



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

- AND -

**IN THE MATTER OF DARRYL BRUBACHER, ANDREW MARTIN AND
TADD INVESTMENT PROPERTIES INC.**

**SETTLEMENT AGREEMENT BETWEEN STAFF AND DARRYL BRUBACHER,
ANDREW MARTIN and TADD INVESTMENT PROPERTIES INC.**

PART I - INTRODUCTION

1. The Commission will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the Act, it is in the public interest for the Commission to approve this Settlement Agreement and to make certain orders in respect of Darryl Brubacher ("Brubacher"), Andrew Martin ("Martin") and TADD Investment Properties Inc. ("TADD").

PART II - JOINT SETTLEMENT RECOMMENDATION

2. Staff agree to recommend settlement of the proceeding initiated by the Notice of Hearing dated April 11, 2012 against Brubacher, Martin and TADD (the "Proceeding") in accordance with the terms and conditions set out below. Brubacher, Martin and TADD consent to the making of an order in the form attached as Schedule "A", based on the facts set out below.

PART III - AGREED FACTS

3. Brubacher, Martin and TADD admit the facts set out in this Settlement Agreement solely for the purposes of this Settlement Agreement.

Overview

4. Between 2007 and 2009, Brubacher, Martin, TADD and 2217275 Ontario Inc. ("2217275") sold approximately \$4,964,000 worth of securities to investors when they were not registered with the Commission and when no exemptions from registration were available to them under the *Securities Act*, R.S.O. 1990, as amended (the "Act"). In particular:

(a) Brubacher, Martin and TADD sold Ciccone Group Inc. ("Ciccone Group") promissory notes totalling approximately \$704,600 to 10 investors;

(b) Brubacher, Martin and TADD sold TADD promissory notes valued at approximately \$3,260,000 to approximately 37 investors; and

(c) Brubacher, Martin, TADD and 2217275 (after September 10, 2009) sold approximately 20 units of the Medra Corp. ("Medra") Founding Partners Program to investors totalling \$1 million.

5. The sale of TADD promissory notes were trades in securities not previously issued and were therefore distributions. TADD has never filed a preliminary prospectus or a prospectus with the Commission, and no prospectus receipt has ever been issued to qualify the sale of TADD securities.

6. In addition, Brubacher, Martin and TADD acted contrary to the public interest by accepting approximately \$630,000 from Ciccone Group to purchase shares of Medra in the secondary market in order to support the stock until it was listed on the NASDAQ, as others represented to them that it would be, which actions had the result of creating an artificial price for Medra shares and/or an artificial volume for Medra shares.

Background

7. Brubacher is a resident of Breslau, Ontario.
8. Martin is a resident of Elmira, Ontario.
9. Brubacher and Martin are brothers-in law.
10. TADD is an Ontario company incorporated on November 9, 2004. Brubacher and Martin were officers and directors of TADD until 2008 when they resigned. Thereafter, they continued to be the directing minds of the corporation up to the present date.
11. 2217275 is an Ontario company incorporated on September 10, 2009. 2217275 was dissolved by way of a voluntary dissolution on or about January 31, 2011. Brubacher and Martin were both officers and directors of 2217275 from its inception to its dissolution.
12. Brubacher, Martin, TADD and 2217275 have never been registered to trade in securities in Ontario and were not registered with the Commission in any capacity during the period November 2007 to December 2009 (the “Material Time”).
13. Ciccone Group is an Ontario company incorporated on August 18, 1992 that was formerly named 990509 Ontario Inc. (collectively referred to as “Ciccone Group”). During the Material Time, Vincent Ciccone (“Ciccone”), a resident of Cambridge, Ontario, was the sole officer and director of Ciccone Group. Ciccone Group purported to be one of the fastest growing niche financial venture companies in Canada.
14. Ciccone Group was assigned into bankruptcy on November 30, 2010. When Ciccone Group was assigned into bankruptcy on November 30th, 2010, it owed over \$17 million to investors including investors who purchased Ciccone Group promissory notes through Brubacher, Martin and TADD.
15. Medra, now known as Cabo Catoche Corp. is a Delaware company incorporated on July 13, 2006 that was formerly named DCH Technology Inc. From about March 2008 up to and including December 2009, Ciccone was the CEO and President of Medra. During this period,

Medra sold at least two investment products: Medra shares which were quoted on the Pink Sheets under the symbol “MDRA” and units of the Medra Founding Partners Program. Medra represented to investors that it specialized in resort real-estate development and land acquisition.

Trading without Registration and/or Distribution of Securities without a Prospectus

16. Brubacher and Martin state that they met Ciccone in 2004 through their cousin and that they attended the same church as Ciccone. Between 2004 and 2007, Brubacher and Martin purchased tax shelter investments from Ciccone. In late 2007, Brubacher and Martin began selling Ciccone Group investment products and TADD promissory notes.

(i) Ciccone Group Promissory Notes

17. Between November and December 2007, Brubacher, Martin and TADD sold Ciccone Group promissory notes totalling approximately \$704,600 to 10 investors with interest rates ranging from 15% to 20%.

18. Brubacher, Martin and TADD traded in Ciccone Group promissory notes when they were not registered with the Commission and when no exemptions from registration were available to them under the Act.

(ii) TADD Promissory Notes

19. During the period December 31, 2007 to February 13, 2009, Brubacher, Martin and TADD sold TADD promissory notes valued at approximately \$3,260,000 to approximately 37 investors with interest rates generally ranging from 15% to 20%.

20. Brubacher and Martin state that they believed that these funds, along with approximately \$305,000 paid by TADD to Ciccone Group would be used by Ciccone to invest in Axxess Automation LLC (“Axxess”), a company purportedly engaged in computerized trading, and that TADD and Ciccone would share 50% of the profits flowing from the investment of these funds in Axxess.

21. Brubacher, Martin and TADD traded in TADD promissory notes when they were not registered with the Commission and when no exemptions from registration were available to them under the Act. The sale of TADD securities were trades in securities not previously issued and were therefore distributions. TADD has never filed a preliminary prospectus or a prospectus with the Commission, and no prospectus receipt has ever been issued to qualify the sale of TADD securities.

(iii) Medra Founding Partners Program

22. During the period August 2009 to December 2009, Brubacher, Martin, TADD and 2217275 (after September 10, 2009) sold approximately 20 units of the Medra Founding Partners Program to investors totalling \$1 million.

23. Each unit of the Medra Founding Partners Program was an investment contract and thereby a security under the Act.

24. In particular, each unit of the Medra Founders Partners Program was priced at \$50,000 and purported to grant investors 20 weeks of lease time in Medra's Puerto Aventuras Resort during a 5 year period. At the end of the 5 year period, an investor could either seek a return of the \$50,000 or could purchase a right of first refusal to purchase a share of stock of the 13 shares issued by a not-for-profit Mexican corporation that owned a condo unit in the Puerto Aventuras Resort. If that option was exercised, the investor's 1/13 share would be listed for sale by Medra and the investor would receive 50% of the net proceeds of the sale.

25. Brubacher, Martin, TADD and 2217275 traded in Medra securities when they were not registered with the Commission and when no exemptions from registration were available to them under the Act.

Monies/Benefits received by Brubacher, Martin and TADD

26. Brubacher and Martin, through TADD and 2217275, received approximately \$125,000 in commissions from Ciccone Group, Medra and/or other companies controlled by Ciccone for the sale of Ciccone Group promissory notes and units of the Medra Founding Partners Program.

27. Of the approximately \$3.26 million received from investors by TADD from the sale of TADD promissory notes, approximately \$2.7 million was remitted to Ciccone Group.

28. TADD retained approximately \$603,000 of the funds raised from the sale of TADD promissory notes. Brubacher and Martin state that these monies were used as follows:

- (a) \$10,000 was paid to Brubacher;
- (b) \$10,000 was paid to Martin;
- (c) \$413,000 was used to repay loans obtained by Brubacher, Martin and TADD to invest in Ciccone Group investment products and to reinvest in Ciccone Group investment products;
- (d) \$40,000 was donated to a church for which TADD received a charitable tax deduction;
- (e) \$42,000 was spent on TADD business expenses; and
- (f) \$88,000 was used to make interest payments to investors.

Breach of Ontario Securities Law

29. By engaging in the conduct described above, Brubacher, Martin and TADD each admit and acknowledge that each of them contravened Ontario securities law during the Material Time in the following ways:

- (a) Brubacher, Martin, TADD and 2217275 traded in securities without being registered to trade in securities, contrary to subsection 25(1)(a) of the Act and, after September 28, 2009, contrary to subsection 25(1) of the Act and contrary to the public interest;
- (b) Brubacher, Martin and TADD traded in securities of TADD when a preliminary prospectus and a prospectus had not been filed and receipts had not been issued for them by the Director, contrary to section 53 of the Act and contrary to the public interest;
- (c) Brubacher and Martin being directors and officers of TADD, authorized, permitted or acquiesced in the commission of the violations of sections 25 and 53 of the Act, as set

out above, by TADD and thereby breached sections 25 and 53 of the Act pursuant to section 129.2 of the Act; and

- (d) Brubacher and Martin being directors and officers of 2217275, authorized, permitted or acquiesced in the commission of the violations of section 25 of the Act, as set out above, by 2217275 and thereby breached section 25 of the Act pursuant to section 129.2 of the Act.

Conduct Contrary to the Public Interest

30. Brubacher, Martin and TADD admit and acknowledge that they acted contrary to the public interest by contravening Ontario securities law as set out above.

31. Brubacher, Martin and TADD also admit that they acted contrary to the public interest by accepting approximately \$630,000 from Ciccone Group to purchase Medra shares in the secondary market in order to support the stock until it was listed on the NASDAQ, as others represented to them that it would be, which actions had the result of creating an artificial price for Medra shares and/or an artificial volume for Medra shares.

PART IV – THE RESPONDENTS’ POSITION

32. The Respondents request that the settlement hearing panel also consider the following:

- (a) Brubacher and Martin grew up as Mennonites in rural Ontario. Their prior work experience was farming or selling farm equipment. Brubacher and Martin have a Grade 8 and Grade 9 education, respectively;
- (b) Brubacher and Martin have no experience in the securities industry. Before these events, they had never even purchased securities;
- (c) Brubacher and Martin were not the architects of the investment products referred to above or the schemes that accompanied them;
- (d) Brubacher and Martin did not know that their actions were in breach of the Act;

- (e) Brubacher and Martin have cooperated with Staff by providing Staff with relevant documents in their control or possession and by promptly answering undertakings arising from their compelled examinations and follow up questions by Staff thereafter;
- (f) Brubacher and Martin state they believed that they were entitled to retain the \$603,000 of investor funds referred to in paragraph 28 above, as profits from TADD's earlier investments in Axxess;
- (g) Brubacher and Martin acknowledge that they failed to exercise adequate due diligence about the propriety of participating in Ciccone investment products and Axxess;
- (h) Brubacher and Martin sold the investments referred to above primarily to their family and friends;
- (i) Brubacher and Martin believed that these investments would be beneficial for their family and friends and during the period October 2008 to January 2010 they paid over \$660,000 received from Ciccone Group to investors as interest;
- (j) Brubacher and Martin had no expectation that these investments would become worthless;
- (k) Brubacher and Martin state that as a result of their involvement in the matters referred to above, they have lost all of their assets with any net value and do not have the means to pay back the funds they raised from investors; and
- (l) Brubacher and Martin state that they have never been the subject of any prior securities-related disciplinary proceeding.

PART V - TERMS OF SETTLEMENT

33. Brubacher, Martin and TADD agree to the terms of settlement listed below.

34. The Commission will make an order, pursuant to subsection 127(1) of the Act, that:
- (a) the Settlement Agreement is approved;
 - (b) trading in any securities by Brubacher, Martin and TADD shall cease for a period of fifteen (15) years commencing from the date of the order approving this Settlement Agreement (this "Order"), with the exception that, once the entire amount of payments set out in sub-paragraphs 34 (i), (j) and (k) are paid in full, Brubacher and Martin be permitted to trade securities for the account of their registered retirement savings plan as defined in the *Income Tax Act*, 1985, c.1 as amended (the "*Income Tax Act*") solely through a registered dealer or, as appropriate, a registered dealer in a foreign jurisdiction (which dealer must be given a copy of this Order) in (a) any "exchange-traded security" or "foreign exchange-traded security" within the meaning of National Instrument 21-101 provided that he does not own beneficially or exercise control or direction over more than 5 percent of the voting or equity securities of the issuer(s) of any such securities; or (b) any security issued by a mutual fund that is a reporting issuer;
 - (c) the acquisition of any securities by Brubacher, Martin and TADD is prohibited for a period of fifteen (15) years commencing from the date of this Order, with the exception that Brubacher and Martin be permitted to acquire securities for the accounts of their registered retirement savings plan as defined in the *Income Tax Act* once the entire amount of payments set out in sub-paragraphs 34(i), (j) and (k) are paid in full, in accordance with the exception requirements as set out in paragraph (b) above;
 - (d) any exemptions contained in Ontario securities law do not apply to Brubacher, Martin and TADD for a period of fifteen (15) years commencing from the date of this Order;
 - (e) Brubacher, Martin and TADD are reprimanded;

- (f) Brubacher and Martin shall resign any positions that they hold as an officer or director of an issuer;
- (g) Brubacher and Martin are prohibited for a period of fifteen (15) years from the date of this Order from becoming or acting as a director or officer of an issuer, registrant or investment fund manager;
- (h) Brubacher, Martin and TADD are prohibited for a period of fifteen (15) years from the date of this Order from becoming or acting as a registrant, investment fund manager or a promoter;
- (i) Each of Brubacher, Martin and TADD shall pay to the Commission an administrative penalty in the amount of \$50,000, for their failure to comply with Ontario securities law, to be paid to or for the benefit of third parties in accordance with subsection 3.4(2) of the Act;
- (j) Brubacher, Martin and TADD shall disgorge to the Commission the amount of \$558,000, on a joint and several basis, obtained as a result of their non-compliance with Ontario securities law, to be paid to or for the benefit of third parties in accordance with subsection 3.4(2) of the Act;
- (k) Each of Brubacher, Martin and TADD shall pay costs to the Commission in the amount of \$5,000; and
- (l) Until the entire amount of payments set out in sub-paragraphs 34(i), (j) and (k) are paid in full, the provisions of sub-paragraph 34(b), (c), (d), (g) and (h) shall continue in force without any limitation as to time period.

35. Brubacher, Martin and TADD undertake to consent to a regulatory order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the prohibitions set out in sub-paragraphs 34(b) to (h) above.

PART VI - STAFF COMMITMENT

36. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Brubacher, Martin and TADD in relation to the facts set out in Part III herein, subject to the provisions of paragraph 37 below.

37. If this Settlement Agreement is approved by the Commission, and at any subsequent time Brubacher, Martin or TADD fail to honour the terms of the Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against Brubacher, Martin or TADD based on, but not limited to, the facts set out in Part III herein as well as the breach of the Settlement Agreement. In addition, if this Settlement Agreement is approved by the Commission, and at any subsequent time Brubacher, Martin or TADD fail to honour the terms of the Settlement Agreement, the Commission is entitled to bring any proceedings necessary to recover the amounts set out in subparagraphs 34(i), (j) and (k) above.

PART VII - PROCEDURE FOR APPROVAL OF SETTLEMENT

38. Approval of this Settlement Agreement will be sought at a hearing of the Commission scheduled on a date to be determined by the Secretary to the Commission, or such other date as may be agreed to by Staff and Brubacher, Martin and TADD for the scheduling of the hearing to consider the Settlement Agreement.

39. Staff and Brubacher, Martin and TADD agree that this Settlement Agreement will constitute the entirety of the agreed facts to be submitted at the settlement hearing regarding Brubacher, Martin and TADD's conduct, unless the parties agree that further facts should be submitted at the settlement hearing.

40. If this Settlement Agreement is approved by the Commission, Brubacher, Martin and TADD agree to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

41. If this Settlement Agreement is approved by the Commission, neither party will make any public statement that is inconsistent with this Settlement Agreement or inconsistent with any additional agreed facts submitted at the settlement hearing.

42. Whether or not this Settlement Agreement is approved by the Commission, Brubacher, Martin and TADD agree that they will not, in any proceeding, refer to or rely upon this Settlement Agreement or the settlement negotiations as the basis of any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

PART VIII - DISCLOSURE OF SETTLEMENT AGREEMENT

43. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the order attached as Schedule "A" is not made by the Commission:

- (a) this Settlement Agreement and its terms, including all settlement negotiations between Staff and Brubacher, Martin and TADD and leading up to its presentation at the settlement hearing, shall be without prejudice to Staff and Brubacher, Martin and TADD; and
- (b) Staff and Brubacher, Martin and TADD shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by the Settlement Agreement or the settlement discussions/negotiations.

44. The terms of this Settlement Agreement will be treated as confidential by all parties hereto until approved by the Commission. Any obligations of confidentiality shall terminate upon the commencement of the public hearing to obtain approval of this Settlement Agreement by the Commission. The terms of the Settlement Agreement will be treated as confidential forever if the Settlement Agreement is not approved for any reason whatsoever by the

Commission, except with the written consent of Brubacher, Martin and TADD and Staff or as may be required by law.

PART IX - EXECUTION OF SETTLEMENT AGREEMENT

45. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.

46. A facsimile copy of any signature will be as effective as an original signature.

Dated this 11th day of April, 2012.

Signed in the presence of:

“Emily Cole”

“Darryl Brubacher”

Witness

Darryl Brubacher

Dated this 11th day of April, 2012.

Signed in the presence of:

“Emily Cole”

“Andrew Martin”

Witness

Andrew Martin

Dated this 11th day of April, 2012.

Signed in the presence of:

“Emily Cole”

“Darryl Brubacher”

Witness

TADD Investment Properties Inc.
Per: Darryl Brubacher

“Tom Atkinson”

Tom Atkinson
Director, Enforcement Branch
Dated this 11th day of April, 2012.



SCHEDULE "A"

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P.O. Box 55, 19th Floor
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**IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, c.S.5, AS AMENDED**

- AND -

**IN THE MATTER OF DARRYL BRUBACHER, ANDREW MARTIN AND
TADD INVESTMENT PROPERTIES INC.**

**ORDER
(Subsections 127(1) and 127.1(1))**

WHEREAS on April 11, 2012, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the "Act") in connection with the allegations set out in the Statement of Allegations of Staff of the Commission ("Staff") dated April 11, 2012.

AND WHEREAS Darryl Brubacher ("Brubacher"), Andrew Martin ("Martin") and TADD Investment Properties Inc. ("TADD") entered into a Settlement Agreement with Staff of the Commission dated April 11, 2012 (the "Settlement Agreement") in which Brubacher, Martin and TADD agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

AND WHEREAS on April 11, 2012, the Commission issued a Notice of Hearing pursuant to section 127 of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve a settlement agreement entered into between Staff and Brubacher, Martin and TADD;

AND UPON reviewing the Settlement Agreement, the Notice of Hearing, and the Statement of Allegations of Staff, and upon hearing submissions from Staff and counsel for Brubacher, Martin and TADD;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED THAT:

- (a) the Settlement Agreement is approved;
- (b) pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by Brubacher, Martin and TADD shall cease for a period of fifteen (15) years commencing from the date of this Order, with the exception that, once the entire amount of payments set out in paragraphs (i), (j) and (k) below are paid in full, Brubacher and Martin shall be permitted to trade securities for the account of their registered retirement savings plan as defined in the *Income Tax Act*, 1985, c.1 as amended (the "*Income Tax Act*"), solely through a registered dealer or, as appropriate, a registered dealer in a foreign jurisdiction (which dealer must be given a copy of this Order) in (a) any "exchange-traded security" or "foreign exchange-traded security" within the meaning of National Instrument 21-101 provided that he does not own beneficially or exercise control or direction over more than 5 percent of the voting or equity securities of the issuer(s) of any such securities; or (b) any security issued by a mutual fund that is a reporting issuer;
- (c) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Brubacher, Martin and TADD is prohibited for a period of fifteen (15) years commencing from the date of this Order, with the exception that Brubacher and Martin shall be permitted to acquire securities for the accounts of their registered retirement savings plan as defined in the *Income Tax Act* once the entire amount of payments set out in paragraphs (i), (j) and (k) below are paid in full, in accordance with the exception requirements as set out in paragraph (b) above;

- (d) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Brubacher, Martin and TADD for a period of fifteen (15) years commencing from the date of this Order;
- (e) pursuant to clause 6 of subsection 127(1) of the Act, Brubacher, Martin and TADD are reprimanded;
- (f) pursuant to clause 7 of subsection 127(1) of the Act, Brubacher and Martin shall resign any positions that they hold as an officer or director of an issuer;
- (g) pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act, Brubacher and Martin are prohibited for a period of fifteen (15) years from the date of this Order from becoming or acting as a director or officer of an issuer, registrant or investment fund manager;
- (h) pursuant to clause 8.5 of subsection 127(1) of the Act, Brubacher, Martin and TADD are prohibited for a period of fifteen (15) years from the date of this Order from the date of this Order from becoming or acting as a registrant, investment fund manager or promoter;
- (i) pursuant to clause 9 of subsection 127(1) of the Act, each of Brubacher, Martin and TADD shall pay to the Commission an administrative penalty in the amount of \$50,000 for their failure to comply with Ontario securities law to be paid to or for the benefit of third parties in accordance with subsection 3.4(2) of the Act;
- (j) pursuant to clause 10 of subsection 127(1) of the Act, Brubacher, Martin and TADD shall disgorge to the Commission the amount of \$558,000, on a joint and several basis, obtained as a result of their non-compliance with Ontario securities law to be paid to or for the benefit of third parties in accordance with subsection 3.4(2) of the Act;
- (k) pursuant to section 127.1 of the Act, each of Brubacher, Martin and TADD shall pay costs to the Commission in the amount of \$5,000; and

- (l) until the entire amount of payments set out in paragraphs (i), (j) and (k) above are paid in full, the orders in paragraphs (b), (c), (d), (g) and (h) above shall continue in force without any limitation as to time period.

DATED AT TORONTO this day of April, 2012.
