

IN THE MATTER OF: THE SECURITIES ACT

-and-

IN THE MATTER OF: DONALD MARK WERBENIUK

STATEMENT OF ALLEGATIONS OF STAFF OF THE
MANITOBA SECURITIES COMMISSION

STAFF OF THE MANITOBA SECURITIES COMMISSION ALLEGE THAT:

A. STATEMENT OF FACTS

1. Donald Mark Werbeniuk (“Werbeniuk”) is a resident of the City of Winnipeg, in the Province of Manitoba.

2. On October 10, 2003, Werbeniuk pled guilty in the Provincial Court of Manitoba to five counts of trading in securities without being registered contrary to section 6(1) of the The Securities Act (the “Act”) and five counts of trading without prospectus contrary to section 37(1) of the Act. Werbeniuk also pled guilty to one count of making statements in evidence during an examination given under the Act to a person appointed to make an investigation which in light of the circumstances under which they were made were false or misleading with respect to a material fact or omitted to state a material fact, the omission of which made the statements false or misleading.

3. The charges before the court to which Werbeniuk pled guilty were as follows:

COUNT 1:

DONALD MARK WERBENIUK, between the 1st day of May, 1998 and the 31st day of August, 1998, both dates inclusive, at or near the City of Winnipeg, in the Province of Manitoba, did trade in a security to Ilana Schulz without being duly registered under The Securities Act, to wit: an investment contract for consideration of \$2,800.00, contrary to Section 6(1) of The Securities Act, and did thereby commit an offence contrary to Section 136(1)(c) of The Securities Act.

COUNT 2:

DONALD MARK WERBENIUK, between the 1st day of May, 1998 and the 31st day of August, 1998, both dates inclusive, at or near the City of Winnipeg, in the Province of Manitoba, did trade in an investment contract in the course of a primary distribution to the public of the said security, both before a preliminary prospectus and a prospectus in respect of the offering of the said security had been filed with The Manitoba Securities Commission and receipts for such preliminary prospectus and prospectus had been obtained from the Director of The Manitoba Securities Commission, to wit: the trade of an investment contract for consideration of \$2,800.00 to Ilana Schulz contrary to Section 37(1) of The Securities Act, and did thereby commit an offence contrary to Section 136(1)(c) of The Securities Act.

COUNT 3:

DONALD MARK WERBENIUK, between the 1st day of October, 1997 and the 31st day of January, 1998, both dates inclusive, at or near the City of Winnipeg, in the Province of Manitoba, did trade in a security to Melanie Longpre without being duly registered under The Securities Act, to wit: an investment contract for consideration of \$10,137.50 contrary to Section 6(1) of The Securities Act, and did thereby commit an offence contrary to Section 136(1)(c) of The Securities Act.

COUNT 4:

DONALD MARK WERBENIUK, between the 1st day of October, 1997 and the 31st day of January, 1998, both dates inclusive, at or near the City of Winnipeg, in the Province of Manitoba, did trade in an investment contract in the course of a primary distribution to the public of the said security, both before a preliminary prospectus and a prospectus in respect of the offering of the said security had been filed with The Manitoba Securities Commission and receipts for such preliminary prospectus and prospectus had been obtained from the Director of The Manitoba Securities Commission, to wit: the trade of an investment contract to Melanie Longpre for consideration of \$10,137.50 contrary to Section 37(1) of The Securities Act, and did thereby commit an offence contrary to Section 136(1)(c) of The Securities Act.

COUNT 5:

DONALD MARK WERBENIUK, between the 1st day of August, 1998 and the 31st day of August, 1998, both dates inclusive, at or near the City of Winnipeg, in the Province of Manitoba, did trade in a security to Susan Schulz without being duly registered under The Securities Act, to wit: an investment contract for consideration of \$3,300.00 contrary to Section 6(1) of The Securities Act, and did thereby commit an offence contrary to Section 136(1)(c) of The Securities Act.

COUNT 6:

DONALD MARK WERBENIUK, between the 1st day of August, 1998 and the 31st day of August, 1998, both dates inclusive, at or near the City of Winnipeg, in the Province of Manitoba, did trade in an investment contract in the course of a primary distribution to the public of the said security before both a preliminary prospectus and a prospectus in respect of the offering of the said security had been filed with The Manitoba Securities Commission and receipts for such preliminary prospectus and prospectus had been obtained from the Director of The Manitoba Securities Commission to wit: the trade of an investment contract to Susan Schulz for consideration of \$3,300.00 contrary to Section 37(1) of The Securities Act, and did thereby commit an offence contrary to Section 136(1)(c) of The Securities Act.

COUNT 7:

DONALD MARK WERBENIUK, between the 1st day of December, 1997 and the 31st day of May, 1998, both dates inclusive, at or near the City of Winnipeg, in the Province of Manitoba, did trade in a security to Marsha Johnson without being duly registered under The Securities Act, to wit: an investment contract for consideration of \$20,420.00 contrary to Section 6(1) of The Securities Act, and did thereby commit an offence contrary to Section 136(1)(c) of The Securities Act.

COUNT 8:

DONALD MARK WERBENIUK, between the 1st day of December, 1997 and the 31st day of May, 1998, both dates inclusive, at or near the City of Winnipeg, in the Province of Manitoba, did trade in a security in the course of a primary distribution to the public of the said security, before both a preliminary prospectus and a prospectus in respect of the offering of the said security had been filed with The Manitoba Securities Commission and receipts for such preliminary prospectus and prospectus had been obtained from the Director of The Manitoba Securities Commission, to wit: the trade of an investment contract to Marsha Johnson for consideration of \$20,420.00 contrary to Section 37(1) of The Securities Act, and did thereby commit an offence contrary to Section 136(1)(c) of The Securities Act.

COUNT 9:

DONALD MARK WERBENIUK, between the 1st day of September, 1997 and the 31st day of October 31, 1997, both dates inclusive, at or near the City of Winnipeg, in the Province of Manitoba, did trade in a security to Georgia McLeod without being duly registered under The Securities Act, to wit: an investment contract for consideration of \$17,263.02, contrary to Section 6(1) of The Securities Act, and did thereby commit an offence contrary to Section 136(1)(c) of The Securities Act.

COUNT 10:

DONALD MARK WERBENIUK, between the 1st day of September, 1997 and the 31st day of October, 1997, both dates inclusive, at or near the City of Winnipeg, in the Province of Manitoba, did trade in an investment contract in the course of a primary distribution to the public of the said security, before both a preliminary prospectus and a prospectus in respect of the offering of the said security had been filed with The Manitoba Securities Commission and receipts for such preliminary prospectus and prospectus had been obtained from the Director of The Manitoba Securities Commission, to wit: the trade of an investment contract to Georgia McLeod for consideration of \$17,263.02, contrary to Section 37(1) of The Securities Act, and did thereby commit an offence contrary to Section 136(1)(c) of The Securities Act.

COUNT 11:

DONALD MARK WERBENIUK, on or about the 28th day of June, 2001, at or near the City of Winnipeg, in the Province of Manitoba, made statements in evidence during an examination given under The Manitoba Securities Act, to a person appointed to make an investigation under The Manitoba Securities Act, to wit: Jan Banasiak, that at the time, and in light of the circumstances under which they were made, were false or misleading with respect to a material fact or omitted to state a material fact, the omission of which made the statements false or misleading and did thereby commit an offence contrary to Section 136(1)(a) of The Securities Act.

4. On December 12, 2003 Judge Miller sentenced Werbeniuk to a period of incarceration of four months concurrent on each count.

5. The Director, Legal and Enforcement (the "Director") of The Manitoba Securities Commission has received an application from Ms. A, Ms. B, and Ms. C for compensation for

financial loss. The Director requests that the Commission order financial loss compensation in an amount to be determined at or prior to the hearing.

B. ALLEGATIONS

1. Staff of the Commission allege that Werbeniuk traded in securities without having been registered in contravention of section 6(1) and 37(1) of the Act and that due to these allegations, it is in the public interest that Werbeniuk not be entitled to use of the exemptions set out in the Act and should not be entitled to participate in the exempt markets in Manitoba in the future. Furthermore, Staff submit that Werbeniuk should be ordered to pay Ms. A, Ms. B, and Ms. C compensation for financial loss pursuant to subsection 148.2 of the Act.

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

DATED at Winnipeg, Manitoba this 16th day of June, 2006.

Director, Legal and Enforcement

TO: Donald Mark Werbeniuk