

# IN THE MATTER OF: THE SECURITIES ACT

-and-

IN THE MATTER OF: TRICLEAN ENTERPRISES INC.

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

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

### A. REGISTRATION

1. TRICLEAN ENTERPRISES INC. is a corporation incorporated under the laws of the Province of Ontario ("TRICLEAN"). The registered office of TRICLEAN is located in Thornhill, Ontario.
2. At all material times, TRICLEAN was not registered to trade in securities under The Securities Act of Manitoba ("Act").
3. At all material times, TRICLEAN 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, TRICLEAN 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. At all material times, TRICLEAN had not made any filings with the Commission under the accredited investor exemption pursuant to either MI 45-103 or NI 45-106.

## DETAILS

**1. Between April of 2005 and March of 2007, TRICLEAN sold common shares of TRICLEAN to Manitoba residents as follows:**

Investor	# Shares <u>Sold</u>	\$ Amount <u>Paid</u>
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(1)	PD	650	\$ 1,950
(2)	JP	1,000	\$ 3,000
		3,000	\$ 9,000
(3)	SW	500	\$ 1,500
(4)	AZ	15,000*	\$ 45,000*
(5)	EB	1,000	\$ 3,000
		2,000	\$ 6,000
(6)	JM	3,000	\$ 9,000
		2,000	\$ 6,000
(7)	CT	1,000	\$ 3,000
(8)	DB	1,000	\$ 3,000
(9)	RM	1,000	\$ 3,000
(10)	NP	5,000	\$ 15,000
(11)	DE	5,000	\$ 15,000
		<u>157,500**</u>	<u>\$315,000**</u>
	<b><u>Totals =</u></b>	<b><u>198,650 shares</u></b>	<b><u>\$438,450</u></b>

\*multiple transactions

\*\* @ \$2 per share

(collectively, "Manitoba Investors").

2. The sales practices generally used by TRICLEAN consisted of:

(a) TRICLEAN initiated telephone contact with prospective investors. Specifically in the case of each of the Manitoba Investors, except for DB, TRICLEAN called each of them to solicit purchases of shares. DB became aware of TRICLEAN from e-mailed information passed on to him by another party. DB then contacted TRICLEAN;

(b) Following the phone call(s), TRICLEAN forwarded a Confirmation of purchase to be signed and returned to TRICLEAN together with payment for the securities;

(c) TRICLEAN made arrangements for the signed Confirmation to be picked up by courier, together with payment for the securities, and returned to TRICLEAN;

(d) Thereafter, TRICLEAN forwarded to investors a package consisting of a welcome letter, a share certificate, a Subscription Agreement to be signed and returned by the investor, and a self-addressed envelope for the return of the Subscription Agreement;

(e) Subscription Agreements used by TRICLEAN claimed that the securities were being offered to accredited investors and, in Manitoba, relied upon exemptions from prospectus and registration requirements under section 5.1 of Multilateral Instrument 45-103 *Capital Raising Exemptions* ("MI 45-103").

3. The accredited investor exemption in Part 5 of MI 45-103 provides for an exemption from the prospectus requirements as required by section 37 of the 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.
5. The definition of accredited investor in MI 45-103 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 in each of the two most recent calendar years, or net assets of at least \$5,000,000 (“Accredited Investor”).
6. Furthermore, pursuant to MI 45-103, where a security is distributed in Manitoba under an Accredited Investor Exemption, the issuer must file in Manitoba a report known as Form 45-103F4 on or before the tenth day after the distribution.
7. As to at least 10 of the 11 Manitoba Investors, TRICLEAN sold shares to them specifically as Accredited Investors.
8. In most cases, TRICLEAN either did not ask at all whether the Manitoba Investors were Accredited Investors nor did they ask questions to verify whether the Manitoba Investors qualified as Accredited Investors. Alternatively, to the extent that TRICLEAN asked any questions as to the financial circumstances of the Manitoba Investors, the exchange of information was either insufficient to verify that the investor was an Accredited Investor or, to the contrary, demonstrated that the investor was not an Accredited Investor.
9. Nine of the 11 Manitoba Investors did not, in fact, qualify as Accredited Investors.
10. With respect to the remaining two Manitoba Investors, although they met the qualifications for Accredited Investors, TRICLEAN did not file any Form 45-103F4’s with the Commission as to trades to these investors.
11. 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) TRICLEAN traded in securities without having been registered and without prospectus in contravention of sections 6 and 37 of the Act;

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

and that due to these allegations, TRICLEAN has acted contrary to the public interest and should not be entitled to use of any of the exemptions under the Act, including but not limited to those exemptions found in MI 45-103 or its successor NI 45-106, and therefore should not participate in the exempt markets in Manitoba in the future, should be ordered to pay an administrative penalty pursuant to section 148.1(1) of the Act, and 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 6th day of October, 2008.

**Director, Legal and Enforcement**

**TO: TRICLEAN ENTERPRISES INC.**