is approved by the Commission and the Consent Order is made upon the terms set out in this Settlement Agreement, this Settlement Agreement will be a public document.

E5. The respondent agrees that he will not raise in any proceeding this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as a basis for an attack on the Commission's jurisdiction, alleged bias, alleged unfairness or any other challenge that may be available.

E6. The respondent further agrees that if this Settlement Agreement is approved by the Commission and the Consent Order is made upon the terms set out in this Settlement Agreement, the respondent will not make any statements inconsistent with the terms of this Settlement Agreement.

**DATED** at Winnipeg, Manitoba, this "6<sup>th</sup>" day of "May", 2002.

Witness

"Michael Birch"

Michael Birch

**DATED** at Winnipeg, Manitoba, this "10<sup>th</sup>" day of "May", 2002.

Staff of the Manitoba Securities Commission

per: "Douglas R. Brown"

Director, Legal and Enforcement