

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 9748 / April 16, 2015**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 74749 / April 16, 2015**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-16494**

**In the Matter of**

**WILLIAM J. GAFFNEY**

**Respondent.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTION 8A OF THE  
SECURITIES ACT OF 1933 AND SECTIONS  
15(b) AND 21C OF THE SECURITIES  
EXCHANGE ACT OF 1934, MAKING  
FINDINGS, AND IMPOSING REMEDIAL  
SANCTIONS AND A CEASE-AND-DESIST  
ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against William J. Gaffney (“Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### **Respondent**

1. Respondent was the sole officer, director, and majority shareholder of mBeach Software, Inc. ("mBeach Software"), a Florida corporation, until approximately June 15, 2010. Respondent, 55 years old, is a resident of Cumming, Georgia.

#### **Other Relevant Entities and Persons**

2. mBeach Software, incorporated in Florida on April 24, 2009, registered an offering of 3,000,000 shares of common stock pursuant to a registration statement effective as of November 10, 2009. mBeach Software's stated principal place of business was in Cumming, Georgia. On June 15, 2010, mBeach Software underwent a change of control pursuant to a stock purchase agreement. Prior to that change of control, mBeach Software had at least three undisclosed parents, promoters, and control persons ("undisclosed control persons").

#### **Background**

3. One of the undisclosed control persons approached Respondent to be the sole officer and director of a company whose sole purpose was to be sold as a public vehicle. This undisclosed control person told Respondent that Respondent would be the sole officer and director of the company in name only, and would be paid a flat fee upon the sale of the company. That company was soon incorporated as mBeach Software on April 24, 2009.

4. On June 9, 2009, mBeach Software filed a Form S-1 registration statement seeking to register the offer and sale of 3,000,000 common shares in a \$30,000 public offering, and amended its statement on July 24, 2009, September 18, 2009, October 21, 2009, and November 4, 2009 (together, the "Registration Statement"). The Registration Statement became effective as of November 10, 2009.

5. According to the Registration Statement and mBeach Software's other filings with the Commission, Respondent was the President, Secretary, Treasurer, Sole Director, Principal Executive Officer, Principal Financial Officer, Principal Accounting Officer, majority shareholder, and sole member of management of mBeach Software.

6. The Registration Statement and mBeach Software's other filings with the Commission materially misrepresented that Respondent had capitalized mBeach Software and controlled, and would continue to control, mBeach Software. Respondent knew at all material

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

times that, to the contrary, mBeach Software was capitalized, operated and otherwise controlled by the undisclosed control persons, none of whom was disclosed in any of mBeach Software's filings with the Commission.

7. The Registration Statement and mBeach Software's other filings with the Commission materially misrepresented that mBeach Software's business plan was "to develop and market mobile software." Respondent took no actions toward any such business plan for mBeach Software. Respondent knew at all material times that mBeach Software had no purpose other than to engage in a merger or acquisition with an unidentified entity. Therefore, mBeach Software was an undisclosed "blank check company" as defined in Rule 419 under the Securities Act.

8. Respondent took no actions toward devising, designing, maintaining, or evaluating internal accounting controls, disclosure controls and procedures as defined in Rule 15d-15(e) under the Exchange Act ("disclosure controls and procedures"), or internal control over financial reporting as defined in Rule 15d-15(f) under the Exchange Act ("internal control over financial reporting") for mBeach Software.

9. mBeach Software filed Forms 10-Q on December 10, 2009 and March 9, 2010, and a Form 10-K on May 17, 2010. Although Respondent did not expressly consent to the use of his electronic signature on these periodic reports and the accompanying certifications, Respondent signed management representation letters in connection with mBeach Software's periodic reports, received email confirmations from the Commission upon the filing of mBeach Software's periodic reports containing certifications signed in his name, and consented to the use of his electronic signature with respect to other documents in connection with mBeach Software. These periodic reports and certifications contained material misrepresentations and omissions pertaining to mBeach Software's business plan and Respondent's involvement in mBeach Software, including but not limited to Respondent's purported design, establishment, evaluation, and maintenance of disclosure controls and procedures and internal control over financial reporting.

10. Respondent signed other documents in furtherance of mBeach Software's sole purpose as a public vehicle for merger or acquisition, including board resolutions and management representation letters to auditors containing false statements related to the issuance of mBeach Software's shares, the accuracy of mBeach Software's disclosures, Respondent's knowledge of fraud involving mBeach Software, and the existence and nature of mBeach Software's disclosure controls and procedures and internal control over financial reporting.

11. Respondent took these various actions at the direction of mBeach Software's undisclosed control persons. Respondent received \$10,000 upon the sale of mBeach Software as the flat fee agreed upon with the undisclosed control persons that had no correlation to Respondent's purported ownership of mBeach Software shares or the terms of the stock purchase agreement effectuating the change of control.

12. As a result of the conduct described above, Respondent willfully violated Section 13(b)(5) of the Exchange Act, which prohibits a person from knowingly circumventing or

knowingly failing to implement a system of internal accounting controls or knowingly falsifying any book, record or account described in Section 13(b)(2) of the Exchange Act.

13. As a result of the conduct described above, Respondent willfully violated Rule 13b2-1 under the Exchange Act, which prohibits a person from directly or indirectly falsifying or causing to be falsified any book, record, or account subject to Section 13(b)(2)(A) of the Exchange Act.

14. As a result of the conduct described above, Respondent willfully violated Rule 13b2-2 under the Exchange Act, which prohibits an officer or director of an issuer to make or cause to be made, or omit or cause another person to omit to state, a materially false or misleading statement to an accountant in connection with the preparation or filing of any document or report required to be filed with the Commission.

15. As a result of the conduct described above, Respondent violated Rule 15d-14 under the Exchange Act, which requires that the principal executive and principal financial officers of an issuer that files a report pursuant to Section 15(d) of the Exchange Act sign a certification that, among other things and based on their knowledge, the periodic report filed with the Commission does not contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading.

16. As a result of the conduct described above, Respondent violated Rule 15d-15 under the Exchange Act, which requires the management of an issuer that files reports pursuant to Section 15(d) of the Exchange Act to evaluate the effectiveness of the issuer's disclosure controls and procedures, and which requires the management of an issuer that either had been required to file an annual report pursuant to Section 13(a) or 15(d) of the Act, or had previously filed an annual report, to evaluate the effectiveness of the issuer's internal control over financial reporting.

17. As a result of the conduct described above, Respondent caused violations by the undisclosed control persons of Section 17(a) of the Securities Act, which prohibits fraudulent conduct in the offer or sale of securities.

18. As a result of the conduct described above, Respondent willfully aided and abetted and caused violations by the undisclosed control persons of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

19. As a result of the conduct described above, Respondent willfully aided and abetted and caused violations by mBeach Software of Section 13(b)(2)(A) of the Exchange Act, which requires that an issuer which is required to file reports pursuant to Section 15(d) of the Exchange Act make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

20. As a result of the conduct described above, Respondent aided and abetted and caused violations by mBeach Software of Section 13(b)(2)(B) of the Exchange Act, which requires that an issuer which is required to file reports pursuant to Section 15(d) of the Exchange Act devise and maintain a system of internal accounting controls.

21. As a result of the conduct described above, Respondent aided and abetted and caused violations by mBeach Software of Section 15(d) of the Exchange Act, Rules 12b-11, 12b-20, 15d-1, 15d-13 and 15d-14 thereunder and willfully aided and abetted and caused violations by mBeach Software of Rule 302 of Regulation S-T, which require that an issuer which has filed a registration statement which has become effective pursuant to the Securities Act file periodic information, documents, and reports as required pursuant to Section 13 of the Exchange Act, including quarterly reports on Form 10-Q and annual reports on Form 10-K, and that such reports be signed, contain such material information as may be necessary to make the required statements in light of the circumstances under which they are made not misleading, and include certifications signed by the issuer's principal executive and principal financial officers.

22. As a result of the conduct described above, Respondent willfully aided and abetted and caused violations by mBeach Software of Rule 13b2-1 under the Exchange Act, which prohibits a person from directly or indirectly falsifying or causing to be falsified any book, record, or account subject to Section 13(b)(2)(A) of the Exchange Act.

23. As a result of the conduct described above, Respondent aided and abetted and caused violations by mBeach Software of Rule 15d-15 under the Exchange Act, which requires an issuer that files reports pursuant to Section 15(d) of the Exchange Act to evaluate the effectiveness of the issuer's disclosure controls and procedures, and which requires an issuer that either had been required to file an annual report pursuant to Section 13(a) or 15(d) of the Act, or had previously filed an annual report, to evaluate the effectiveness of the issuer's internal control over financial reporting.

#### **Disgorgement and Civil Penalties**

24. Respondent has submitted a sworn Statement of Financial Condition dated October 3, 2014 and other evidence, and has asserted his inability to pay disgorgement plus prejudgment interest or a civil penalty.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Gaffney's Offer.

Accordingly, pursuant to Section 8A of the Securities Act and Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent Gaffney cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act, Sections 10(b), 13(b)(2)(A),

13(b)(2)(B), 13(b)(5) and 15(d) of the Exchange Act and Rules 10b-5, 12b-11, 12b-20, 13b2-1, 13b2-2, 15d-1, 15d-13, 15d-14 and 15d-15 promulgated thereunder, and Rule 302 of Regulation S-T.

B. Respondent Gaffney be, and hereby is:

prohibited from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

C. Respondent shall pay disgorgement of \$10,000 which represents profits gained as a result of the conduct described herein, and prejudgment interest of \$1,515.11, but that payment of such amount is waived based upon Respondent's sworn representations in his Statement of Financial Condition dated October 3, 2014 and other documents submitted to the Commission. Based upon Respondent's sworn representations in his Statement of Financial Condition dated October 3, 2014 and other documents submitted to the Commission, the Commission is not imposing a penalty against Respondent.

D. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement, pre-judgment interest, and the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of disgorgement, interest, and a penalty should not be ordered; (3) contest the amount of disgorgement and interest to be ordered or the imposition of the maximum penalty allowable under the law; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

**V.**

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields  
Secretary