

IN THE MATTER OF: THE SECURITIES ACT

-and-

**IN THE MATTER OF: PROMITTERE S & P 500 LIMITED,
PROMITTERE RETIREMENT TRUST,
and
ROBERT JAMES THIESSEN**

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

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

A. REGISTRATION

1. PROMITTERE S & P 500 LIMITED is a corporation incorporated on October 8, 1992 under the laws of the Province of Ontario ("PS & P"). The registered office of PS & P is located in Toronto, Ontario.
2. At all material times, PS & P was not registered to trade in securities under The Securities Act of Manitoba ("Act").
3. At all material times, PS & P had not filed a preliminary prospectus or a prospectus with The Manitoba Securities Commission ("Commission"), nor had it applied for or been granted an exemption order under section 20 of the Act.
4. At all material times, PS & P had not filed any reports under section 7 of the Regulation to the Act or any notice under section 91 of the Regulation to the Act with respect to any trades under section 19 of the Act or sections 90 or 91 of the Regulation.
5. PROMITTERE RETIREMENT TRUST is an unincorporated investment trust ("PRT") with its office situated at the same location as PS & P, in Toronto, Ontario.
6. At all material times, PRT was not registered to trade in securities under the Act.
7. At all material times, PRT had not filed a preliminary prospectus or a prospectus with the Commission, nor had it applied for or been granted an exemption order under section 20 of the Act.
8. At all material times, PRT had not filed any reports under section 7 of the Regulation to the Act or any notice under section 91 of the Regulation to the Act with respect to any trades under section 19 of the Act or sections 90 or 91 of the Regulation.
9. The trustee and administrator of PRT is PROMITTERE LIMITED.

10. PROMITTERE LIMITED is a corporation incorporated on December 17, 1990 under the laws of the Province of Ontario with its office situated at the same location as PS & P and PRT in Toronto, Ontario.

11. Robert James Thiessen (“THIESSEN”) is a resident of Ontario and operates both PS & P and PRT.

12. At all material times, THIESSEN was a director and the president and secretary of PS & P.

13. At all material times, THIESSEN was a director and the president and secretary of PROMITTERE LIMITED.

14. At all material times, THIESSEN was not registered to trade in securities under the Act.

B. DETAILS

General:

1. Multilateral Instrument 45-103 was in effect from June 16, 2003 until its revocation on September 14, 2005, as amended on March 30, 2004 (“MI 45-103”).

2. An accredited investor exemption was provided for in Part 5 of MI 45-103 Capital Raising Exemptions.

3. On September 14, 2005, National Instrument 45-106 (“NI 45-106”) came into effect. NI 45-106 is the successor to MI 45-103.

4. An accredited investor exemption is also provided for in NI 45-106, at Part 2, Division 1: Capital Raising Exemptions, section 2.3.

5. The accredited investor exemption in Part 5 of MI 45-103 (“MI 45-103 AI Exemption”) and in Part 2 of NI 45-106 (“NI 45-106 AI Exemption”) provides for an exemption from the prospectus requirements as required by section 37 of the Act and an exemption from the registration requirements as required by section 6 of the Act (collectively, “Accredited Investor Exemptions”).

6. In order to rely upon either of the Accredited Investor Exemptions, the trade of securities must be made to an investor who qualifies under the applicable instrument as an **“accredited investor”** as that term is defined in Parts 1, section 1.1, of the instruments, which, briefly summarized, includes individuals who have financial assets exceeding \$1,000,000, net income before taxes exceeding \$200,000 alone or if combined with a spouse exceeding \$300,000, or net assets of at least \$5,000,000 (“Accredited Investor”).

7. Pursuant to sections 6.1 and 6.3(1) of NI 45-106, where a security is distributed in Manitoba under an exemption in subsection 2.3(2) of NI 45-106, the issuer must file a report known as Form 45-106F1.

8. The report must be filed in Manitoba on or before the tenth day after the distribution.
9. Under MI 45-103, the filing of a report was also required on or before the tenth day after the distribution.

PS & P:

10. From approximately February 2004 to October 2005 inclusive, PS & P traded in securities of PS & P to the Manitoba residents.
11. At or about the time of the PS & P distributions, no filings for any exemption were made by PS & P.
12. In the spring of 2004, information was received by staff of the Commission as to securities of PS & P being offered to a Manitoba resident as an investment opportunity.
13. In the spring and summer of 2004, enquiries were made by staff of the Commission.
14. An investigator of the Commission received information from THIESSEN as to the extent of trading of PS & P in Manitoba by a particular agent. On two occasions, THIESSEN provided information to the effect that the agent had only brought in four or five investors.
15. During the course of the investigation, staff subsequently received further information identifying the actual number of investors, at the times corresponding with when THIESSEN had provided information, to be 31 and 44.
16. In or about November of 2004, Commission staff requested from PS & P information on investments made by Manitoba investors in PS & P and, furthermore, enquired as to the exemption being relied upon by PS & P.
17. No response was received from PS & P.
18. Commission staff followed up with THIESSEN of PS & P in July of 2005, August of 2005, and April of 2006.
19. In the spring of 2006, information on behalf of PS & P was provided to staff of the Commission whereby PS & P claimed reliance upon the accredited investor exemption pursuant to the NI 45-106 AI Exemption.
20. At this time, no filings had yet been made by PS & P under either of the Accredited Investor Exemptions for any trades to the Manitoba investors.
21. In August of 2006, PS & P filed a 45-106F1 report, followed shortly thereafter by a revised Schedule 1, claiming reliance upon the NI 45-106 AI Exemption for all sales of PS & P to Manitoba investors for the entire period of February 27, 2004 to October 4, 2005 ("PS & P Filings").

22. In purported reliance upon the NI 45-106 AI Exemption, PS & P traded to 30 Manitoba investors who, in fact, were not Accredited Investors.

23. The Form 45-106F1 was signed by THIESSEN on behalf of PS & P, certifying the statements in the report to be true.

24. In July of 2005, an investigator of the Commission had received information from THIESSEN that he had sent back all of the monies invested by Manitoba investors in PS & P.

25. In August of 2005, staff requested from THIESSEN of PS & P documentary verification of the alleged return of the monies to the investors.

26. No response was received from PS & P.

27. Staff of the Commission has received information evidencing that the statement made by THIESSEN to the investigator as to the alleged return of all of the monies was false.

28. In the fall of 2006, staff of the Commission received information from THIESSEN of PS & P that there was no money in the account of PS & P and that the investors would be advised that their money was gone. On or about October 10, 2006, PS & P as a plaintiff initiated a civil lawsuit in an Ontario court. Included in the suit, as filed, is a claim by PS & P for recovery of the monies.

PRT:

29. From May 1, 2006 to September 1, 2006 inclusive, PRT traded in securities of PRT to Manitoba residents.

30. From on or about May 12, 2006 to September 14, 2006, PRT made various filings of Form 45-106F1's reporting the trades in PRT ("PRT Filings").

31. Included in the PRT Filings were trades for which PRT claimed reliance upon the NI 45-106 AI Exemption.

32. Included in the Manitoba investors in respect of which the PRT Filings claimed reliance upon the NI 45-106 AI Exemption were 12 investors who, in fact, were not Accredited Investors.

33. The Form 45-106F1's were signed by THIESSEN as President of the Trustee of PRT, namely PROMITTERE LIMITED, certifying the statements in the reports to be true.

C. ALLEGATIONS

1. Staff of the Commission allege that PS & P:

(a) traded in securities without having been registered and without prospectus in contravention of sections 6 and 37 of the Act, by trading in reliance upon an Accredited Investor Exemption to investors who were not Accredited Investors;

(b) acted improperly and contrary to the public interest in its purported use of an Accredited Investor Exemption;

(c) made statements in reports or other documents required to be filed or furnished under the Act or regulations that at the time and in the circumstances were false or misleading with respect to a material fact;

(d) made statements in information submitted to investigator(s) of the Commission that at the time and in the circumstances were false or misleading with respect to material facts or that omitted to state a material fact, the omission of which made the statement false or misleading;

and that due to these allegations, PS & P acted contrary to the public interest and should not be entitled to use any of the exemptions under the Act including but not limited to those exemptions found in NI 45-106 and therefore should not participate in the exempt markets in Manitoba in the future and, furthermore, should be ordered to pay an administrative penalty pursuant to section 148.1(1) of the Act.

2. Staff of the Commission allege that PRT:

(a) traded in securities without having been registered and without prospectus in contravention of sections 6 and 37 of the Act, by trading in reliance upon an Accredited Investor Exemption to investors who were not Accredited Investors;

(b) acted improperly and contrary to the public interest in its use of an Accredited Investor Exemption;

(c) made statements in reports or other documents required to be filed or furnished under the Act or regulations that at the time and in the circumstances were false or misleading with respect to a material fact;

and that due to these allegations, PRT acted contrary to the public interest and should not be entitled to use any of the exemptions under the Act including but not limited to those exemptions found in NI 45-106 and therefore should not participate in the exempt markets in Manitoba in the future and, furthermore, should be ordered to pay an administrative penalty pursuant to section 148.1(1) of the Act.

3. Staff of the Commission allege that THIESSEN:

(a) traded in securities without having been registered and without prospectus in contravention of sections 6 and 37 of the Act, by trading in reliance upon, or purported reliance upon, an Accredited Investor Exemption to investors who were not Accredited Investors;

(b) acted improperly and contrary to the public interest in the use of an Accredited Investor Exemption by PS & P and/or PRT;

(c) made statements in reports or other documents required to be filed or furnished under the Act or regulations that at the time and in the circumstances were false or misleading with respect to a material fact;

(d) made statements in information submitted to investigator(s) of the Commission that at the time and in the circumstances were false or misleading with respect to material facts or that omitted to state a material fact, the omission of which makes the statement false or misleading;

and that due to these allegations, THIESSEN acted contrary to the public interest and should not be entitled to use any of the exemptions under the Act including but not limited to those exemptions found in NI 45-106 and therefore should not participate in the exempt markets in Manitoba in the future and, furthermore, should be ordered to pay an administrative penalty pursuant to section 148.1(1) of the Act.

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

DATED at Winnipeg, Manitoba this 14th day of February, 2007.

Director, Legal and Enforcement

TO: PROMITTERE S & P 500 LIMITED

AND TO: PROMITTERE RETIREMENT TRUST

AND TO: ROBERT JAMES THIESSEN