IN THE MATTER OF: THE SECURITIES ACT

-and-

IN THE MATTER OF: IRIS MARGARET MCKAY

STATEMENT OF ALLEGATIONS OF STAFF OF
THE MANITOBA SECURITIES COMMISSION

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

A. REGISTRATION

1. Iris Margaret McKay ("McKay") was first registered as a salesperson under The Securities Act ("Act") on August 18, 1997 and thereafter has been registered as follows:

> (a) from August 18, 1997 to April 8, 2002 with Regal Capital Planners Ltd. ("Regal");
> (b) from April 9, 2002 to June 1, 2004 with Cartier Partners Financial Services Inc. ("Cartier");
> (c) from June 1, 2004 to present with another employer, being a Mutual Fund Dealer.

2. The registration of McKay under the current Certificate will expire on December 31, 2004, unless renewed.

3. At all material times, Regal was registered under the Act as a Broker-Dealer Restricted to Mutual Funds and Labour Sponsored Funds.

4. At all material times, Cartier was registered under the Act as a Broker-Dealer Restricted to Mutual Funds and GIC's.

B. DETAILS

1. In or about 1996, Ms. E's husband passed away. Ms. E was in her 30's, with two young children.

2. At the time of her husband's demise, the family had a $2,000 RRSP, their home, a van worth approximately $8,000, and a bank account of $800.

3. Following the demise of her husband, Ms. E's monthly income consisted of $700 widow's pension and $300 pension benefits from her husband's employment.

4. Ms. E was the beneficiary of a life insurance policy in the amount of $250,000 and a benefit package of $70,000 representing 2 years of her husband's salary.

5. Ms. E had no investment knowledge and a grade 9 education. She had only worked outside of the home occasionally and had no intentions of entering the workforce.

6. Ms. E sought advice from McKay as to how to invest her monies so as to be financially able to look after her children.

7. Firstly, McKay recommended the following:

> (a) purchase of a 10 year Life Annuity for $100,000, to provide an income of approximately $1,000 per month for a 10 year period ("Annuity");
>
> (b) placement of the balance of the monies into long-term growth, with the purchase of segregated funds.

8. Ms. E followed the advice and recommendations of McKay.

9. Thereafter, in or about early 2000, McKay further recommended an investment strategy for Ms. E whereby Ms. E would borrow money against her home, to be used for investment purposes.

10. Specifically, the borrowed monies would be used to purchase mutual funds.

11. McKay advised that the interest paid on the loan would be deductible.

12. McKay further advised that in time, Ms. E would not only have her house paid for, but, in addition, would also have all of the money she had borrowed including interest made from the investments.

13. McKay did not explain to Ms. E the risks of borrowing money against her home for investment purposes. Specifically, McKay did not explain to Ms. E the risk of losing the money borrowed.

14. Ms. E followed the recommendation of McKay.

15. To implement the recommended strategy, McKay accompanied Ms. E to a financial institution, chosen by McKay.

16. In late January of 2000, based upon the recommendation of McKay, Ms. E borrowed $66,000 from the financial institution ("Borrowed Proceeds"). The Borrowed Proceeds were obtained by mortgaging her home, valued at approximately $74,000.

17. In or about late February of 2000, the Borrowed Proceeds were forwarded to McKay and invested in $65,800 worth of mutual funds.

18. The documentation completed for the mutual fund purchase did not identify the purchase as leveraged, nor was a Disclosure Statement specifically for leveraged purchases completed.

19. At all material times, Ms. E trusted McKay and relied upon her knowledge and expertise.

20. In 2002, Ms. E discovered that the value of the mutual funds purchased with the Borrowed Proceeds had dropped. Ms. E was concerned and contacted McKay for an explanation. McKay reassured Ms. E and advised her to stay with the leveraged mutual funds.

21. Ms. E remained concerned with her mutual funds dropping in value, did not understand what was going on, and could not afford to lose the money.

22. McKay proposed solutions to get Ms. E out of the leveraged program.

23. In or about the fall of 2002, McKay offered to personally buy Ms. E's mutual funds.

24. Various discussions and draft agreements ensued.

25. Amongst the suggestions was a proposal made by McKay, in or about September of 2002, whereby McKay, herself, would take over the loan, and make the loan payments, and Ms. E would give the mutual funds to McKay. McKay prepared a draft agreement to this effect.

26. McKay also proposed that the loan, or mortgage, remain in Ms. E's name, that the mutual funds be transferred, and that McKay would make the mortgage payments for Ms. E. To that end, in the time period of September to December of 2002, McKay gave personal cheques to Ms. E, for the purpose of paying Ms. E's mortgage payments on the Borrowed Proceeds.

27. In all, at least three payments were made by McKay towards the mortgage of Ms. E.

28. Other suggestions were also made by McKay. In October and November of 2002, further draft agreements were prepared, whereby the mutual funds would be transferred upfront to McKay's husband, a Promissory Note would be provided by McKay's husband to Ms. E, and payments would be made to Ms. E such that her mortgage would be paid off by the end of July 2003 or, as later suggested by McKay, within five years.

29. Ultimately, a written agreement was not concluded.

30. Since January of 2000, Ms. E has made numerous mortgage payments totaling thousands of dollars as a result of the Borrowed Proceeds.

31. Contrary to the advice of McKay, Ms. E was not able to deduct the interest paid on the Borrowed Proceeds.

C. ALLEGATIONS

1. Staff of the Commission allege that McKay:

> (a) as to leveraging to purchase mutual funds, provided investment advice and recommended a strategy that in all of Ms. E's circumstances, including

investment knowledge, experience and objectives, risk tolerance, and financial position was unsuitable;

(b) failed to provide adequate disclosure as to the risks associated with leveraging to purchase mutual funds;

(c) failed to avoid personal financial dealings with her client Ms. E;

(d) failed to act in the best interests of her client;

and that due to these allegations, it is in the public interest that pursuant to section 8 of the Act the registration of McKay as a salesperson under the Act be subject to terms and conditions, suspended, or cancelled, McKay be reprimanded, or one or more of the foregoing and that an administrative penalty pursuant to section 148.1(1) of the Act be ordered against McKay.

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

DATED at Winnipeg, Manitoba this 7th day of July, 2004.

Director, Legal and Enforcement

TO: IRIS MARGARET MCKAY