

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

**-and-**

**IN THE MATTER OF: BMO NESBITT BURNS INC. & THOMAS WAITT**

**STATEMENT OF ALLEGATIONS OF STAFF OF  
THE MANITOBA SECURITIES COMMISSION**

STAFF OF THE MANITOBA SECURITIES COMMISSION ALLEGE, INTER ALIA, THAT:

**A. REGISTRATION**

1. BMO Nesbitt Burns Inc. ("Nesbitt Burns") is presently and at all material times has been registered as an Investment Dealer under *The Securities Act* (the "Act").
2. Thomas Waitt ("Waitt") has been registered under the Act continuously since August 1978 and has been a branch manager of the Winnipeg office of Nesbitt Burns from 1994 to present.
3. At all material times hereto Randy McDuff ("McDuff") was registered as a salesman under the Act in the employ of Nesbitt Burns. McDuff's registration was suspended as of June 13, 2000.
4. At all material times Michael Sidiropoulos ("Sidiropoulos") was registered as a salesman under the Act in the employ of Nesbitt Burns. The registration of Sidiropoulos was suspended when he ceased to be employed by Nesbitt Burns in July 1998. The registration of Sidiropoulos subsequently expired on April 1999.
5. At all material times Charles Edward Griffith ("Griffith") was registered as a salesman under the Act in the employ of Nesbitt Burns. Griffith's registration as a salesman in the employ of Nesbitt Burns was suspended in January 1999.

**B. SUPERVISION AND COMPLIANCE**

1. Nesbitt Burns at all material times operated and continues to operate its head office out of Toronto, Ontario and has a branch office located in the city of Winnipeg (the "Winnipeg Branch").
2. Waitt is the manager of the Winnipeg Branch.
3. Both Nesbitt Burns and Waitt had and continue to have a role in the ongoing monitoring of client accounts as well as the monitoring of the activities of salesmen in the employ of Nesbitt Burns.

**C. SUPERVISION MATTERS**

## **i) McDuff**

1. In 1996 Nesbitt Burns compliance staff determined that some of the investments in the accounts of McDuff clients raised the question whether those investments were suitable.
2. McDuff was asked by Waitt to review the accounts in question but no further action was taken by either Nesbitt Burns or Waitt.
3. In 1997 Nesbitt Burns compliance staff raised questions about the level of commissions generated in some of McDuff's client accounts, as well as the use of margin in some of the accounts. McDuff was told by Waitt to pursue these matters with the clients that were affected.
4. McDuff was absent from Nesbitt Burns from August 24<sup>th</sup> to September 14, 1998 for medical reasons.
5. Upon McDuff returning to work at Nesbitt Burns, Waitt raised the question of unsuitable investments in certain of McDuff's client accounts. It was left with McDuff to deal with the matter.
6. In spring 1999 Nesbitt Burns became aware that McDuff had been conducting trades in the account of a United States client without being registered in the United States. McDuff agreed to pay a penalty to Nesbitt Burns and to absorb losses in the account.
7. In 2000 Nesbitt Burns discovered McDuff had offered a settlement to a client without advising Nesbitt Burns. Nesbitt Burns required McDuff to rewrite the Conduct and Practices Handbook examination and pay the client the amount offered as settlement, but took no other action against McDuff.
8. McDuff began an extended medical leave on June 15, 2000.
9. Nesbitt Burns began to receive a large number of complaints from clients in June 2000. A review of these complaints identified problems (some of which were unknown to Nesbitt Burns) relating to:
  - (a) the suitability of investments,
  - (b) concentration of securities in accounts,
  - (c) use of margin,
  - (d) possible instances of discretionary trading, and
  - (e) money had been borrowed from third parties to purchase securities that were not suitable for the client.

## **ii) Sidiropoulos**

10. The Manitoba Securities Commission held a hearing in October 1999 relating to the conduct of Sidiropoulos in his handling of a client account while he was employed with Nesbitt Burns.

11. In Reasons for Decision released December 30, 1999 the determination of the panel of the Commission included the following findings relating to Sidiropoulos' handling of the client's account:

- (a) unsuitable investments were made in the account
- (b) the client was not advised of risks of certain investments
- (c) failed to act in the client's best interest
- (d) failed to properly diversify the investments in the account
- (e) traded excessively, including churning of the account with an annual turnover rate of 17.8 times equity during the period 1994 to 1997, and
- (f) unauthorized trading.

### **iii) Griffith**

12. Policies of Nesbitt Burns prohibit its employees from purchasing new issues of securities for client account for the sole purpose of reselling those securities ("flipping").

13. On seven occasions between 1993 and 1998 it was determined that Griffith has been flipping new issues of securities contrary to Nesbitt Burns policies.

14. In each instance where Nesbitt Burns identified flipping, Griffith was approached by Waitt or another official from Nesbitt Burns and reminded of the policy. In each case no further actions were taken by Nesbitt Burns against Griffith.

15. By January 1999 Nesbitt Burns received three client complaints alleging Griffith had been involved in discretionary trading.

16. Griffith was terminated by Nesbitt Burns in January 1999.

## **D. ALLEGATIONS**

1. Staff of the Commission allege that Nesbitt Burns and Waitt acted improperly and contrary to the public interest in that:

- (a) Nesbitt Burns and Waitt failed to detect on a timely basis the extent of unsuitable securities, over-concentration of securities and the unacceptable use of margin in certain of the accounts of clients of McDuff;
- (b) Nesbitt Burns and Waitt failed to detect on a timely basis the actions of Sidiropoulos; and
- (c) Nesbitt Burns and Waitt failed to act in a timely and effective manner when potential problems regarding the accounts of each of McDuff, Sidiropoulos and Griffith were identified.

2. Such further and other matters as counsel may advise and the Commission may permit.

DATED at Winnipeg, Manitoba this 7<sup>th</sup> day of May, 2001

**Director, Legal and Enforcement**

**TO: BMO Nesbitt Burns**

**AND TO: Thomas Waitt  
c/o BMO Nesbitt Burns**