

IN THE MATTER OF:

THE SECURITIES ACT

-and-

IN THE MATTER OF:

**JOHN WILLIAM DUNCAN NICHOLSON,
NATIONAL BANK FINANCIAL LTD., and
EDWARD GORDON ALEXANDER
PERCIVAL**

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

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

A. REGISTRATION

1. John William Duncan Nicholson ("NICHOLSON") is a resident of the City of Winnipeg, in the Province of Manitoba.
2. NICHOLSON was first registered under The Securities Act ("Act") as a salesman on or about May 4, 1998 and was thereafter registered under the Act as a salesman almost continuously to present, except for two short periods of time each a matter of days in length.
3. At all material times, NICHOLSON was registered under the Act as a salesman with National Bank Financial Ltd. ("NATIONAL BANK"), except for a period of time in 1999 when he was registered with NATIONAL BANK's predecessor Levesque Securities Inc.
4. At all material times, NATIONAL BANK was registered as an Investment Dealer under the Act and on November 30, 2000 also became registered under The Commodity Futures Act as a Futures Commission Merchant. NATIONAL BANK was formerly known as Levesque Securities Inc., until it became NATIONAL BANK effective November 4, 1999. At all material times, Levesque Securities Inc. was registered as an Investment Dealer under the Act.
5. NICHOLSON is currently registered under the Act as a salesman with NATIONAL BANK.
6. Edward Gordon Alexander Percival ("PERCIVAL") is a resident of the City of Winnipeg, in the Province of Manitoba.
7. At all material times, PERCIVAL was registered as a branch manager with NATIONAL BANK supervising NICHOLSON.
8. PERCIVAL is currently registered under the Act as a Trading Officer with NATIONAL BANK.

B. DETAILS

1. At all material times, Ms. S was a resident of Winnipeg, Manitoba.
2. In 1999, Ms. S informed NICHOLSON that she liked to buy bonds and had enquired as to whether he could find her any deals on bonds which were better than that of her principal investment firm.
3. She further informed him that the reason she liked to buy bonds was that she felt she was not going to lose a lot of money, she gets paid interest, and she usually gets her investment back. Ms. S was not looking to make a lot of money, nor did she want anything where she could lose a lot of money. She further informed him that she was not really interested in stocks, but perhaps, if there was a major corporation or a bank, she would think about it.
4. NICHOLSON confirmed to her that he did trade in bonds.
5. Accordingly, in 1999, Ms. S became a client of NICHOLSON and NATIONAL BANK, then known as Levesque Securities Inc. At the time, Ms. S was turning 52 years of age and was employed. Ms. S's investment experience consisted of investments predominantly in GIC's, Bonds, and money market, with the odd stock and income trust and some mutual funds.
6. On or about May 3, 1999, a New Account Form was completed by NICHOLSON stating Ms. S's Risk Factors as 60% low and 40% medium and her Investment Knowledge as "Good". The Investment Objectives section was not completed.
7. A copy of the New Account Form was not sent to Ms. S. It was not the policy of NATIONAL BANK to do so.
8. On June 18, 1999, Ms. S signed a Cash Account Agreement for the account which had been opened.
9. After the completion of the New Account Form, the following bond purchases were made:

Settlement Date	Transaction	Description	Quantity	Amount
(a) May 12, 1999	Buy	Bank of Nova Scotia CL-09 5.75% 12MY14	5,000	-\$4,984.60
(b) July 12, 1999	Buy	Alta Energy 6.1% 1JN09	5,000	-\$4,826.76

(collectively, the "1999 Bond Purchases").

10. The 1999 Bond Purchases were done with the knowledge, consent, and authorization of Ms. S.

11. Except for a very small amount of cash, the 1999 Bond Purchases constituted the entirety of Ms. S's portfolio holdings with NATIONAL BANK for 1999 and into 2000 until May of 2000.

Arbitrage –

12. In 2000, NICHOLSON discussed with Ms. S an investment strategy called arbitrage. In so doing, he explained that there was little risk in arbitrage because of how closely the deals were watched and that there was maybe more gain to be made than in bonds.

13. At the recommendation of NICHOLSON, Ms. S was prepared to try arbitrage.

14. On or about May 2, 2000, NICHOLSON opened margin and margin short accounts, in Canadian and U.S. funds, for Ms. S. In so doing, the Risk Factors for Ms. S were again stated as 60% low and 40% medium.

15. On May 9, 2000, Ms. S signed a Margin Account Agreement.

16. As to margin short accounts, Ms. S was unaware that such accounts were being opened by NICHOLSON in addition to an ordinary margin account. A copy of the account opening document used by NICHOLSON to open all of the new accounts was not provided to Ms. S. It was not the practice of NATIONAL BANK to do so.

17. In May of 2000, the first arbitrage transaction proceeded in a margin account of Ms. S, as follows:

Settlement Date	Transaction	Description	Quantity	Amount
(a) May 5, 2000	Buy	Rexall Sundown Inc	2,100	-\$73,379.33
(b) May 30, 2000	Sell	Rexall Sundown Inc	2,100	\$74,929.30

18. NICHOLSON invited Ms. S to a seminar conducted by NATIONAL BANK on arbitrage deals. Ms. S attended the seminar.

19. Ms. S also understood from the seminar that there was less risk in arbitrage because of how closely the deals were followed by the NATIONAL BANK people. Ms. S further understood that because of this close monitoring, NATIONAL BANK would know right away if there was going to be any problem in not making the kind of money anticipated on a particular deal and would then come to her to advise her to sell.

20. Based upon her conversations with NICHOLSON and the information she understood from the NATIONAL BANK seminar, Ms. S continued to authorize the use of the arbitrage strategy in her account, as had been recommended to her by NICHOLSON.

21. From May of 2000 to July of 2001, NICHOLSON conducted various arbitrage transactions in the margin accounts and also in the margin short accounts of Ms. S.

22. During the time that arbitrage transactions were conducted in her accounts, Ms. S had great difficulty understanding her account statements and relied heavily upon NICHOLSON to explain the details of the deals including what had been bought and sold, for how much money, and what had been the outcome.

23. Some of the arbitrage transactions conducted by NICHOLSON involved short-selling. As these transactions occurred, Ms. S was unaware that short-selling was being done.

24. In or about early 2002, NICHOLSON informed Ms. S that the arbitrage opportunities had dried up.

25. Accordingly, NICHOLSON presented Ms. S with a new opportunity. He advised her that she could make money in Government of Canada Bonds ("GOC Bonds").

Bond trading –

26. Ms. S had understood GOC Bonds to be very secure investments. In her investment experience prior to NICHOLSON and NATIONAL BANK, Ms. S had purchased bonds to hold them to maturity. In addition, Ms. S was still holding in her portfolio with NATIONAL BANK the two 1999 Bond Purchases which she had made through NICHOLSON at the commencement of their client/investment adviser relationship.

27. At the time, Ms. S did not have experience in buying and selling bonds to be held for short-terms. This strategy introduced by NICHOLSON was new to her.

28. NICHOLSON further recommended that the GOC Bond trades be done on margin.

29. Ms. S understood from NICHOLSON that buying and selling bonds on margin meant that she would not have to put up the whole amount of money for the trade and that she would be able to buy more bonds, resulting in a larger gain than if she was to just use her own money.

30. Ms. S followed the advice of NICHOLSON to buy GOC Bonds on margin, to be held for short-terms.

31. Still further, NICHOLSON recommended that the amount of bonds that would be held in her account would be \$250,000.00. Ms. S was comfortable with that amount. Ms. S informed NICHOLSON that in the event that it ever appeared she would lose money, her intention would be to buy out her position in the bonds and hold them until maturity, rather than incurring a loss. Ms. S intended to do this by using other funds of hers to pay the difference between what she had put up for the bond purchase on margin and the full amount of the bonds.

32. Ms. S followed the advice of NICHOLSON and authorized the buying and selling of bonds in her account as follows, except that prior to the purchase she had understood that the quantity was to be 250,000 not 500,000:

Settlement	Transaction	Description	Quantity	Amount
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Date					
(a) March 18, 2002	Buy	Canada 8% 1JUN23	500,000		-\$631,476.03 ¹
(b) April 10, 2002	Sell	Canada 8% 1JUN23	500,000		\$635,496.58 ²

("First GOC Bond Transactions").

33. However, after the First GOC Bond Transactions, beginning in or about May of 2002, a series of Bond trades were conducted in the accounts of Ms. S by NICHOLSON which involved short sales. The short-selling of bonds was done without the knowledge, consent, or authorization of Ms. S.

34. This short-selling of bonds consisted of the following transactions:

BOND SHORT-SELL TRANSACTIONS

Settlement Date	Transaction	Description	Quantity	Amount
(a) June 3, 2002	Sell	Canada 5.75% 1JN29	250,000	\$247,375.00 \$ 78.77 ³ \$247,453.77 ⁴
(b) September 5, 2002	Sell	Canada 5.75% 1JN29	250,000	\$257,375.00 \$3,780.82 \$261,155.82
(c) October 30, 2002	Buy	Canada 5.75% 1JN29	125,000	-\$125,937.50 -\$2,973.46 -\$128,910.96
(d) November 4, 2002	Buy	Canada 5.75% 1JN29	375,000	-\$381,187.50 -\$9,215.75 -\$390,403.25
(e) March 7, 2003	Sell	Canada 5.75% 1JN29	250,000	\$260,000.00 \$3,780.82 \$263,780.82
(f) March 11, 2003	Sell	Canada 5.75% 1JN29	250,000	\$261,500.00 \$3,938.36 \$265,438.36
(g) March 20, 2003	Buy	Canada 5.75% 1JN29	500,000	-\$519,000.00 -\$8,585.62 -\$527,585.62
(h) April 11, 2003	Sell	Canada 5.75% 1JN29	125,000	\$127,562.50 \$2,579.62 \$130,142.12
(i) April 22, 2003	Sell	Canada 5.75% 1JN29	125,000	\$128,375.00 \$2,796.23

					\$131,171.23
(j)	April 30, 2003	Sell	Canada 5.75% 1JN29	250,000	\$258,750.00
					\$5,907.53
					\$264,657.53
(k)	June 13, 2003	Buy	Canada 5.75% 1JN29	250,000	-\$283,625.00
					-\$472.60
					-\$284,097.60
(l)	June 18, 2003	Buy	Canada 5.75% 1JN29	250,000	-\$285,750.00
					-\$669.52
					-\$286,419.52

35. As shown above, in June and September of 2002, a total of \$500,000 of GOC Bonds had been sold short in her account.

36. The short-selling of bonds was done without the knowledge, consent, or authorization of Ms. S.

37. Thereafter, in October and November of 2002, NICHOLSON conducted trades in the account of Ms. S such that the short-sold bonds were bought back, thereby closing the positions from June and September.

38. As shown in the Chart above, in 2003, the unauthorized short-selling of GOC Bonds continued in the accounts of Ms. S.

39. In March of 2003, two short sales of GOC Bonds totaling a quantity of 500,000 had been executed in the account of Ms. S, followed by a corresponding purchase later that same month.

40. Again, in April of 2003, three short sales of 500,000 of GOC Bonds had been executed in the account of Ms. S, followed by GOC Bond purchases in June of 2003.

41. As to the March and April of 2003 transactions, while Ms. S had authorized transactions in these two months, her authorization was in regard to the standard purchase and sale of bonds. The short-selling done in March and April of 2003 was done without the prior knowledge, consent, or authorization of Ms. S.

42. As to the June of 2003 transactions, not only had these transactions utilized short-selling which had not been authorized by Ms. S, she had also not provided any instructions at all to NICHOLSON and/or NATIONAL BANK for any GOC Bond transactions to be done during that month.

43. The June 2003 transactions first came to the attention of Ms. S upon review of her June 2003 account statement.

44. The April and June 2003 trades had resulted in a loss to the account of Ms. S of almost \$59,000.00. This loss represented approximately 50% of the value of what her account would have otherwise been.

45. In or about June of 2004, Ms. S confronted NICHOLSON and NATIONAL BANK for an explanation as to what had occurred regarding the June 2003 trades. NICHOLSON had previously told Ms. S that her common-law husband had authorized the trades. No such authorization had been given by her husband. Further still, Ms. S's husband did not have trading authority for her accounts.

46. During the June 2004 meeting, NICHOLSON instead advised that permission for the trades did not matter and that instructions to complete the trades were from NATIONAL BANK's head office.

Cancelled transaction -

47. Later in 2004, NICHOLSON contacted Ms. S and recommended an investment. In so doing, he provided information as to principal protection and guaranteed interest. The information provided by NICHOLSON was incorrect.

48. Ms. S brought this matter to the attention of NATIONAL BANK. NATIONAL BANK cancelled the transaction. The handling of Ms. S's accounts was transferred to another adviser.

General -

49. At all material times, as to bond transactions, Ms. S understood the transactions to be simply buying, and then selling, bonds.

50. At all material times, the use of a short-selling strategy in bonds was done without the prior knowledge, consent, or authorization of Ms. S.

51. At no time during the short-sale bond transactions did NICHOLSON or NATIONAL BANK explain to Ms. S that a strategy of short-selling would be utilized in her accounts or the risks associated with the strategy.

52. At all material times, for Ms. S, her Risk Factors remained the same. Nevertheless, in or about August of 2002, NICHOLSON changed the Risk Factors for her accounts to "very high". This change was made without the knowledge of Ms. S.

Compensation for Financial Loss -

53. The Director, Legal and Enforcement ("Director") of the Commission has received an application for a claim against NICHOLSON and NATIONAL BANK for compensation for financial loss in favour of Ms. S. The Director requests that the Commission order financial loss compensation to the claimant in an amount to be determined at or prior to the hearing.

C. ALLEGATIONS

1. Staff of the Commission allege that NICHOLSON:

(a) recommended and/or utilized investment strategies in the accounts of Ms. S that, in all of the circumstances, including investment knowledge, experience, and objectives, age, financial circumstances, and risk tolerance, were unsuitable, such recommendations, advice, and/or strategies to have included arbitrage and the short-selling of bonds;

(b) recommended and/or conducted trades in the accounts of Ms. S that, in all of the circumstances including investment knowledge, experience, and objectives, age, financial circumstances, and risk tolerance, were unsuitable;

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

(d) conducted unauthorized trades in the accounts of Ms. S;

(e) failed to act in the best interests of his client;

and that due to any or all of the foregoing allegations, NICHOLSON acted contrary to the best interests of the public and that pursuant to section 8 of the Act as to his registration NICHOLSON be reprimanded, terms and conditions on his registration be imposed, and/or his registration be suspended, that pursuant to section 148.1 of the Act an administrative penalty be ordered against NICHOLSON, and furthermore that pursuant to section 148.2(3) of the Act NICHOLSON be ordered to pay to Ms. S compensation for financial loss.

2. Staff of the Commission allege that NATIONAL BANK:

(a) failed to detect on a timely basis, or at all, unsuitable trades conducted and/or unsuitable strategies utilized by NICHOLSON in the accounts of Ms. S;

(b) failed to detect on a timely basis, or at all, actions of NICHOLSON contrary to the best interests of the client, in his handling of the accounts of Ms. S;

(c) failed to adequately review documentation and make enquiries sufficient to assess suitability of trades and strategies conducted and utilized in the accounts of Ms. S;

(d) failed to keep complete and accurate records;

(e) during an investigation, submitted to an investigator of the Commission a misleading, inaccurate, or altered document or documents;

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

and that due to any or all of the foregoing allegations, NATIONAL BANK acted contrary to the best interests of the public and that pursuant to section 8 of the Act as to its registration NATIONAL BANK be reprimanded, terms and conditions on its registration be imposed, and/or its registration be suspended, that pursuant to section 148.1 of the Act an administrative penalty be ordered against NATIONAL BANK, and furthermore that pursuant to section 148.2(4) of the Act NATIONAL BANK be ordered to jointly and severally pay Ms. S any compensation for financial loss ordered to be paid to Ms. S by NICHOLSON pursuant to section 148.2(3) of the Act, as a contravention or failure to comply as itemized in section 148.2(3)(a) of the Act on the part of NICHOLSON occurred in the course of NICHOLSON's employment by, or while NICHOLSON was acting on behalf of, NATIONAL BANK.

3. Staff of the Commission allege that PERCIVAL:

- (a) failed to detect on a timely basis, or at all, unsuitable trades conducted and/or unsuitable strategies utilized by NICHOLSON in the accounts of Ms. S;
- (b) failed to detect on a timely basis, or at all, actions of NICHOLSON contrary to the best interests of the client, in his handling of the accounts of Ms. S;
- (c) failed to adequately review documentation and make enquiries sufficient to assess suitability of trades and strategies conducted and utilized in the accounts of Ms. S;
- (d) failed to act in the best interests of the client;

and that due to any or all of the foregoing allegations, PERCIVAL acted contrary to the best interests of the public and that pursuant to section 8 of the Act as to his registration PERCIVAL be reprimanded, terms and conditions on its registration be imposed, and/or its registration be suspended and furthermore that pursuant to section 148.1 of the Act an administrative penalty be ordered against PERCIVAL.

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

DATED at Winnipeg, Manitoba this 22nd day of April, 2008.

Director, Legal and Enforcement

TO: JOHN WILLIAM DUNCAN NICHOLSON

AND TO: NATIONAL BANK FINANCIAL LTD.

AND TO: EDWARD GORDON ALEXANDER PERCIVAL

1. Dollar amounts on buy/sell include accrued interest paid or received at the time, as applicable.

2. See footnote #1.

3. Second figure for each transaction in the Chart of Bond Short-Sell Transactions represents accrued interest at the time of the transaction.

4. Third figure for each transaction in the Chart of Bond Short-Sell Transactions represents the total of price and accrued interest at the time of the transaction