

**THE SECURITIES ACT** ) **Order No. 4714**  
 )  
**Section 148.1(1)** ) **March 31, 2005**

**GARY THOMAS BRAZZELL**

**WHEREAS:**

(A) On March 21, 2005, 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 order, pursuant to subsection 148.1(1) of The Securities Act ("Act"), that a Settlement Agreement between staff of the Commission ("Staff") and Gary Thomas Brazzell ("BRAZZELL") be approved;

(B) Staff of the Commission and BRAZZELL entered into a Settlement Agreement (a copy of which is attached as Schedule "A") dated March 21, 2005 ("Settlement Agreement"), which proposed settlement of an enforcement matter, subject to the approval of the Commission;

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

(D) On March 30, 2005 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 148.1(1) of the Act, BRAZZELL pay an administrative penalty of \$3,000.00, to be paid in two equal installments each in the amount of \$1,500.00, the first of which shall be made forthwith and the second of which shall be made on or before June 30, 2005.

**4. THAT** BRAZZELL pay to the Commission costs in the amount of \$500.00 to be paid forthwith.

**BY ORDER OF THE COMMISSION**

**Director, Legal and Enforcement**

## **Settlement Agreement**

**Gary Thomas Brazzell**

**and**

**The Staff of The Manitoba Securities Commission**

**The Manitoba Securities Commission**

**1130 - 405 Broadway**

**Winnipeg, Manitoba**

**R3C 3L6**

### **SETTLEMENT AGREEMENT**

#### **A. Introduction**

A1. By way of a Notice of Hearing to be issued, The Manitoba Securities Commission ("Commission") will give notice of its intention to hold a hearing to consider whether pursuant to section 148.1(1), inter alia, of The Securities Act ("Act") it is in the public interest for the Commission to make an order approving the settlement agreement contained herein entered into between staff of the Commission ("Staff") and the respondent, Gary Thomas Brazzell ("BRAZZELL") ("Settlement Agreement").

A2. Discussions have been held between the respondent and Staff in an effort to settle all issues in connection with an enforcement matter in respect of conduct or alleged conduct of the respondent in relation to the facts set out in Part B. of this Settlement Agreement ("Enforcement Matter"). The respondent has been advised of his right to legal counsel and has waived that right. A settlement of the Enforcement Matter has been reached based on the terms and conditions set forth in this Settlement Agreement.

A3. Pursuant to the settlement, Staff agrees to recommend to the Commission that the Enforcement Matter 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 Part D. below, on the terms and conditions set forth in this Settlement Agreement.

#### **B. Statement of Facts**

B1. At all material times, BRAZZELL was a resident of the City of Winnipeg, in the Province of Manitoba.

B2. ABJECT MODERNITY INTERNET CREATIONS INC. is a corporation incorporated under the laws of Manitoba on December 9, 1996 ("ABJECT"). At the time of its incorporation, ABJECT was incorporated as "ABJECT MODERNITY LTD.". Effective December 18, 1998, the name of the company changed from "ABJECT MODERNITY LTD." to "ABJECT MODERNITY INTERNET CREATIONS INC.".

B3. On or about December 2, 1998, BRAZZELL was appointed a director of ABJECT.

B4. At all material times, neither BRAZZELL nor ABJECT were registered to trade in securities under the Act.

B5. At all material times, ABJECT had not filed a preliminary prospectus or a prospectus with the Commission, nor had it applied for or been granted an exemption order under section 20 of the Act.

B6. At all material times, ABJECT 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.

B7. At all material times, Rodney Bruinooge ("BRUINOOG") was a director and the president of ABJECT.

B8. At all material times, Chantale Marion was the spouse of BRUINOOG, an officer of ABJECT, and for the period of October 9, 1998 to December 23, 1998 a director of ABJECT.

B9. In 1998 BRAZZELL was a lawyer practicing in the City of Winnipeg, Manitoba. Commencing in or about August of 1998, BRAZZELL provided legal advice to ABJECT.

B10. On December 2, 1998, BRAZZELL was appointed director of ABJECT.

B11. On December 7, 1998, a company of which BRAZZELL was a director, officer, and sole shareholder ("BRAZZELL's Company") subscribed for 25,000 shares of ABJECT. On December 23, 1998, the subscription of BRAZZELL's Company was accepted by Resolution of the Directors of ABJECT. As consideration for said shares, a Promissory Note was accepted. A share certificate dated December 23, 1998 was issued.

Shand Scenario:

B12. Mr. Shand was resident of Manitoba and an uncle to Chantale Marion.

B13. In or about November or December of 1998, Mr. Shand enquired of BRUINOOG as to whether he could invest in ABJECT. BRUINOOG referred Mr. Shand to the lawyers.

B14. Mr. Shand contacted BRAZZELL as to investing in ABJECT. BRAZZELL advised Mr. Shand that he could invest.

B15. Mr. Shand further enquired as to whether there could be a number of investors. BRAZZELL advised Mr. Shand to keep track of the people and the money and to bring everything to him.

B16. In December of 1998, Mr. Shand provided to BRAZZELL his cheque in the amount of \$7,000 for the purchase of shares in ABJECT by Mr. Shand.

B17. In December of 1998, Mr. Shand also provided to BRAZZELL fifteen additional cheques representing monies to be invested by fifteen other individual investors. The fifteen other investors were co-workers of Mr. Shand or persons known to a co-worker. The fifteen other investors did not have any known relationship to any of the officers or directors of ABJECT or ABJECT itself.

B18. The total of all of the cheques, including Mr. Shand's, given by Mr. Shand to BRAZZELL was \$32,000.

B19. The specific amount of each of the cheques was as follows:

7,000	(Mr. Shand's)
5,000	
10,000	
500	
500	
1,000	
1,000	
1,000	
500	
500	
1,000	
500	
500	
500	
2,000	
<u>500</u>	
<u>\$32,000</u>	

B20. BRAZZELL forwarded the cheques directly to a branch of a financial institution for deposit to ABJECT.

B21. Mr. Shand provided to BRAZZELL a list itemizing each of the investors.

B22. In February of 1999, BRAZZELL provided to Mr. Shand sixteen share certificates.

B23. All of the share certificates were dated December 23, 1998.

B24. All of the share certificates were in the name of Mr. Shand.

B25. The number of shares represented in the certificates varied and corresponded to the dollar amounts as shown on the sixteen cheques. The total number of shares as represented by the sixteen certificates was 32,000.

B26. Mr. Shand questioned why all of the share certificates had been issued in his name. BRAZZELL provided an explanation to the effect that it was easier.

B27. BRAZZELL showed Mr. Shand how to sign each of the share certificates over to the applicable shareholder by completing the back of each share certificate.

B28. In February of 1999, Mr. Shand did sign fourteen of the fifteen share certificates over to the applicable shareholder. The last of the fifteen certificates was signed over to the intended investor in July of 1999.

**Ruggero Scenario:**

B29. Ms. Ruggero was a resident of Ontario and a co-worker of Norbert Traboulay ("TRABOULAY").

B30. TRABOULAY is a step-brother to BRUINOOGEE.

B31. TRABOULAY told Ms. Ruggero about ABJECT. Ms. Ruggero did not know anyone at ABJECT.

B32. Ms. Ruggero decided to invest in ABJECT.

B33. In or about December of 1998, Ms. Ruggero invested \$5,000 in ABJECT. To do so, she dealt with TRABOULAY. TRABOULAY in turn dealt with BRAZZELL.

B34. In addition to Ms. Ruggero, there were other co-workers of TRABOULAY's who were interested in investing in ABJECT.

B35. Each of these additional investors completed subscriptions for shares.

B36. BRAZZELL received cheques for payment for some of these additional shares. The cheques were forwarded directly to a branch of a financial institution for deposit to ABJECT.

B37. As to the additional investors, BRAZZELL advised TRABOULAY that all of their shares would be issued in the name of Ms. Ruggero.

B38. BRAZZELL further advised TRABOULAY that Ms. Ruggero could sign the back of the certificates for the shares which were not hers and transfer them over to the other shareholders.

B39. In due course, Ms. Ruggero received seven share certificates.

B40. All of the share certificates were dated December 23, 1998.

B41. All of the share certificates were in the name of Ms. Ruggero.

B42. The share certificates were prepared by BRAZZELL.

B43. Of the seven certificates received by Ms. Ruggero, one certificate represented the 5,000 shares for which Ms. Ruggero had invested \$5,000.

B44. As to the remainder of the certificates issued in her name, Ms. Ruggero had not paid for any of the shares represented by the certificates and had not intended to herself purchase the shares.

B45. The remainder of the certificates intended for shareholders other than Ms. Ruggero, but issued in her name, were as follows:

<u>Certificate No.</u>	<u>Number of Shares</u>
CB-5	5,000
CB-6	500
CB-7	500
CB-8	500
CB-9	1,000
<u>CB-10</u>	<u>2,000</u>
<u>Total Number of Shares</u>	<u>9,500</u>

B46. On March 31, 1999, Ms. Ruggero signed over each of the certificates listed above to the actual shareholder who had intended to purchase the shares.

**General:**

B47. At all material times, ABJECT was not a private company as defined in the Act. The Articles of ABJECT did not limit the number of shareholders to not more than fifty, nor did they prohibit any invitation to the public to subscribe for shares.

B48. On March 22, 1999, BRAZZELL resigned as director, effective immediately.

B49. On July 22, 1999, the share certificate issued to BRAZZELL's Company for 25,000 shares in ABJECT was cancelled.

**C. Acknowledgements**

C1. BRAZZELL acknowledges and agrees that he acted contrary to the public interest in that he:

- (a) traded in securities without having been registered and without prospectus in contravention of sections 6 and 37 of the Act;
- (b) facilitated or permitted the purchase of shares by a number of investors under the sole name of one investor, so as to minimize the number of apparent investors in an effort to purportedly rely upon the private company exemption under section 19(2)(i) of the Act;
- (c) failed to ascertain whether the company in question was in fact a private company as defined in the Act, thereby causing shares to be traded in reliance upon such exemption, when the exemption was not so available;
- (d) facilitated or permitted the purchase and sale of securities in ABJECT in the name of one investor, when he knew or ought to have known that the shares were intended to be purchased by a number of other investors in addition to the investor so named.

C2. Staff acknowledges that BRAZZELL has provided his full co-operation in the investigation of the Enforcement Matter.

#### **D. Terms of Settlement**

D1. In order to effect a resolution of the issues raised in the Enforcement Matter, Staff and the respondent have entered into this Settlement Agreement. Upon this basis, Staff seek an order ("Consent Order") from the Commission pursuant to subsection 148.1(1) of the Act that:

- (a) the Settlement Agreement be approved;
- (b) pursuant to subsection 148.1(1) of the Act, BRAZZELL pay an administrative penalty of \$3,000.00, to be paid in two equal installments each in the amount of \$1,500.00, the first of which shall be made forthwith upon approval of the Settlement Agreement and the second of which shall be made on or before June 30, 2005;
- (c) BRAZZELL pay to the Commission costs in the amount of \$500.00 to be paid forthwith upon approval of the Settlement Agreement.

#### **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 to be issued.

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 Enforcement Matter 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 Part D. above is not made by the Commission, Staff will be entitled to proceed with whatever steps it is entitled by law to take, including but not restricted to the commencement of a hearing before the Commission, unaffected by this Settlement Agreement or the settlement discussions. In the event that such steps are taken, the respondent shall have all the usual rights of an individual subject to such proceedings. If this Settlement Agreement is not approved or the Consent Order set out in Part D. above is not made by the Commission, the terms of this Settlement Agreement shall remain confidential and will not be raised in this or any other proceeding and any admissions contained in this Settlement Agreement shall be considered as without prejudice communications and in furtherance of settlement discussions, which will not be binding upon the parties and which will be inadmissible in any proceeding whatsoever.

E4. Staff and the respondent agree that if this Settlement Agreement is approved by the Commission and the Consent Order 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. If this Settlement Agreement is approved by the Commission and the Consent Order is made upon the terms set out in this Settlement Agreement, neither Staff nor the respondent will make any statement inconsistent with this Settlement Agreement.

DATED at Winnipeg, Manitoba, this "12th" day of March, 2005.

Witness

Gary Thomas Brazzell

DATED at Winnipeg, Manitoba, this "21st" day of March, 2005.

Staff of the Manitoba Securities Commission

per: Director, Legal and Enforcement