

Orthogenic Technologies Inc. (Re), 2022 NSSEC 3

IN THE MATTER OF THE *SECURITIES ACT*
R.S.N.S. 1989, CHAPTER 418, AS AMENDED ("**Act**")

- AND -

IN THE MATTER OF ORTHOGENIC TECHNOLOGIES INC. (the "**Respondent**")

ORDER
(Sections 134, 135, 135A)

WHEREAS on April 18, 2022 the Nova Scotia Securities Commission (the "**Commission**") issued a Notice of Hearing to the Respondent pursuant to Sections 134, 135 and 135A of the Act;

AND WHEREAS the Respondent entered into a settlement agreement with the Director of Enforcement for the Commission, whereby it agreed to a proposed settlement of the proceeding, subject to the approval of the Commission;

AND WHEREAS the Director of Enforcement and the Respondent recommended approval of the settlement agreement;

AND WHEREAS the Commission is of the opinion that the Respondent has contravened Nova Scotia securities laws and it is in the public interest to make this Order;

AND UPON reviewing the settlement agreement and the Notice of Hearing, and upon hearing submissions of counsel for the Director of Enforcement;

IT IS HEREBY ORDERED, pursuant to Sections 134, 135 and 135A of the Act, that:

1. the settlement agreement dated March 31, 2022, a copy of which is attached, is approved;
2. pursuant to Section 134(h) of the Act, the Respondent is reprimanded;
3. pursuant to Section 134(1)(a) of the Act, the Respondents shall comply with, and cease contravening Nova Scotia securities laws;
4. pursuant to Section 134(1)(c) of the Act, any exemptions contained in Nova Scotia securities laws do not apply to the Respondent for a period of three (3) years from the date of issuance of this Order;
5. pursuant to Section 135 of the Act, the Respondent shall pay an administrative penalty in the amount of Twenty-Five Thousand dollars (\$25,000.00) forthwith; and

6. pursuant to Section 135A of the Act, the Respondent shall pay costs in connection with the investigation and conduct of the proceedings before the Commission in the amount of One Thousand and Five Hundred dollars (\$1,500.00) forthwith.

DATED at Halifax, Nova Scotia, this 3rd day of May, 2022.

NOVA SCOTIA SECURITIES COMMISSION

(signed) "J. Walter Thompson"

J. Walter Thompson, Q.C.
Commissioner

IN THE MATTER OF THE SECURITIES ACT
R.S.N.S. 1989, CHAPTER 418, AS AMENDED (the “**Act**”)

- AND -

IN THE MATTER OF ORTHOGENIC TECHNOLOGIES INC. (the “**Respondent**”)

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

2. The parties to this Settlement Agreement (“**Agreement**”) are the Respondent, Orthogenic Technologies Inc. (the “**Respondent**” or “**O-Tech**”) and the Director of Enforcement for the Nova Scotia Securities Commission (the “**Director of Enforcement**”).
3. The parties agree that the Nova Scotia Securities Commission (the “**Commission**”) has jurisdiction over this matter.
4. The parties agree to recommend to the Commission approval of this Agreement in accordance with the terms and process set out herein.

PART II – PROCEDURE FOR APPROVAL OF THE AGREEMENT

5. The Director of Enforcement agrees to request that a Notice of Hearing be issued setting down a hearing (“**Settlement Hearing**”) wherein the Commission will consider whether it is in the public interest to approve this Agreement and to issue an Order in the form attached hereto as Schedule “A”.
6. The parties agree that this Agreement constitutes the entirety of evidence to be submitted to the Commission at the Settlement Hearing.
7. The Director of Enforcement agrees to recommend that the allegations acknowledged and admitted by the Respondent be resolved and disposed of in accordance with this Agreement.
8. The Parties acknowledge that this Agreement will become a public document upon its approval by the Commission at the Settlement Hearing.

PART III – STATEMENT OF AGREED FACTS

Acknowledgment

9. The Director of Enforcement and the Respondent agree with the facts and conclusions set out in this Part of the Agreement.

The Respondent

10. The Respondent is an extra-provincial corporation, incorporated in the Province of Ontario on May 17, 2016, and has a registered office at 103 Lake Drive East, Keswick, Ontario.
11. The Respondent is engaged in the business of licensing proprietary 3-D camera software used for development of custom foot orthotics and other orthotic products.
12. The Respondent is not a reporting issuer in Nova Scotia or elsewhere in Canada. At no time did the Respondent ever file a prospectus or preliminary prospectus with the Commission or securities regulators in any other jurisdiction in Canada.

The Promotional Materials

13. In or about July of 2018, the Respondent published promotional materials regarding an opportunity to invest in O-Tech, which were distributed to prospective investors including one (1) resident of Nova Scotia.
14. The promotional materials state that the Respondent would initiate the process for an initial public offering (“**IPO**”) to list publicly on the Canadian Securities Exchange (the “**CSE**”) in the fall of 2018, with a target IPO price of \$0.75 - \$1.00 per share. The promotional materials state as follows:

O-Tech is currently raising \$1,000,000 from friends, family and accredited investors at a share price of \$0.20 per share.

O-Tech intends to list publicly on the Canadian Stock [sic] Exchange (CSE) through an initial public offering in the fall of 2018.

The IPO process will be initiated upon the closing of the friends and family round currently underway.

[...]

O-Tech's target IPO price is \$0.75 - \$1.00 per share.

15. The promotional materials further state that the Respondent would be profitable immediately:

It's important to note that because O-Tech will be revenue generating and profitable immediately, the capital raised is not critical to O-Tech's success...

16. The Respondent did not have written permission from the Director of the Commission, nor did the Respondent have approval or consent from the CSE, when the Respondent represented in its promotional materials that it would initiate the process for an IPO to list publicly on the CSE.
17. At no time did the Respondent ever initiate the process for an IPO to publicly list its shares on the CSE as represented in the Respondent's promotional materials.

Distributions of Shares to Nova Scotia Investors

18. Between January 25, 2018, and August 20, 2018, the Respondent sold common shares of O-Tech to six (6) residents of Nova Scotia in total (collectively, the "**Nova Scotia Investors**") relying on exemptions contained in National Instrument 45-106 – *Prospectus Exemptions*.
19. Three (3) of the six (6) Nova Scotia Investors did not qualify to purchase the shares under an exemption within Nova Scotia securities laws.
20. At no time did the Respondent ever file a Form 45-106F1 – *Report of Exempt Distributions* with the Commission for any of the six (6) Nova Scotia Investors to whom the Respondent distributed shares relying on an exemption.
21. The Respondent raised a total of \$461,250.00 Canadian dollars from the Nova Scotia Investors, \$160,000.00 of which came from those three (3) Nova Scotia investors who did not qualify under any exemption within Nova Scotia securities laws.

Violations of Nova Scotia Securities Laws

22. By distributing shares to Nova Scotia investors who did not qualify under an exemption without filing a prospectus or preliminary prospectus with the Commission, the Respondent violated Section 58(1) of the Act.
23. By failing to file a Form 45-106F1 – *Report of Exempt Distributions* with the Commission within 10 business days of distributing common shares pursuant to an exemption under Nova Scotia securities laws, the Respondent violated Part 6.1(2) of National Instrument 45-106.
24. By making representations in its promotional materials that the Respondent would initiate the process for an IPO on the CSE, without written permission from the Director of the Commission or approval or consent from the CSE, the Respondent violated Section 44(3) of the Act.

PART IV – STATEMENT OF ALLEGATIONS ACKNOWLEDGED AND ADMITTED BY THE RESPONDENT

25. The Respondent admits the facts set forth in Part III herein and acknowledges that it violated Nova Scotia securities laws.
26. The Respondent acknowledges and admits that it violated Section 58(1) of the Act.
27. The Respondent acknowledges and admits that it violated Section 44(3) of the Act.
28. The Respondent acknowledges and admits that it violated Part 6.1(2) of National Instrument 45-106.
29. The Respondent acknowledges that its actions undermined investor confidence in the fairness and efficiency of capital markets and were contrary to the public interest.

PART V - MITIGATING FACTORS

30. The Respondent acknowledges and accepts responsibility for its conduct which is the subject matter of this Agreement.
31. The Respondent has no past record of violations of Nova Scotia securities laws.
32. At all relevant times, the Respondent was unaware that its conduct was in violation of Nova Scotia securities laws.
33. The Respondent recognizes the seriousness of its conduct and is remorseful.
34. The distribution of the Respondent's promotional materials did not cause or result in the purchase of any securities or any investments in O-Tech by any of the prospective investors to whom the promotional materials were distributed.
35. The Respondent is a small company, and the amount of the monetary penalty is proportionately severe relative to O-Tech's revenues. The monetary penalty will have a significant impact on O-Tech's finances.
36. The Respondent remains operational and is working towards building its business. The Respondent is hopeful that it will eventually become profitable for its investors.

PART VI – TERMS OF SETTLEMENT

37. The terms of settlement are set forth in the Order contained in Schedule “A” to this Agreement which is expressly incorporated herein.
38. The Respondent consents to the Order contained in Schedule “A”.
39. The terms of the settlement as set out in the Order contained in Schedule “A” are as follows:
 - i. the settlement agreement dated _____, 2022, a copy of which is attached, is approved;
 - ii. pursuant to Section 134(h) of the Act, the Respondent is reprimanded;
 - iii. pursuant to Section 134(1)(a) of the Act, the Respondents shall comply with, and cease contravening Nova Scotia securities laws;
 - iv. pursuant to Section 134(1)(c) of the Act, any exemptions contained in Nova Scotia securities laws do not apply to the Respondent for a period of three (3) years from the date of issuance of this Order;
 - v. pursuant to Section 135 of the Act, the Respondent shall pay an administrative penalty in the amount of Twenty-Five Thousand dollars (\$25,000.00) forthwith; and
 - vi. pursuant to Section 135A of the Act, the Respondent shall pay costs in connection with the investigation and conduct of the proceedings before the Commission in the amount of One Thousand and Five Hundred dollars (\$1,500.00) forthwith.

PART VII – COMMITMENTS

40. If this Agreement is approved and the Order as set out in Schedule “A” is granted, the parties agree to waive any right to a full hearing and judicial review and appeal of this matter.
41. If this Agreement is approved by the Commission, the parties will not in any way make any statement, public or otherwise, that is inconsistent with the terms of this Agreement.
42. If this Agreement is approved by the Commission, the Respondent agrees to abide by all terms of this Agreement.
43. If, for any reason whatsoever, this Agreement is not approved, or the Order set forth in Schedule “A” is not granted by the Commission:

- a. The Director of Enforcement and the Respondent will be entitled to proceed to a hearing of the allegations which are the subject matter of this Agreement unaffected by the Agreement or the settlement negotiations;
 - b. The negotiations, the terms of this Agreement, and this Agreement will not be raised in any other proceeding or disclosed to any person except with the written consent of the Director of Enforcement and the Respondent or as may otherwise be required by law; and
 - c. The Respondent agrees that it will not raise in any proceeding the Agreement or the negotiations or process of approval thereof as a basis of any attack or challenge of the Commission's jurisdiction, alleged bias, appearance of bias, alleged unfairness or any other challenge that may otherwise be available.
44. The Respondent acknowledges that the Director of Enforcement has the discretion to withdraw from this Agreement if, prior to the approval of this Agreement by the Commission in the view of the Director of Enforcement, additional facts or issues are discovered that cause her to conclude that it would not be in the public interest to request approval of this Agreement. In the event of such withdrawal, notice will be provided to Respondent in writing. In the event of such notice being given, the provisions of paragraph 42 in this Part will apply as if this Agreement had not been approved in accordance with the procedures set out herein.

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

45. The Director of Enforcement or the Respondent may refer to any or all parts of this Agreement as required by Rule 15-501 General Rules of Practice and Procedure and in the course of the Settlement Hearing. Otherwise, this Settlement Agreement and its terms will be treated as confidential by all parties to it until approved by the Commission, and forever if, for any reason whatsoever, this settlement is not approved by the Commission.

PART IX – EXECUTION OF SETTLEMENT AGREEMENT

46. This Agreement may be signed in one or more counterparts that together shall constitute a binding agreement and a facsimile or electronic copy of any signature shall be as effective as an original signature.
47. The Respondent acknowledges that Orders made by the Commission may form the basis for parallel Orders in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions may allow Orders made in this matter to take effect in those other jurisdictions automatically without notice to the Respondent.

[signature page follows]

DATED at Keswick, Ontario, this 31 day of March, 2022

**SIGNED, SEALED AND DELIVERED in
the presence of:**

Orthogenic Technologies Inc.

(signed) "Terry Richard"

(signed) "Tony Eluck"

Witness:

Per: Anthony Eluck, President

DATED at Halifax, Nova Scotia, this 31st day of March, 2022

**SIGNED, SEALED AND DELIVERED in
the presence of:**

(signed) "Ibrahim Badawi"

(signed) "Stephanie Atkinson"

Witness: Ibrahim Badawi

Stephanie Atkinson
Director of Enforcement
Nova Scotia Securities Commission

SCHEDULE "A"

IN THE MATTER OF THE SECURITIES ACT
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DATED at Halifax, Nova Scotia, this ____ day of _____, 2022.

NOVA SCOTIA SECURITIES COMMISSION

(Chair)