

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

**-and-**

**IN THE MATTER OF: MARIO DI FONZO**

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

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

**A. REGISTRATION**

1. Mario Di Fonzo ("DI FONZO") was first registered under The Securities Act ("Act") as a salesman on April 21, 1993 and has since been registered under the Act almost continuously in various capacities to date as follows:

(a) from April 21, 1993 to February 25, 1994 as a salesperson with Phoenix (Mutual Fund Distributors) Ltd. ("PHOENIX");

(b) from February 26, 1994 to April 11, 1997 as an Officer & Director (Trading) with PHOENIX;

(c) from April 11, 1997 to August 11, 2004 as an Officer & Director (Trading) with Prime Financial Securities Inc. ("PRIME FINANCIAL");

(d) from August 18, 2004 to August 19, 2004 as a salesperson, from August 19, 2004 to September 28, 2009 as a Branch Manager, and from September 28, 2009 to present as a Dealing Representative, and approved as a Branch Manager (MFDA members only), with IPC Investment Corporation ("IPC").

2. On December 30, 1992, PHOENIX was incorporated under the laws of Manitoba. On March 1, 1994, DI FONZO became a director and officer of PHOENIX. On January 20, 1997, PHOENIX changed its name to PRIME FINANCIAL.

3. At all material times, DI FONZO was an officer (President and Secretary) and director of PRIME FINANCIAL.

4. At all material times while DI FONZO was registered with PRIME FINANCIAL, PRIME FINANCIAL was registered under the Act as a Broker-Dealer restricted to mutual funds and, in

addition, for portions of the time, Labour Sponsored Investment Funds, Bonds, and/or Guaranteed Investment Certificates.

5. At all material times while DI FONZO was registered with IPC, IPC was registered under the Act as a Broker-Dealer restricted to mutual funds and Labour Sponsored Investment Funds, Bonds, and Guaranteed Investment Certificates.

6. At all material times the registration of DI FONZO under the Act did not cover trading in and the distribution of Promissory Notes or Debentures as described in these allegations.

## **B. DETAILS**

### **Other corporate entities**

1. On January 7, 1992, 2821851 Manitoba Ltd. was incorporated under the laws of Manitoba.

2. On November 17, 1998, 2821851 Manitoba Ltd. changed its name to Westcan Printing Group Ltd. ("WESTCAN PRINTING").

3. At all material times, DI FONZO was an officer (Chairman and Secretary) and a director of WESTCAN PRINTING. DI FONZO HOLDINGS INC. was a shareholder in WESTCAN PRINTING.

4. DI FONZO HOLDINGS INC. was a company incorporated under the laws of Manitoba on February 23, 1998. DI FONZO was its first director and incorporator and, thereafter, a director, officer (President and Secretary), and shareholder.

5. In 2001, DI FONZO approached mutual fund clients of his and recommended they redeem mutual funds to purchase WESTCAN PRINTING Promissory Notes, which they did. These clients were Mr. and Mrs. P and Ms. A. These matters are further particularized below.

6. In 2002, DI FONZO approached mutual fund clients of his and recommended they redeem mutual funds and, in one case, borrow money, in order to purchase WESTCAN PRINTING Debentures, which they did. These clients were Ms. A, Ms. C, Mr. H, and Ms. L and Mr. B. These matters are further particularized below.

### **Mr. and Mrs. P -**

7. At all material times, Mr. and Mrs. P were mutual fund clients of DI FONZO.

8. In late 2001, Mr. and Mrs. P were 52 and 49 years of age, respectively, with limited investment knowledge and low tolerance for risk.

9. At this time, DI FONZO introduced them to an investment opportunity in his company, with a 10% return. DI FONZO described how the company had equipment, contracts, and was making money.

10. Mr. and Mrs. P decided to invest in DI FONZO's company.

11. In October of 2001, mutual funds invested through DI FONZO were redeemed in the amount of \$100,000 net. Once redeemed, the proceeds were turned over to DI FONZO to be invested by Mr. and Mrs. P in WESTCAN PRINTING.

12. Due to the redemptions, additional costs including deferred sales charges and capital gains resulted. At the time, Mr. and Mrs. P had not been made aware that there would be such costs.

13. The monies invested in WESTCAN PRINTING were monies Mr. and Mrs. P had intended to use in the future for retirement. The amount of money invested constituted approximately 20% of the net worth of Mr. and Mrs. P combined.

14. Mr. and Mrs. P received a Promissory Note from WESTCAN PRINTING in the amount of \$100,000 dated October 26, 2001 due on November 1, 2003 paying interest at the rate of 10% per annum payable monthly.

**Ms. A -**

15. Prior to her husband's death in November of 2000, Ms. A and her late husband had been clients of DI FONZO's for a number of years.

16. Shortly before his death, her husband was very concerned for the financial well being of his wife Ms. A and their two sons, due to his own poor health. Ms. A and her husband met with DI FONZO in this regard. DI FONZO reassured them not to worry. He would take care of the finances and he advised there was good insurance. As a result of their meeting, Ms. A placed her complete trust in DI FONZO.

17. In November of 2000, Ms. A's husband died. Ms. A remained a client of DI FONZO's and turned over the insurance proceeds in the range of \$350,000 to him to invest on her behalf.

18. By the latter part of 2001, Ms. A was 58 years of age, widowed, and relied upon DI FONZO for investment advice. Her investment knowledge was limited as she had relied upon her husband and then after his death DI FONZO. She had a monthly debt obligation to pay, as a result of past advice given by DI FONZO, whereby approximately \$110,000 had been borrowed by a line of credit secured against her home, the proceeds of which were then invested by DI FONZO.

19. At this time, DI FONZO presented Ms. A with an investment opportunity.

20. DI FONZO described the opportunity as being a good investment in a private company, with interest at the rate of 10%, and with no taxes to be paid.

21. DI FONZO did not tell Ms. A he had a financial stake in the company.

22. Ms. A followed his recommendation.

23. In October of 2001, mutual funds were redeemed such that proceeds of \$100,000 were obtained and invested in a Promissory Note in WESTCAN PRINTING.

24. Ms. A obtained a Promissory Note from WESTCAN PRINTING in the amount of \$100,000 dated October 30, 2001 bearing interest at a rate of 10% per annum with a maturity date of November 1, 2003 ("ORIGINAL 2001 PN").

25. Approximately one year later, in 2002, again at the introduction and recommendation of DI FONZO, further mutual funds of Ms. A were redeemed and invested in a Debenture with WESTCAN PRINTING. As represented by DI FONZO, the total amount of monies required for the Debenture was \$100,000. To achieve this amount, \$50,000 was obtained by redeeming mutual funds of Ms. A and the remaining \$50,000 was achieved by applying \$50,000 from the ORIGINAL 2001 PN to this Debenture investment.

26. Once again, Ms. A followed the advice of DI FONZO. At the time, Ms. A did not fully appreciate she was investing in a debenture or what it was.

27. In order to take \$50,000 from the ORIGINAL 2001 PN and apply it to the new 2002 Debenture investment, in or about September or October of 2002, the ORIGINAL 2001 PN remained in place, but at the reduced principal amount of \$50,000. Later, at the expiration of its term in November of 2003, the ORIGINAL 2001 PN was renewed for a further two years to November 1, 2005, at an interest rate of 7.5%.

28. Ms. A received a Debenture in the amount of \$100,000 from WESTCAN PRINTING dated September 30, 2002.

29. Therefore, by September of 2002, the total amount of Ms. A's monies invested in WESTCAN PRINTING as a result of DI FONZO's introduction, advice, recommendation, handling of funds, and preparation of paperwork was \$150,000.

30. In addition to the \$150,000, additional deductions or charges totaling over \$7,000 had been incurred in the mutual fund account of Ms. A as a result of the redemptions. Ms. A was unaware of these related costs.

31. In conjunction with investing in WESTCAN PRINTING, Ms. A signed documents as presented to her by DI FONZO, without reading them. Ms. A was told by DI FONZO not to worry.

32. Ultimately, Ms. A did have tax implications associated with the investments in WESTCAN PRINTING, contrary to the advice given by DI FONZO.

**Ms. C -**

33. At all material times, Ms. C was a mutual fund client of DI FONZO.

34. In the latter part of 2002, Ms. C was 81 years of age, widowed, understood verbal English somewhat, had no to limited investment knowledge at best, and a very low tolerance for risk. Ms. C. had been investing her monies for the purpose of establishing an inheritance for her children.

35. At this time, through relatives of Ms. C, DI FONZO enquired as to whether Ms. C. would be interested in investing in WESTCAN PRINTING. The investment being proposed was a Debenture.

36. From DI FONZO, the relatives understood the Debenture to be an investment with the printing company whereby your money is invested at a certain rate.

37. Ms. C proceeded with investing in WESTCAN PRINTING.

38. In September of 2002, mutual funds of Ms. C which had been invested through DI FONZO were redeemed in the amount of \$100,000 net. The proceeds were forwarded for investing in WESTCAN PRINTING. The original source of these funds had been from the sale of Ms. C's former home in which she resided prior to coming to Canada and living with relatives.

39. Ms. C received a Debenture from WESTCAN PRINTING in the amount of \$100,000 in September of 2002.

40. The amount of money invested in the Debenture constituted approximately one half of Ms. C's net worth.

41. Additional costs had been incurred related to the redemptions, being deferred sales charges in excess of \$3,500. At the time, such costs had not been explained by DI FONZO.

42. Ms. C died in 2005.

### **Mr. H -**

43. At all material times, Mr. H was a mutual fund client of DI FONZO.

44. In 2002, Mr. H was employed with a young family to support. His wife was a stay-at-home mom. His investment knowledge was fair and his tolerance for risk was moderate.

45. At this time, DI FONZO introduced Mr. H to an investment opportunity in a printing company.

46. DI FONZO described how he himself was investing money in the company, how the company was a good company with growth, and how the return on the investment to Mr. H would be 9%. DI FONZO portrayed the risk of the investment as low, as Mr. H would be second in line after the banks and before DI FONZO himself in being repaid.

47. The investment being proposed by DI FONZO was a \$100,000 Debenture in WESTCAN PRINTING.

48. Mr. H did not have the necessary funds to invest.

49. DI FONZO recommended that Mr. H borrow the money, using his home as collateral. DI FONZO referred Mr. H to a contact at a financial institution. Mr. H followed the advice of DI FONZO and met with the representative of the financial institution.

50. Subsequently, the home of Mr. H was assessed at less than the \$100,000 needed to invest in the Debenture.

51. DI FONZO then recommended to Mr. H he redeem mutual funds, held through DI FONZO, to make up the difference between the amount that could be borrowed and the \$100,000 needed to invest. Mr. H again followed the advice of DI FONZO.

52. In September of 2002, mutual funds in the net amount of \$7,000 were redeemed from the joint account of Mr. H and his wife at the recommendation of and with the assistance of DI FONZO.

53. In September of 2002, a line of credit was obtained by Mr. H in the amount of \$93,750, secured by a mortgage against his home, in order to invest in the Debenture.

54. In September of 2002, Mr. H invested \$100,000 in WESTCAN PRINTING and received a Debenture.

**Ms. L -**

55. At all material times, Ms. L and Mr. B were mutual fund clients of DI FONZO. Ms. L and Mr. B were married in 1997. Before her marriage to Mr. B, Ms. L had been widowed and raised four children while employed as a cook.

56. In September of 2002, Ms. L was 69 years of age, retired, had fair to average investment knowledge and a low tolerance for risk. Mr. B was also 69 years of age and retired.

57. In or about August of 2002, approximately \$50,000 worth of mutual funds from each of Ms. L and Mr. B, said funds having previously been invested through DI FONZO, were redeemed. From the redemption proceeds, \$100,000 was invested in WESTCAN PRINTING through DI FONZO. In return, in or about September of 2002, a \$100,000 Debenture from WESTCAN PRINTING was acquired, in the sole name of Ms. L.

58. Ms. L died in May of 2004. Mr. B died in January of 2005.

**General**

59. At the time the Promissory Notes were issued in 2001 and the Debentures were issued in 2002, WESTCAN PRINTING was in serious financial difficulty.

60. A Trust Deed Securing Convertible Debentures entered into by WESTCAN PRINTING and DI FONZO HOLDINGS INC. ("TRUST DEED") applied to the Debentures issued in 2002.

61. Pursuant to the TRUST DEED, each Debenture had a five year term repayable on September 30, 2007, subject to a right of renewal for an additional five years, and bore interest on the aggregate principal sum outstanding calculated and paid annually in arrears at the rate of 9% per annum to be paid on the anniversary date of each and every year during the term.

62. Pursuant to the TRUST DEED, DI FONZO HOLDINGS INC. was named as the trustee.

63. DIFONZO HOLDINGS INC. remained trustee until on or about February of 2005.

64. In February of 2005, in order to facilitate a share purchase of WESTCAN PRINTING by another printing company, WESTCAN PRINTING was amalgamated with its shareholders DIFONZO HOLDINGS LTD. and ASHLEY HOLDINGS LTD. and a new trustee was appointed.

65. The sale of WESTCAN PRINTING proceeded and the company continued on under the same name of Westcan Printing Group Ltd.

66. Some time after the sale of WESTCAN PRINTING in 2005, the principal amounts of the Promissory Notes and of the Debentures were paid back in 2006 and 2007.

67. In 2008, Westcan Printing Group Ltd. was dissolved.

### **C. ALLEGATIONS**

1. Staff of the Commission allege that DI FONZO:

(a) traded in securities of WESTCAN PRINTING, being Promissory Notes, without registration contrary to section 6 of the Act and/or outside the scope of his registration;

(b) traded in securities of WESTCAN PRINTING, being Promissory Notes, without prospectus contrary to section 37 of the Act and/or outside the scope of his registration;

(c) traded in securities of WESTCAN PRINTING, being Debentures, outside the scope of his registration;

(d) failed to avoid personal financial dealings with his clients;

(e) acted in conflict of interest to the interests of his clients;

(f) recommended investments and/or utilized investment strategies in the accounts of his clients that, in all of the circumstances, including investment knowledge, experience, and objectives, age, financial circumstances, and tolerance for risk, were unsuitable;

(g) failed to act in the best interests of his clients;

(h) failed to follow the Know Your Client Rule;

and that due to any or all of the foregoing allegations, DI FONZO acted contrary to the best interests of the public and that pursuant to section 8 of the Act, as to his registration, DI FONZO be reprimanded, terms and conditions on his registration be imposed, and/or his registration be suspended, pursuant to section 148.1 of the Act an administrative penalty be ordered, and pursuant to subsection 19(5) of the Act the use of exemptions be denied.

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

**DATED** at Winnipeg, Manitoba this 19th day of April, 2010.

**Director, Legal and Enforcement**

**TO: MARIO DI FONZO**