

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

**-and-**

**IN THE MATTER OF: EUSTON CAPITAL CORP.**

**AMENDED AMENDED**

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

STAFF OF THE MANITOBA SECURITIES COMMISSION ALLEGE, AMONG OTHER THINGS, THAT:

**A. REGISTRATION**

1. EUSTON CAPITAL CORP. is a corporation incorporated on August 21, 2001 under the laws of the Province of Ontario ("EUSTON"). The registered office of EUSTON is located in Toronto, Ontario.
2. At all material times, EUSTON was not registered to trade in securities under The Securities Act of Manitoba ("Act").
3. At all material times, EUSTON had not filed a preliminary prospectus or a prospectus with The Manitoba Securities Commission ("Commission"), nor had it applied for or been granted an exemption order under section 20 of the Act.
4. At all material times, EUSTON had not filed any reports under section 7 of the Regulation to the Act or any notice under section 91 of the Regulation to the Act with respect to any trades under section 19 of the Act or sections 90 or 91 of the Regulation.
5. With respect to the eleven trades hereinafter described, only one Form 45-103F4 was filed in relation to one of the eleven trades in question.

**B. DETAILS**

1. Between October of 2003 and October of 2004, both inclusive, EUSTON sold 19,100 common shares of EUSTON to the Manitoba residents listed below for a total amount of \$57,300, as follows:

	<b>Investor</b>	<b>Distribution Date</b>	<b># Shares Sold</b>	<b>\$ Amount Paid</b>
(1)	BS	Aug 10/04	600	1,800
(2)	RM	Sept 10/04	500	1,500
(3)	HB	Oct 8/04	1,000	3,000
(4)	PGD	Feb 2/04	5,000	15,000

		Feb 20/04	<u>5,000</u>	<u>15,000</u>
			<u>10,000</u>	<u>30,000</u>
(5)	RGL	Feb 20/04	1,000	3,000
	*RGL and WL	*Nov 24/03	<u>1,000</u>	<u>3,000</u>
			<u>2,000</u>	<u>6,000</u>
(6)	ET	June 1/04	2,000	6,000
(7)	DD	Oct 22/03	2,000	6,000
(8)	<u>TK</u>	<u>(cheque date)Dec 11/03</u>	<u>500</u>	<u>1,500</u>
		<u>(cheque date)Oct 14/04</u>	<u>500</u>	<u>1,500</u>
			<u>1,000</u>	<u>3,000</u>
		<u>Totals=</u>	<u>19,100</u>	<u>\$57,300</u>

(collectively, “Investors”).

2. EUSTON sold the common shares as described above relying upon the accredited investor exemption provided for in Part 5 of Multilateral Instrument 45-103 Capital Raising Exemptions (“MI 45-103”).

3. The accredited investor exemption in Part 5 of MI 45-103 provides an exemption from the prospectus requirements as required by section 37 of The Securities Act (“Act”) and an exemption from the registration requirements of section 6 of the Act (“Accredited Investor Exemption”).

4. In order to rely upon the Accredited Investor Exemption, the trade of securities must be made to an investor who qualifies under MI 45-103 as an “accredited investor” as that term is defined in Part 1, section 1.1, of MI 45-103, which, briefly summarized, includes individuals who have financial assets exceeding \$1,000,000, net income before taxes exceeding \$200,000 alone or if combined with a spouse exceeding \$300,000, or net assets of at least \$5,000,000 (“Accredited Investor”).

5. The sales practices used by EUSTON in general consisted of:

(a) Using publicly available information from business directories accessible by internet, EUSTON obtained information on various people and identified those who appeared to EUSTON to be likely to qualify as Accredited Investors;

(b) Based upon the public information obtained, EUSTON prepared an Investor Profile on each potential purchaser;

(c) The Investor Profiles were prepared prior to any communication with the potential investor himself;

(d) Based upon the Investor Profile, EUSTON then contacted the potential investors by telephone to solicit purchases of shares of EUSTON;

- (e) No enquiries were made in the telephone contact as to whether the potential investors did in fact qualify as Accredited Investors;
- (f) Furthermore, staff of EUSTON were specifically instructed not to make such enquiries;
- (g) If in the telephone conversation a potential investor expressed an interest in purchasing EUSTON securities, EUSTON forwarded a confirmation of purchase to be signed and returned to EUSTON together with payment for the securities;
- (h) A Purchase Agreement was then forwarded to the investor to be signed and returned to EUSTON;
- (i) Schedule B of the Purchase Agreement provided that the purchaser represents and warrants that he is an accredited investor as defined in MI 45-103 and that he acknowledges and agrees that he is purchasing common shares pursuant to the exemption under section 5.1 of MI 45-103. Also included was wording reflective of the financial asset test and net income test found in the definition of Accredited Investor in MI 45-103.

6. Investor Profiles were prepared on each of the Investors.

7. Each of the Investors was contacted by telephone in accordance with the general practices of EUSTON. Two of the Investors were called at their residences.

8. None of the Investors were asked whether they qualified as Accredited Investors, nor were any questions necessary to make such assessment asked of the Investors.

9. In fact, none of the Investors qualified as Accredited Investors.

10. At the request of EUSTON, each of the Investors signed and returned EUSTON's standard form Purchase Agreement.

11. Pursuant to MI 45-103, where a security is distributed in Manitoba under an exemption in subsection 5.1(2) of MI 45-103, the issuer must file a report known as Form 45-103F4 in Manitoba on or before the tenth day after the distribution.

12. Except for the sale to DD, no filings of Form 45-103F4 were made by EUSTON in Manitoba as required by MI 45-103 in respect of the Investors.

13. The Director, Legal and Enforcement ("Director") of the Commission has received applications for claims for compensation for financial loss. The Director requests that the Commission order financial loss compensation in amounts to be determined at or prior to the hearing.

## **C. ALLEGATIONS**

1. Staff of the Commission allege that:

(a) EUSTON traded in securities without having been registered and without prospectus in contravention of sections 6 and 37 of the Act, by trading in reliance upon the Accredited Investor Exemption to Investors who were not “Accredited Investors”;

(b) EUSTON acted improperly and contrary to the public interest in its use of the Accredited Investor Exemption;

and that due to these allegations, EUSTON has acted contrary to the public interest and should not be entitled to use any of the exemptions under the Act including but not limited to those exemptions found in MI 45-103 and therefore should not participate in the exempt markets in Manitoba in the future and should be ordered to pay an administrative penalty pursuant to section 148.1(1) of the Act and furthermore EUSTON should be ordered to pay compensation for financial loss pursuant to section 148.2 of the Act.

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

**DATED** at Winnipeg, Manitoba this 22nd day of September, 2006.

**Director, Legal and Enforcement**

**TO: EUSTON CAPITAL CORP.**