

December 20, 2006

**IN THE MATTER OF: THE SECURITIES ACT**

**- and -**

**IN THE MATTER OF: PROMITTERE RETIREMENT TRUST**

**REASONS FOR DECISION  
OF  
THE MANITOBA SECURITIES COMMISSION**

**Panel:**

Chair	Mr. D.G. Murray
Commission Members:	Mr. J.W. Hedley

**Appearances:**

Ms. K.G.R. Laycock	)	Counsel for the Commission
Mr. D.M. Wright	)	Counsel for Promittere
	)	Retirement Trust

By Notice of Motion dated November 28, 2006, Promittere Retirement Trust ("PRT"), one of the Respondents named in this matter, has asked this panel to interpret or alternatively amend paragraph 2 of Manitoba Securities Commission ("Commission") Order No. 5175, a copy of which is attached to these Reasons as an Exhibit. The reason for the request is that there are two groups of Manitobans who have purchased or agreed to purchase PRT Units who may be affected by the Order but whose rights are the subject of disagreement as between staff counsel and counsel to PRT.

The Order was made ex parte and pursuant to the following Sections of The Manitoba Securities Act:

Sections 148(1) and (2)

Order Suspending trading

**148(1)** The commission may, where in its opinion the action is in the public interest, order, subject to such terms and conditions as it may impose, that trading shall cease in respect of such securities for such period of time as is specified in the order.

Temporary Order

**148(2)** No order shall be made under subsection (1) without a hearing unless in

the opinion of the commission the holding of a hearing would cause a delay which would be prejudicial to the public interest; and in that event the commission may make a temporary order, which shall expire fifteen days from the date of the making thereof; but the order may be extended for such period as the commission considers necessary where satisfactory information is not provided to the commission within the 15 day period.

The order, by its terms, was set to expire on September 29, 2006 and a hearing was held on that date. All Respondents, including PRT, entered appearances either personally or by legal counsel.

At the September 29, 2006 hearing, most of the matters involving the Respondents were adjourned to October 13, 2006; however, PRT consented to the continuation of the Cease Trade Order until February 15, 2007. It was an agreed condition of the extension of the Cease Trade Order that it allow for the redemption of units by Manitoba investors should they so request.

By letter of October 30, 2006, counsel to PRT informed Commission counsel that there exists a group of PRT unitholders, including Manitoba unitholders; who had prior to September 15, 2006, issued written instructions directing PRT to reinvest their monthly distributions. Counsel to PRT informed Commission counsel that PRT thereby became contractually obliged to comply with those instructions.

Another group of Manitobans had, again prior to September 15, 2006, signed and submitted subscription agreements to PRT and paid for units in the PRT Fund, which funds have been transferred into an RSP account with a trust company pending transfer of the PRT units. To quote the letter from PRT counsel:

"The units have not been issued as PRT was waiting for the funds to be transferred. However, each of the subscribers has opened an RSP account with Olympia Trust and has been charged a fee by Olympia Trust for doing so. Typically, PRT reimburses the fee charged by Olympia Trust upon issuance of PRT units. Additionally, the subscribers may well incur costs if they choose to withdraw their funds from Olympia Trust."

PRT stated that it believed that completing the transactions contemplated for the above described groups of Manitobans would not offend the Cease Trade Order. Commission counsel responded to the contrary stating that the transactions contemplated for those two groups would, to quote the letter dated October 31, 2006 from Commission counsel, "be considered by staff to be a breach of the Cease Trade Order."

As a result, PRT has asked this panel either to interpret the Order or amend it.

Is it sufficient to interpret the Order or must it be amended? The answer to this question lies within paragraph 1(1) of The Securities Act:

"trade" or "trading" includes:

(a) any sale or disposition of or other dealing in or any solicitation in respect of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, or any attempt to do one of the foregoing;

(b) any participating as a floor trader in any transaction in a security upon the floor or any stock exchange;

(c) any receipt by a person or company registered for trading in securities under this Act of an order to buy or sell a security; and

(d) any act, advertisement, conduct or negotiation directly or indirectly in furtherance of any of the foregoing.

This panel agrees that either of the type of transaction contemplated by PRT would fall within the definition of trade. As a result, if PRT is to be allowed to proceed with the transactions contemplated in respect of the Manitoba unitholders or subscribers, the Cease Trade Order dated September 15, 2006, must be amended.

The PRT Motion was heard on December 6, 2006. A vigorous discussion took place regarding some irregularities in PRT's subscription documents and recordkeeping uncovered by Commission Investigators. The irregularities described affected one or more of the unitholders or subscribers. The panel also heard arguments around what constitutes proper evidence and which parties should bear the onus of providing evidence.

As indicated, the irregularities are largely errors or discrepancies in the completion of documents. The PRT Fund was sold in Manitoba pursuant to the "Accredited Investor" exemption under National Instrument 45-106 and there are also suggestions that some of the subscribers aren't really accredited investors, however; this is not substantiated at this point in the proceedings. Without hearing evidence, the panel is not in a position to determine if the irregularities are a result of sloppy document completion by PRT's agents in Manitoba or whether there has been some intent to skirt the rules.

There are a limited group of investors who are now in a state of limbo over their investments. The panel is advised that there are a total of 21 investors involved, 12 of whom have received their units and have provided written instructions for reinvestment of distributions and 9 of whom who have paid for their investment and set up RSP accounts with a trust company, but have not actually received the units to finalize the transaction.

Staff counsel take the position that the Cease Trade Order should not be amended. This would allow investors to require redemptions of their units but not allow them any other way to take advantage of or make use of certain options attached to these investments. Counsel for PRT states that automatic reinvestment and transfer of paid-for units was not included in the initial Cease Trade Order by oversight and that the amendment to allow these transactions should be granted as a matter of course.

In the final analysis the panel will consider the public interest and the possibility of prejudice to this limited number of investors. It should be noted at this point that there are no allegations currently that PRT's fund product is not a legitimate investment. The concerns raised are with the manner in which the fund has been marketed here. Nonetheless, PRT has consented to a Cease Trade Order and will refrain from marketing its product in Manitoba while the Commission completes its investigation into this matter. Public interest concerns about the marketing of this product have been respected by the issuance of the Cease Trade Order in that there will be no new investors in Manitoba at this time.

The manner in which 21 Manitoba investors are allowed to deal with their investments is not a public interest concern but is obviously of vital importance to these individuals. The units, once received, can either be held or redeemed. That decision will affect these investors only. Not being allowed to complete the intended set up of an RSP account or being allowed to add to one in a timely manner could represent a real prejudice to these individuals. The panel is inclined to amend the Cease Trade Order; however, as contemplated in the legislation, if amended, it will be on conditions that are appropriate to the circumstances. There has been a change of circumstances since these investors made their investments and gave their instructions. The issuer and marketers of the Fund they have acquired have been implicated in a regulatory investigation. This is something that should be disclosed to the investors.

With full disclosure the investors can confirm their instructions if they so choose. The disclosure will be by a written communication in a form agreed to by PRT and Commission staff counsel. It should be stated as simply and clearly as possible and the investors will be asked to confirm their instructions in light of the intervening information by signing their consent. Making this contact should not be a difficult task for PRT given the small number of investors involved.

The document, in addition to seeking a confirmation of instructions in light of the new circumstances, will also confirm the other options open to investors including receiving cash distributions, where applicable, and redemption or, as the case may be, return of funds. The Cease Trade Order will be amended with respect to those investors confirming their initial instructions.

The panel does not wish this matter to be unnecessarily delayed. If counsel are unable to agree on the wording of the written communication within fourteen (14) days of the date of this Decision, either party can request panel assistance. Obviously, if PRT declines to send a written communication to these investors the Cease Trade Order will continue to remain in effect.

*"D.G. Murray"*

D.G. Murray  
Chair

*"J.W. Hedley"*

J.W. Hedley  
Member