

THE SECURITIES ACT

)

Order No. 4401

)

Section 8(1) and 148.1(1)

)

February 27, 2004

ROBERT CHARLES NAPPER

WHEREAS:

(A) On January 31, 2000, The Manitoba Securities Commission ("Commission") issued a Notice of Hearing ("Notice of Hearing") giving notice of its intention to hold a hearing to consider, *inter alia*, whether or not it was in the public interest to grant an order pursuant to subsection 8(1) of The Securities Act ("Act") and an order pursuant to subsection 19(5) of the Act with respect to Robert Charles Napper ("Napper");

(B) Staff of the Commission and Napper entered into a Settlement Agreement (a copy of which is attached as Schedule "A") dated February 26, 2004 ("Settlement Agreement"), which proposed settlement of the proceedings initiated by the Notice of Hearing, subject to the approval of the Commission;

(C) Napper has consented to the issuance of this Order and has waived his right to a full hearing;

(D) On February 27, 2004 the Commission held a hearing ("Settlement Hearing") to consider whether or not to approve the Settlement Agreement;

(E) At the Settlement Hearing the Commission approved the Settlement Agreement and is of the opinion that it is in the public interest to make this order.

IT IS ORDERED:

1. THAT the Settlement Agreement, Schedule "A", be and the same is hereby approved.

2. THAT pursuant to subsection 8(1) of the Act, a written reprimand be placed on Napper's registration file with the Commission relating to the matters set out in the Settlement Agreement, with a copy of the Settlement Agreement to be attached as Schedule "A" to the reprimand.

3. THAT pursuant to subsection 148.1(1) of the Act, Napper pay an administrative penalty of \$13,000.00 on or before April 30, 2004.

4. THAT Napper pay to the Commission costs in the amount of \$7,000.00 on or before April 30, 2004.

BY ORDER OF THE COMMISSION

Director, Legal and Enforcement

SETTLEMENT AGREEMENT

Robert Charles Napper

And

The Staff of The Manitoba Securities Commission

The Manitoba Securities Commission
1130 - 405 Broadway
Winnipeg, Manitoba
R3C 3L6

SETTLEMENT AGREEMENT

A. INTRODUCTION

1. On January 31, 2000, The Manitoba Securities Commission (the "Commission") issued a notice of hearing and a statement of allegations (collectively referred to as the "Notice of Hearing") giving notice of its intention to hold a hearing under The Securities Act (the "Act") to consider:

(a) whether or not it is in the public interest to order, pursuant to subsection 8(1) of The Securities Act (the "Act"), that the registration of Robert Charles Napper ("Napper") as a salesman under the Act in the employ of Wellington West Capital Inc. ("Wellington West") be suspended or cancelled;

(b) whether or not it is in the public interest or pursuant to subsection 19(5) of the Act that subsections 19(1) and 19(3) of the Act do not apply to Napper, with respect to such of the trades referred to in those sections and that subsection 19(2) of the Act does not, with respect to such of the securities referred to in that section, apply to Napper;

(c) whether or not it is in the public interest to order that Napper pays the costs of the investigation and hearing in this matter.

2. Discussions have been held between Napper and staff of the Commission ("Staff") in an effort to settle all issues in connection with or related to the matters set out in the Notice of Hearing (the "Proceedings") and this agreement. A settlement (the "Settlement") has been reached based on the terms and conditions set forth in this agreement (the "Settlement Agreement").

3. Pursuant to the Settlement, Staff agrees to recommend to the Commission that the Proceedings initiated against Napper be resolved and disposed of in accordance with the terms and conditions of this Settlement Agreement as set forth below. Napper consents to the Settlement and to the making of the consent order referred to in subparagraph D1. below, on the terms and conditions set forth in this Settlement Agreement.

B. STATEMENT OF FACTS

1. Robert Charles Napper ("Napper") has been registered continuously under The Securities Act (the "Act") since 1993. He was first registered as a salesman for Moss Lawson & Company Limited commencing May 26th, 1993 and was so continuously registered until May 3rd, 1995. Commencing May 4th, 1995 to the present time Napper has been registered as a salesman with Wellington West Capital Inc.

2. At all material times Napper was not registered to deal with securities in the province of Saskatchewan.

3. Wellington West Capital Inc. has been continuously registered as a Broker and Investment Dealer under the Act since October 21, 1993.

ACTIVITIES

The Gs

4. GG and MG (MG together with GG, the "Gs") were husband and wife and at all material times were residents of Manitoba and clients of Napper. The Gs first became clients of Napper in November 1995.

5. At the time they became Napper's clients, and from time to time thereafter the Gs signed new account application forms which recorded information concerning their investing experience, their net worth and their investment objectives.

The Ps

6. JP and WP (WP together with JP the "Ps") were husband and wife and at all material times were clients of Napper. The Ps were residents of Saskatchewan between May 1992 and July 1996, when they moved to Manitoba.

7. The Ps first met Napper in early 1996 having been introduced to Napper through GG. The Ps' opened trading accounts with Napper while still resident in Saskatchewan.

Turbodyne Technologies Inc.

8. In the Spring of 1996 Napper made GG aware of an opportunity to purchase shares of Turbodyne Technologies Inc. ("Turbodyne") which were being offered by way of private placement in Manitoba.

9. Napper advised GG that the Turbodyne shares could be purchased at \$5.00 per share however there was a minimum subscription amount of \$100,000.00 for 20,000 shares. With that purchase GG would also receive 20,000 ½ warrants (the "Turbodyne Placement"). On being exercised, each full warrant entitled the holder to acquire 1 Turbodyne share at a price of \$5.50 per share.

10. At the time that GG was approached by Napper to purchase the Turbodyne Placement, Turbodyne shares were being quoted over the counter at approximately \$9.00 per share. Napper and GG discussed the strategy of short selling the shares on the basis that on completing the private placement when the shares became unrestricted he would be able to cover his short position. Napper advised GG that the short sale should be done through a different broker as the shares could not be shorted at Wellington West.

11. GG advised Napper he did not wish to invest the \$100,000.00 necessary to purchase the Turbodyne Placement. He advised Napper that he was going to enlist a second person to participate in the purchase of the Turbodyne shares pursuant to the Turbodyne Placement.

12. With the knowledge of Napper, GG enlisted JP to invest money along with the Gs, such that between the two of them they could purchase securities of Turbodyne pursuant to the Turbodyne Placement at \$5.00 per share.

13. Subsequent to being approached by GG, Napper spoke on the telephone with JP regarding a purchase of shares in Turbodyne on a private placement basis.

14. Napper advised JP that the Turbodyne shares were being sold in \$100,000.00 allotments at \$5.00 per share. The shares would be restricted and could not be resold for a period from the date of purchase. Napper further told JP that if the shares were restricted for longer than 90 days Turbodyne would issue a warrant for ½ a Turbodyne share as compensation.

15. Napper told JP that one person should be buying the \$100,000.00 allotment, but Napper permitted the transaction to proceed nonetheless.

16. Napper advised JP that Turbodyne shares were trading at \$9.00 per share.

17. In early 1996 Napper mailed a Wellington West New Account Form to JP who completed name and address information and mailed it back to Napper.

18. On March 22, 1996, Napper confirmed the purchase of Turbodyne shares would be made in MG's account.

19. Napper subsequently advised GG and/or JP that the money to purchase the Turbodyne Placement would be required at the beginning of April 1996.

20. On or about April 14, 1996, Napper received a cheque from WP payable to MG in the amount of \$50,000.00.

21. The purchase of the Turbodyne shares and warrants settled on July 16, 1996. The purchase was made in MG's account. Subsequently shares of Turbodyne were transferred to the Ps' accounts as instructed by MG.

22. Napper arranged for the execution of the subscription agreement with respect to the Turbodyne Placement by MG, including the execution of a Form 8 report which is required to be filed with the Commission in connection with a trade made pursuant to the private placement provisions of the Act (the "Gs Form 8"). MG executed the Gs Form 8 on June 24, 1996. The Gs Form 8 was filed with the Commission on July 15, 1996.

The MTS Offering

23. In late 1996 The Manitoba Telephone System, a crown corporation wholly owned by the Province of Manitoba, became a share capital corporation known as Manitoba Telecom Services Inc. ("MTS") pursuant to The Reorganization Act.

24. Pursuant to The Reorganization Act the authorized share capital of MTS consists of an unlimited number of common shares, an unlimited number of preference shares and one special share. In order to effect the reorganization, 70,000,000 common shares and the one special share were issued to the Province of Manitoba. Common shares would then be acquired by a group of underwriters who would distribute the shares to the public by way of an initial public offering by secondary distribution pursuant to a prospectus.

25. On December 20, 1996 MTS filed with the Commission and obtained a receipt from the Director for a prospectus (the "Final Prospectus") qualifying the distribution of 70,000,000 common shares of MTS (the "MTS Shares"). The offering of the shares to the public was done by way of an underwriting group which included Wellington West (the "MTS Offering").

26. The MTS Offering consisted of three parts: the offering of MTS shares in all the provinces of Canada (the "National Offering"), the offering of Common Shares to Manitoba residents only pursuant to an installment plan for which installment receipts (the "Installment Receipts") were issued (the "Installment Offering"), and an offering to MTS employees pursuant to an employee share plan (the "Employee Offering"). Of the 70,000,000 shares being offered, 50,540,706 were reserved to be issued pursuant to the Installment Offering.

27. Commission Order No. 1509, dated October 29, 1996, was issued permitting certain activities taking place in connection with the Installment Offering and the Employee Offering prior to a receipt being issued for the Final Prospectus.

28. To subscribe for Installment Receipts under the Installment Offering Commission Order No. 1509 required potential purchasers to complete a form which was referred to as a Priority Application Form Under the Installment Plan (the "PAF"). All PAFs had to be received by a Dealer, Registered Representative or Financial Institution (as those terms are defined in Commission Order No. 1509) no later than December 14, 1996.

29. The PAF was required to be completed in addition to whatever other documentation a registered dealer would require for trading on an account with that registered dealer. As an example, if the purchaser was not an existing client of the registered dealer, the registered dealer would complete the necessary documentation to establish an account with the registered dealer for the purchaser.

30. The underwriting group placed limits on the number of Installment Receipts that a person could subscribe for (the "Personal Allotment"). This limit was disclosed in the prospectus qualifying the MTS shares. The initial restriction was 4,000 Installment Receipts which was subsequently changed to 1,600 in the Final Prospectus.

31. An Installment Receipt entitled a holder to make two payments, the first payment of \$7.00 per MTS Share on or before January 7, 1997, the second payment of \$6.00 per MTS Share on or before January 8, 1998. Holders of Installment Receipts were afforded certain rights described in the Final Prospectus.

32. CIBC Wood Gundy Securities Inc., the lead underwriter with respect to the MTS Offering, circulated a memo dated December 12, 1996 to all members of the underwriting group as well as financial institutions forming part of the selling group to deal with certain inappropriate sales practices which have been identified as occurring. One of the points raised in the memo was that the Commission had received reports that syndicate and selling group employees were counselling Manitobans to borrow the name and Social Insurance Numbers of other Manitobans for the purposes of exceeding their personal allotments. The memo stated that any such allocations were considered fraudulent.

Target Investment Club

33. After seeing reports in the media concerning an upcoming initial public offering of shares in MTS, GG contacted Napper about the possibility of acquiring MTS Shares.

34. GG discussed with Napper purchasing \$600,000.00 in MTS Shares.

35. Napper subsequently advised GG that there were restrictions on the number of shares that an individual could buy under the Installment Offering.

36. Napper told GG that he could approach close family and friends who were eligible to purchase shares under the Installment Offering to see if they intended to buy Installment Receipts. If they did not, Napper advised GG to ask that person for permission to use their name and social insurance number so that GG could purchase that person's Personal Allotment for himself.

37. GG, with the knowledge of Napper, approached family and friends to enable GG to purchase additional shares.

38. Subsequently the Personal Allotment was changed again. Napper ultimately advised GG that it would be necessary to set up an investment club to permit shares to be acquired in names of the group of people that GG had assembled.

39. Napper provided GG with the documents required by Wellington West to establish a trading account for Target Capital Investment Club (the "Target Account"). Napper told GG to complete the documentation with the names and social insurance numbers of those people who were going to be purchasing installment receipts.

40. GG completed the documents provided by Napper which included a list of names and social insurance numbers.

41. GG arranged to borrow \$64,000.00 which was deposited to the Target Account on January 7, 1997. No other cash or securities were deposited to the account except for the Installment Receipts.

42. On January 7, 1999 the Target Capital Investment Club subscribed for 24,000 Installment Receipts for consideration of \$168,000.00.

43. GG sold the Installment Receipts on January 24, 1997 from the Target Account and repurchased them without the participation of Napper through an account with another investment dealer.

44. Napper was aware that GG provided all of the capital for some or all of the shares, that he was the beneficial owner of the shares and that any of the profits would not be going to all of the members of the investment club.

Turbo Investment Club

45. Napper advised JP that he should be investing in the MTS Offering.

46. Napper subsequently advised JP that there were restrictions on the number of shares that an individual could buy under the Installment Offering.

47. JP recruited a number of people for the purpose of purchasing MTS Shares for himself in excess of his Personal Allotment.

48. Subsequently, the Personal Allotment was changed again. Napper ultimately advised JP to set up an investment club to permit shares to be acquired in the names of the group of people that JP had assembled.

49. JP, with the knowledge of Napper, approached family and friends to enable JP to purchase additional shares.

50. Napper provided JP with the documents required to open a trading account with Wellington West for the Turbo Investment Club (the "Turbo Account").

51. JP completed the documents provided by Napper which included a list of names and social insurance numbers.

52. On January 7, 1999 the Turbo Investment Club purchased 10,000 Installment Receipts for consideration of \$70,000.00.

53. Subsequent to the MTS Offering JP questioned Napper about the legality of the investment club and was advised by Napper that everything had been done appropriately.

C. ACKNOWLEDGEMENTS BY NAPPER

1. Napper admits in connection with the Gs that:

(a) Napper did trades in securities in the course of a primary distribution to the public without there having been filed with the Commission both a preliminary prospectus and a prospectus and receipts therefore having been obtained from the director in respect of the offering of those securities, contrary to section 37 of the Act in executing trades on behalf of the Gs which Napper knew or ought to have

known was contrary to the Act and Regulations in that Gs pool funds with other purchasers to come up with \$100,000.00 to purchase securities in Turbodyne in purported reliance on section 90 of the Security Regulations;

(b) Napper acted improperly and contrary to the public interest in assisting MG in executing the Gs Form 8 for the purpose of filing the Gs Form 8 with the Commission to purportedly rely upon section 90 of the Security Regulation in connection with the purchase of Turbodyne shares by the Gs and the Ps when he knew or ought to have known that the Gs and Ps had pooled funds to purchase the Turbodyne shares contrary to the Act and Regulations.

(c) Napper acted improperly and contrary to the public interest in providing GG with documentation and assistance for the establishment of Target Capital Investment Club and opening the Target Account when he knew or ought to have known the purpose of establishing the investment club was to permit GG to purchase MTS Shares in excess of his Personal Allotment.

2. Napper admits in connection with the Ps:

(a) Napper acted improperly and contrary to the public interest in soliciting trades by, opening accounts for, and effecting trades on behalf of the Ps while they were resident in Saskatchewan without being registered in Saskatchewan to deal in securities.

(b) Napper did trades in securities in the course of a primary distribution to the public without there having been filed with the Commission both a preliminary prospectus and a prospectus and receipts therefore having been obtained from the director in respect of the offering of those securities, contrary to section 37 of the Act in executing trades on behalf of the Ps which Napper knew or ought to have known was contrary to the Act and Regulations in that the Ps pool funds with other purchasers to come up with \$100,000.00 to purchase securities in Turbodyne in purported reliance on section 90 of the Security Regulations;

(c) Napper acted improperly and contrary to the public interest in providing JP with documentation and assistance for the establishment of Turbo Investment Club and opening the Turbo Account when he knew or ought to have known the purpose of establishing the investment club was to permit JP to purchase MTS Shares in excess of his Personal Allotment.

D. TERMS OF SETTLEMENT

1. Staff seek an order (the "Consent Order") from the Commission consistent with the terms contained in section D2 of this Settlement Agreement, pursuant to the provisions of the Act.

2. The Consent Order sought by Staff is as follows.

- (a) The Settlement Agreement be approved.
- (b) A written reprimand will be placed on Napper's registration file relating to the matters set out in this Settlement Agreement.
- (c) Napper be assessed an administrative penalty in the amount of \$13,000.00, payable on or before April 30, 2004.
- (d) Napper will make a contribution to costs of the investigation in the sum of \$7,000.00, payable to the Commission on or before April 30, 2004.

E. PROCEDURE

1. The approval of this Settlement Agreement shall be sought at a public hearing.
2. If this Settlement Agreement is approved by the Commission, and if a Consent Order issues in accordance with this Settlement Agreement, this Settlement Agreement will constitute the entirety of the evidence to be submitted to the Commission in connection with the Proceedings and, upon the making of the Order contemplated by this Settlement Agreement, Napper waives his right to a full hearing and appeal of this matter.
3. Notwithstanding any other provision of this Settlement Agreement, if, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the Consent Order referred to in section D. above is not made by the Commission, Staff will be entitled to proceed with whatever steps it is entitled by law to take, including but not restricted to, the commencement of a hearing before the Commission, unaffected by this Settlement Agreement or the settlement discussions. In the event that such steps are taken, Napper shall have all of the usual rights of a person subject to such proceedings.
4. If the Settlement Agreement is not approved or the Consent Order set out in section D. above is not made by the Commission, the terms of this Settlement Agreement will not be raised in any other proceeding, and any admissions contained in this Settlement Agreement shall be considered as without prejudice communications in furtherance of settlement discussions which will not be binding upon the parties and which will be inadmissible in any proceeding whatsoever.
5. If this Settlement Agreement is approved by the Commission and the Consent Order made upon the terms set out in this Settlement Agreement, this Settlement Agreement will be a public document.
6. Napper agrees that, if this Settlement Agreement is approved by the Commission and the Consent order is made upon the terms set out in this Settlement Agreement, Napper will not raise as a basis for attack on the Order this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement, alleged bias, alleged unfairness or any other such challenge to the validity of the Order.

7. If this Settlement Agreement is approved by the Commission and the Consent Order is made upon the terms set out in this Settlement Agreement, Napper and Staff agree not to make any public statements inconsistent with the terms of this agreement.

DATED at Winnipeg, Manitoba, this 26th day of February, 2004.

Robert Charles Napper

DATED at Winnipeg, Manitoba, this 25th day of February, 2004.

Staff of The Manitoba Securities Commission
Per: "*Douglas R. Brown*"
Director