

**THE SECURITIES ACT**

)

**Order No. 3311**

)

**Section 19(5)**

)

**April 25, 2001**

**JAMES PETER YAWORSKI**

**WHEREAS:**

(A) On February 28, 2001, The Manitoba Securities Commission (the "Commission") issued a Notice of Hearing (the "Notice") giving notice of its intention to hold a hearing (the "Hearing") to consider whether or not it was in the public interest to grant an order pursuant to subsection 19(5) of The Securities Act (the "Act") with respect to James Peter Yaworski ("Yaworski");

(B) Staff of the Commission and Yaworski entered into a Settlement Agreement (a copy of which is attached as Schedule "A") dated April 24, 2001 (the "Settlement Agreement"), which proposed settlement of the proceedings initiated by the Notice, subject to the approval of the Commission;

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

(D) The Commission has reviewed 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, except that the time period within which the costs are to be paid shall be as described in paragraph 3 below.

2. **THAT** pursuant to subsection 19(5) of the Act:

(a) subsection 19(1) of the Act does not, with respect to such of the trades referred to in that subsection, apply to Yaworski;

(b) notwithstanding subparagraph 2(a) above, subsection 19(1)(c) of the Act and clause 90 of Manitoba Regulation 491/88R continue to apply to Yaworski; and

(c) subsection 19(2) of the Act does not, with respect to such securities referred to in that subsection, apply to Yaworski;

for a period of two (2) years from the date of this order.

3. **THAT** Yaworski pay the sum of \$500.00 to the Minister of Finance of the Province of Manitoba towards the Commission's costs incurred in this matter, said sum to be paid within 30 days of the date of this order.

**BY ORDER OF THE COMMISSION**

**Director, Legal and Enforcement**

**Settlement Agreement**

**James Peter Yaworski ("Yaworski")**

**and**

**The Staff of The Manitoba Securities Commission**

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

**SETTLEMENT AGREEMENT**

**A. Introduction**

A1. On February 28<sup>th</sup>, 2001, The Manitoba Securities Commission (the "Commission") issued a notice of hearing (the "Notice of Hearing") giving notice of its intention to hold a hearing under The Securities Act (the "Act") to consider:

1. whether or not it is in the public interest to order, pursuant to section 19(5) of The Securities Act (the "Act"), that:

(a) subsections 19(1) and 19(3) of the Act do not, with respect to such of the trades referred to in those subsections, apply to Yaworski;

(b) subsection 19(2) of the Act does not, with respect to such of the securities referred to in that subsection, apply to Yaworski;

2. whether or not it is in the public interest to order that the Yaworski pay the costs of the hearing;

3. such further and other matters and the making of such further and other orders as the Commission may deem appropriate.

A2. Discussions have been held between the respondent and staff of the Commission ("Staff") in an effort to settle the matters set out in the Notice of Hearing and Statement of Allegations (the

"Proceedings"). A settlement (the "Settlement") has been reached based on the terms and conditions set forth in the herein agreement (the "Settlement Agreement").

A3. Pursuant to the Settlement, Staff agrees to recommend to the Commission that the Proceedings initiated against the respondent be resolved and disposed of in accordance with the terms and conditions of this Settlement Agreement as set forth below. The respondent consents to the Settlement and to the making of the consent order referred to in paragraph D. below, on the terms and conditions set forth in this Settlement Agreement.

## **B.Statement of Facts**

B1. Yaworski was first registered as a salesman under the Act on October 1, 1987 and has since been registered during the following periods:

- (a)from October 1, 1987 to April 6, 1989;
- (b)from October 24, 1989 to February 15, 1990;
- (c)from March 23, 1990 to May 1, 1991;
- (d)from May 10, 1991 to May 23, 1995;
- (e)from May 26, 1995 until on or about April 18, 1997 with Midland Walwyn Capital Inc. ("Midland"), except for a 4 week suspension and an additional suspension of 6 days with reinstatement effective September 16, 1996 pursuant to Commission orders No. 1122 and No. 1431;

B2.On April 10, 1997, Yaworski was terminated by Midland and his registration was suspended on April 18, 1997.

B3.On June 1, 1997, Yaworski's registration expired without having been transferred or renewed.

B4. Yaworski has not been registered under the Act since his registration in 1997.

B5.During the time that Yaworski was registered with Midland, Midland was registered under the Act as a Broker and Investment Dealer.

B6.At all material times Mr. and Mrs. Richards were residents of the City of Winnipeg in the Province of Manitoba.

B7.In November of 1996, Mr. and Mrs. Richards met with Yaworski.

B8.Mr. Richards had some retirement money in a mutual fund, namely BPI T-Bill Fund (the "BPI funds"). The Richards were interested in purchasing some shares of Manitoba Telecom Services Inc..

B9.A New Account Application Form was completed following which an RRSP account in the name of Mr. Richards (the "Account") was opened. Mrs. Richards was given Power of Attorney by Mr. Richards in respect of the Account.

B10. At no time was Yaworski given any authority to purchase or sell investments through the Account without having first obtained the instructions and consent of Mr. or Mrs. Richards.

B11. On or about December 5, 1996, the BPI funds in the amount of \$38,437.52 were transferred into the Account.

B12. During the period from December of 1996 through to March of 1997 both inclusive, Yaworski executed a number of trades in the Account in respect of the Atlas Canadian T-Bill fund (the "Atlas trades").

B13. The Atlas trades were done without the prior knowledge and consent of Mr. or Mrs. Richards.

B14. For his part, Yaworski says that in respect of the Atlas trades it was his intention to provide a higher level of interest on cash held in the Account. There were no commissions generated on the Atlas Canadian T-Bill fund.

### **C. Acknowledgements**

C1. Yaworski acknowledges and agrees that he conducted unauthorized trades in the Account of his client, namely the Atlas trades.

### **D. Terms of Settlement**

D1. In order to effect a resolution of the issues raised by the Notice of Hearing, Staff and the respondent have entered into this Settlement Agreement. Upon this basis, Staff seek an order (the "Consent Order") from the Commission:

1. THAT the Settlement Agreement be approved.

2. THAT pursuant to subsection 19(5) of the Act:

(a) subsection 19(1) of the Act does not, with respect to such of the trades referred to in that subsection, apply to Yaworski;

(b) notwithstanding subparagraph 2(a) above, subsection 19(1)(c) of the Act and clause 90 of Manitoba Regulation 491/88R continue to apply to Yaworski; and

(c) subsection 19(2) of the Act does not, with respect to such securities referred to in that subsection, apply to Yaworski;

for a period of two (2) years from the date of the order.

3. THAT Yaworski pay the sum of \$500.00 to the Minister of Finance of the Province of Manitoba towards the Commission's costs incurred in this matter, said sum to be paid forthwith upon the granting of this order.

D2. The terms of the Consent Order as suggested above are not intended to be construed so as to deny Yaworski the ability to rely upon the private placement exemption as provided for under subsection 19(3) of the Act and clause 90 of Manitoba Regulation 491/88R (the "Regulation"). However, the terms of the Consent Order as suggested above are intended to deny Yaworski any use of the exemption as provided for in clause 91

#### **E. Procedure for Approval of Settlement**

E1. The approval of this Settlement Agreement and the making of the Consent Order set out in this Settlement Agreement shall be sought at a public hearing pursuant to the Notice of Hearing.

E2. Staff and the respondent agree that if this Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted to the Commission in connection with the Proceedings and the respondent hereby waives his right to a full hearing and appeal of this matter.

E3. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the Consent Order referred to in paragraph D. above is not made by the Commission, Staff will be entitled to proceed with the hearing commenced by the Notice of Hearing unaffected by this Settlement Agreement or the settlement discussions. If this Settlement Agreement is not approved or the Consent Order set out in paragraph D. above is not made by the Commission, the terms of this Settlement Agreement will not be raised in the Proceedings or in any other proceeding.

E4. Staff and the respondent agree 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, this Settlement Agreement will be a public document.

E5. The respondent agrees that he will not raise in any proceeding this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as a basis for an attack on the Commission's jurisdiction, alleged bias, alleged unfairness or any other challenge that may be available.

DATED at Winnipeg, Manitoba, this 24th day of April, 2001.

Witness

James Peter Yaworski

DATED at Winnipeg, Manitoba, this day of April, 2001.

Staff of The Manitoba Securities Commission  
per:  
Director, Legal and Enforcement

