

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

**AND**

**MICHAEL ZELYONY**

**SETTLEMENT AGREEMENT BETWEEN  
MICHAEL ZELYONY and  
STAFF OF THE ONTARIO SECURITIES COMMISSION**

**PART I - INTRODUCTION**

1. By Notice of Hearing dated January 15, 2009, the Ontario Securities Commission (the “Commission”) announced that it proposed to hold a hearing to consider whether, pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5 (the “Act”), it is in the public interest for the Commission to make certain orders in respect of Michael Zelyony (the “Respondent”).

**PART II – JOINT SETTLEMENT RECOMMENDATION**

2. Staff of the Commission (“Staff”) recommend settlement with the Respondent of the proceeding commenced by Notice of Hearing dated September 27, 2007 (the “Proceeding”) according to the terms and conditions set out in Part VI of this Settlement Agreement. The Respondent agrees 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. For the Proceeding, and any other regulatory proceeding commenced by a securities regulatory authority in Canada, the Respondent agrees with the facts as set out in Part III of this Settlement Agreement.
4. Staff and the Respondent agree that this Settlement Agreement is without prejudice to the Respondent in any past, present or future civil proceeding which may be brought by any person. Nothing in this Settlement Agreement is intended to be an admission of civil liability by the Respondent to any person or company; such liability is expressly denied.

#### **(a) Background**

5. The Respondent is an individual residing in Ontario and is not currently registered with the Ontario Securities Commission (“Commission”) in any capacity.
6. Imagin Diagnostic Centres Inc. (“Imagin”) is a corporation incorporated pursuant to the laws of Canada with its head office previously located in Toronto, Ontario.
7. Imagin is not registered in any capacity with this Commission nor is it a reporting issuer in Ontario.
8. Imagin started selling its securities in 2003 and as of July 13, 2006, Imagin had raised \$14 million of which approximately \$3.5 million was from Ontario investors. These securities have not been qualified by a prospectus filed with the Commission.

#### **(b) Sale of Imagin Securities by Employees of Imagin including the Respondent**

9. Prior to February of 2006, a significant percentage of its staff in Toronto was primarily employed by Imagin to assist in the sales of its securities to investors both inside and outside of Ontario.

10. After February of 2006, Imagin continued to employ persons in Toronto to contact or “qualify” potential investors and any sales leads gathered were then forwarded to Vancouver, British Columbia for further sales action by Imagin. The head office of Imagin also relocated to Vancouver in February of 2006.
11. During the material time, the Respondent was employed by Imagin and was engaged in the sale of securities of members of the public from November 2005 to October 2006.
12. Some of these sales made by the Respondent were from Imagin’s offices in Toronto to investors including residents of Ontario.

**PART IV - CONDUCT CONTRARY TO ONTARIO SECURITIES LAW  
AND THE PUBLIC INTEREST**

13. Through these acts, the Respondent has been engaging in the business of trading in securities in Ontario. Accordingly, he has been acting as a market intermediary and was required to be registered pursuant to section 25 of the Act.
14. The Respondent’s conduct constituted trading in securities without being registered as required by subsection 25(1) of the Act.
15. The Respondent’s conduct was contrary to the public interest.

**PART V - RESPONDENT’S POSITION**

16. The Respondent requests that the settlement hearing panel consider the following mitigating circumstances.
17. The Respondent cooperated with Staff’s investigation and provided a voluntary statement.
18. During his conduct set out above, the Respondent states that he unknowingly breached the Act.

19. Further, after the Respondent became aware of Staff's inquiries about the sale of Imagin securities, the Respondent asserts that he was provided a legal opinion that had been previously provided to Imagin stating that the conduct above did not breach the Act.

#### **PART VI - TERMS OF SETTLEMENT**

20. The Respondent agrees to the following terms of settlement listed below.
21. The Commission will make an order pursuant to section 127(1) of the Act that:
- (a) The settlement agreement is approved.
  - (b) The Respondent is prohibited for five years from becoming or acting as a director or officer of any issuer, registrant or investment fund manager.
  - (c) The Respondent is prohibited for five years from becoming or acting as a registrant.

#### **PART VII - STAFF COMMITMENT**

22. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding under Ontario securities law in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 22 below.
23. If the Commission approves this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against the Respondent. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement.

## **PART VIII – PROCEDURE FOR APPROVAL OF SETTLEMENT**

22. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for January 16, 2009, or on another date agreed to by Staff and the Respondent, according to the procedures set out in this Settlement Agreement and the Commission’s Rules of Practice.
23. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on the Respondent’s conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.
24. If the Commission approves this Settlement Agreement, the Respondent agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.
25. If the Commission approves this Settlement Agreement, neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.
26. Whether or not the Commission approves this Settlement Agreement, the Respondent will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission’s jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

## **PART IX – DISCLOSURE OF SETTLEMENT AGREEMENT**

27. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule “A” to this Settlement Agreement:
  - (a) this Settlement Agreement and all discussions and negotiations between Staff and the Respondent before the settlement hearing takes place will be without prejudice to Staff and the Respondent; and

(b) Staff and the Respondent will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.

28. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality. If the Commission does not approve the Settlement Agreement, both parties must continue to keep the terms of the Settlement Agreement confidential, unless they agree in writing not to do so or if required by law.

**PART X – EXECUTION OF SETTLEMENT AGREEMENT**

29. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.

30. A fax copy of any signature will be treated as an original signature.

Dated this “15<sup>th</sup>” day of January, 2009.

**ONTARIO SECURITIES COMMISSION**

"Peggy Dowdall-Logie"

\_\_\_\_\_

Executive Director, Ontario Securities Commission

**MICHAEL ZELYONY**

“Michael Zelyony”

\_\_\_\_\_

Michael Zelyony

“Richard Chua”

\_\_\_\_\_

Witness

**Schedule A**

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

**– AND –**

**IN THE MATTER OF  
MICHAEL ZELYONY**

**ORDER**

**WHEREAS** on September 28, 2007, the Commission issued a Notice of Hearing pursuant to section 127 of the *Securities Act* (the “Act”) in respect of the trading of securities in Imagin Diagnostic Centres Inc. (“Imagin”) by Michael Zelyony;

**AND WHEREAS** on September 27, 2007 Staff of the Commission filed a Statement of Allegations;

**AND WHEREAS** Michael Zelyony entered into a Settlement Agreement dated January 15, 2009 (the “Settlement Agreement”) in relation to the matters set out in the Statement of Allegations;

**AND WHEREAS** the Commission issued a Notice of Hearing dated January 15, 2009, setting out that it proposed to consider the Settlement Agreement;

**UPON** reviewing the Settlement Agreement, the Notice of Hearing, the Statement of Allegations, and upon considering submissions from Michael Zelyony through his agent and from Staff of the Commission;

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

**IT IS HEREBY ORDERED, PURSUANT TO SECTION 127 OF THE ACT, THAT :**

1. The Settlement Agreement dated January 15, 2009, between Staff of the Commission and Michael Zelyony is approved;
2. The Respondent is prohibited for ten years from becoming or acting as a director or officer of any issuer, registrant or investment fund manager;
3. The Respondent is prohibited for ten years from becoming or acting as a registrant; and,

4. The Respondent is to pay an administrative penalty of \$15,000 to be allocated under s.3.4(2)(b) of the Act to or for the benefit of third parties.

Dated at Toronto, Ontario this        day of January, 2009.

\_\_\_\_\_

\_\_\_\_\_