

**THE SECURITIES ACT**

)

**Order No. 4832**

)

**Subsection 19(5) and 148.2**

)

**July 15, 2005**

**CHARLES EDWARD GRIFFITH**

**WHEREAS:**

(A) On March 15, 2004, The Manitoba Securities Commission ("Commission") issued a Notice of Hearing thereafter amended by the issuance of an Amended Notice of Hearing on April 19, 2004 ("Proceedings") giving notice of its intention to hold a hearing to consider, inter alia, whether or not it was in the public interest to grant an order pursuant to subsection 19(5) and section 148.2 of The Securities Act ("Act") with respect to Charles Edward Griffith ("GRIFFITH");

(B) Staff of the Commission and GRIFFITH entered into a Settlement Agreement (a copy of which is attached as Schedule "A") dated July 15, 2005 ("Settlement Agreement"), which proposed settlement of the Proceedings, subject to the approval of the Commission;

(C) GRIFFITH has consented to the issuance of this Order and has waived his right to a full hearing;

(D) On July 15, 2005, the Commission held a hearing ("Settlement Hearing") to consider whether or not to approve the Settlement Agreement;

(E) At the Settlement Hearing the Commission approved the Settlement Agreement and is of the opinion that it is in the public interest to make this order.

**IT IS ORDERED:**

**1. THAT** the Settlement Agreement, Schedule "A", be and the same is hereby approved.

**2. THAT** pursuant to subsection 19(5) of the Act:

(a) subsections 19(1) and 19(3) of the Act do not, with respect to such of the trades referred to in those sections, apply to GRIFFITH; and

(b) subsection 19(2) of the Act does not, with respect to such securities referred to in that section, apply to GRIFFITH,

for a period of ten (10) years from the date of this order.

**3. THAT** pursuant to subsection 148.2 of the Act, GRIFFITH pay to the estate of Robert Christie the amount of \$68,237.00.

**BY ORDER OF THE COMMISSION**

**Director, Legal and Enforcement**

Settlement Agreement

**Charles Edward GRIFFITH**

**and**

**The Staff of The Manitoba Securities Commission**

The Manitoba Securities Commission  
1130 - 405 Broadway  
Winnipeg, Manitoba  
R3C 3L6

**SETTLEMENT AGREEMENT**

**A. Introduction**

A1. On March 15, 2004, The Manitoba Securities Commission ("Commission") issued a notice of hearing ("NOH") and Statement of Allegations ("SOA") naming Charles Edward Griffith ("GRIFFITH") as respondent.

A2. On April 19, 2004, the Commission issued an Amended Notice of Hearing ("ANO") and Amended Statement of Allegations ("ASOA") adding a request for an order of Financial Loss Compensation as against GRIFFITH in favour of one of the former clients of GRIFFITH included amongst the former clients contained within the ASOA and giving notice of its intention to hold a hearing under The Securities Act ("Act") to consider:

1. whether or not it is in the public interest to order, pursuant to subsection 19(5) of the Act, that:

(a) subsections 19(1) and 19(3) of the Act do not, with respect to such of the trades referred to in those sections, apply to GRIFFITH;

(b) subsection 19(2) of the Act does not, with respect to such of the securities referred to in that section, apply to GRIFFITH;

2. whether or not it is in the public interest to order that the respondent pay the costs of and incidental to the hearing;
3. whether or not it is in the public interest to order, pursuant to subsection 148.1(1) of the Act, that GRIFFITH pay an administrative penalty;
4. whether or not pursuant to subsection 148.2 of the Act, that GRIFFITH be ordered to pay compensation for financial loss;
5. such further and other matters and the making of such further and other orders as the Commission may deem appropriate.

A3. Discussions have been held between the respondent and staff of the Commission ("Staff") in an effort to settle the matters set out in the ANOH and ASOA dated April 19, 2004 ("Proceedings"). The respondent has been advised of his right to legal counsel and has waived that right. A settlement ("Settlement") has been reached based on the terms and conditions set forth in this agreement ("Settlement Agreement").

A4. Pursuant to the Settlement, Staff agrees to recommend to the Commission that the Proceedings initiated against the respondent be resolved and disposed of in accordance with the terms and conditions of this Settlement Agreement as set forth below. The respondent consents to the Settlement and to the making of the consent order referred to in paragraph D. below, on the terms and conditions set forth in this Settlement Agreement.

## **B. Statement of Facts**

B1. GRIFFITH is a resident of the City of Winnipeg, in the Province of Manitoba.

B2. GRIFFITH was first registered under the Act as a salesman on or about May 24, 1977 and was thereafter registered under the Act from time to time as a salesman.

B3. At all material times GRIFFITH was registered with Burns Fry Limited ("Fry") from June 5, 1992 until October 1, 1994 and with Nesbitt Burns Inc. ("Nesbitt") from October 1, 1994 to on or about January 8, 1999.

B4. Nesbitt was registered as a Broker & Investment Dealer.

B5. Following his employment with Nesbitt, GRIFFITH was registered, under conditions of supervision, with a Broker Dealer restricted to mutual funds, from August 30, 1999 to March 26, 2001, at which time his employment terminated.

B6. On March 26, 2001, his registration was suspended by the Commission.

B7. GRIFFITH has not been registered under the Act since March 26, 2001.  
Client - Ms. Banerjee

B8. In or about August of 1994, BANERJEE became a client of GRIFFITH's. At the time, BANERJEE was in her early 60's, retired, and recently divorced. BANERJEE's annual income was approximately \$45,000.00 in interim spousal maintenance and about \$200.00 per month in pension.

B9. BANERJEE's past investment experience consisted of some Hydro bonds and GIC's. BANERJEE did not want risky investments and was concerned about maintaining her capital.

B10. A New Account Form was completed by GRIFFITH which stated BANERJEE's investment objectives as 50% income and 50% long-term growth and her investment knowledge as "Limited or Nil".

B11. In August of 1994 a cash account was opened for BANERJEE, which shortly thereafter became a margin account ("B's Margin Account").

B12. In August of 1994, BANERJEE provided GRIFFITH with approximately \$199,000.00 to be invested by him. Later, in or about September of 1995, a further \$200,000.00 of inheritance money was received by BANERJEE and forwarded to GRIFFITH for investment.

B13. BANERJEE trusted GRIFFITH to act in accordance with her best interests.

B14. Commencing in or about June of 1995, GRIFFITH began to utilize a trading style in B's Margin Account consisting of the purchase, and quick sale, of new issue securities.

B15. This trading style continued beyond 1995 such that numerous short-term trades of new issue securities were made in B's Margin Account from June 1995 through to and inclusive of part of 1998.

B16. Overall, from its inception to December 1998, B's Margin Account suffered a total loss of approximately \$135,873.00, which was, after taking into account withdrawals, almost one-half of its net original capital.

B17. In addition, commencing in or about February of 1997 and continuing through to December of 1998, GRIFFITH's use of margin in B's Margin Account was consistent and excessive.

B18. For the period of February of 1997 to December of 1998, the average outstanding loan at the end of each month was in excess of \$184,000.00. The maximum amount of the loan occurred in November of 1997 when it reached in excess of \$800,000.00.

B19. During this period of 1997 and 1998, B's Margin Account lost approximately \$271,000.00.

B20. B's Margin Account incurred margin interest costs of approximately \$21,214.00.

B21. Based upon the contents of an expert report, GRIFFITH acknowledges that in 1997 and 1998 the level of turnover in B's Margin Account exceeded acceptable industry levels.

Client – Mr. Crawford Sr.

B22. In or about February 1997, CRAWFORD became a client of GRIFFITH's. CRAWFORD was 65 years of age and retired, with an annual income of approximately \$20,000.00.

B23. At the time that CRAWFORD became a client of GRIFFITH's, CRAWFORD had had past investment experience in stocks, mutual funds, and bonds.

B24. CRAWFORD had approximately \$500,000.00 in investments, a significant portion of which were fixed income investments. CRAWFORD intended to transfer his investments to GRIFFITH in order to invest in secure investments.

B25. In or about February of 1997, a New Account Form was completed by GRIFFITH ("February 97 NAF") which stated CRAWFORD's investment objectives as 50% income and 50% moderate growth and his investment knowledge as "Limited".

B26. Two accounts were opened for CRAWFORD – a margin account and an RRSP account (respectively, "C's Margin Account" and "C's RRSP Account").

### **C's Margin Account**

B27. When C's Margin Account was established in February of 1997, its initial value was approximately \$179,701.00.

B28. By the end of December of 1998, C's Margin Account had incurred a loss of approximately \$48,429.00.

B29. The main investment activity in C's Margin Account had been the purchase and sale of new issue securities. The majority of these new issue securities were sold within two months of having been purchased.

B30. Based upon the contents of an expert report, GRIFFITH acknowledges that for 1997 and 1998 the level of turnover in C's Margin Account exceeded acceptable industry levels.

B31. In addition, for the period of April of 1997 continuing through to December of 1998, GRIFFITH's use of margin in C's Margin Account was consistent and excessive.

B32. From the inception of C's Margin Account in February of 1997 to December of 1998, the average outstanding loan at the end of each month was approximately \$70,257.00.

B33. During the 1997 and 1998 period, C's Margin Account incurred margin interest costs of approximately \$11,121.00.

### **C's DAP Account**

B34. In or about December of 1997, a second New Account Form was prepared by GRIFFITH ("December 97 NAF") with which GRIFFITH opened a third account for CRAWFORD – a Cash on Delivery account ("C's DAP Account"). The December 97 NAF now stated the investment objectives to be 100% aggressive trading.

B35. In February of 1998, \$250,000.00 worth of shares of Pipe NT Corp ("Pipe Shares") were purchased in the DAP Account and then immediately sold.

B36. The Pipe Shares were sold through an account opened at another broker ("Outside Account"). The Outside Account had been opened in or about December 1997 at the recommendation of GRIFFITH.

#### C's RRSP Account

B37. C's RRSP Account was opened in February of 1997. The starting value was \$325,102.00. A significant portion of C's RRSP Account consisted of fixed income assets.

B38. In October of 1997, three new issue securities were purchased. As a result, C's RRSP Account had a negative cash balance of approximately \$438,281.00.

B39. In November of 1997, GRIFFITH liquidated fixed income investments to pay for the purchases of new issue equity securities that had occurred in October.

B40. By the end of December of 1998, the value of C's RRSP Account had been reduced to \$251,964.00, thereby having incurred a loss over the 1997 and 1998 period of \$73,138.00.

#### Discretionary Trading

B41. During the 1997 year, GRIFFITH conducted transactions without the prior knowledge, authorization, and consent of CRAWFORD, including the following:

<b><u>Security Purchased</u></b>	<b><u>Settlement Date</u></b>	<b><u>Quantity</u></b>	<b><u>Value</u></b>	<b><u>Account</u></b>
Genesis Exploration Ltd.	Oct. 3/97	21,200	\$190,800	Margin
Harrowston Inc.	Oct. 28/97	20,000	\$125,000	RRSP

B42. After having discovered the acquisition of the Genesis securities shown above, CRAWFORD wanted to sell the securities and purchase safer securities. GRIFFITH recommended to CRAWFORD that he not sell. CRAWFORD followed the advice of GRIFFITH.

B43. After having discovered the acquisition of the Harrowston securities shown above, CRAWFORD was concerned and contacted GRIFFITH. GRIFFITH reassured CRAWFORD that the Harrowston securities in question would be sold.

B44. By the end of 1997, as a result of CRAWFORD's concern for GRIFFITH having conducted transactions without his permission and his concern for the kind of stocks which had been purchased, CRAWFORD had blatantly instructed GRIFFITH not to trade any further without his permission.

B45. In February of 1998, GRIFFITH purchased the Pipe Shares in C's DAP Account, without the prior knowledge, authorization, and consent of CRAWFORD.

B46. For his part GRIFFITH says that he conducted the above described discretionary trades as a result of having had some communications with a relative and/or friend of CRAWFORD, while further saying and acknowledging however that said person(s) did not have trading authority and that the transactions were conducted without having received from CRAWFORD his prior knowledge, authorization, and consent.

#### General

B47. As to the handling of CRAWFORD's investments and as to the use of a margin account at all, CRAWFORD trusted GRIFFITH to act in accordance with his best interests.

Client – Ms. M. Fletcher and Mr. B. Fletcher

B48. In December of 1994, B. FLETCHER opened a joint cash account for his mother, M. FLETCHER, who was the primary account holder. M. FLETCHER was 78 years of age and resided in a senior's care facility. B. FLETCHER was authorized to make decisions for the account ("The F Account").

B49. In addition to some monies in a RRIF account, the monies in The F Account were relied upon by M. FLETCHER to pay her living expenses.

B50. B. FLETCHER understood from GRIFFITH that the money would be kept in safe, guaranteed investments like bonds.

B51. At the time of the opening of The F Account, the client's objectives were stated as 100% "income". M. FLETCHER's investment knowledge was stated as "Limited or Nil".

B52. At the outset, the investments in The F Account were fixed income debentures and bonds.

B53. Commencing in June of 1995, at the direction of GRIFFITH, The F Account was changed to a margin account and a pattern of short-term trading began. The short-term trading included purchases and subsequent sales of new issue securities.

B54. Based upon the contents of an expert report, GRIFFITH acknowledges that for the period of July 1995 to November 1998, the level of turnover in The F Account far exceeded acceptable industry levels.

B55. In addition, from time to time in 1996 and, thereafter, consistently during the period of February 1997 through to November 1998, GRIFFITH's use of margin in The F Account was excessive.

B56. For the period of February of 1997 to November of 1998, the average outstanding loan at the end of each month was almost \$200,000.00. The loan reached its highest amount in November of 1997, when it was in excess of \$550,000.00. The account value in November of 1997 was less than \$200,000.00.

B57. From its inception in December 1994 to November 1998, The F Account lost almost \$163,000.00.

B58. In order to convert The F Account into a margin account in June of 1995, a new Client Account Form had been completed, which changed the client's investment objectives to include 50% moderate growth. M. FLETCHER's personal circumstances however had not changed. Thereafter, in November of 1997, at GRIFFITH's suggestion, the name of the account holder for The F Account was changed to BF's name alone. Furthermore, the investment objectives for The F Account had again been changed, to show even riskier objectives – 50% “moderate growth” and 50% “aggressive trading”.

#### **Client – Mr. Christie**

B59. CHRISTIE became a client of GRIFFITH's in 1993. At the time, CHRISTIE was in his 70's and his annual income was approximately \$30,000.00.

B60. Prior to becoming a client of GRIFFITH's, CHRISTIE had had experience in purchasing shares. However, it had not been CHRISTIE's practice to buy shares for quick resale.

B61. In 1996 and 1997, CHRISTIE had Canadian and US dollar margin account(s) with GRIFFITH (“E's Margin Account”). At the time, CHRISTIE's annual income was approximately \$24,000.00, including \$12,000.00 the source of which would expire in 1999.

B62. CHRISTIE intended to use E's Margin Account as his source of retirement income.

B63. The updated New Account Form signed by GRIFFITH in February of 1993 for E's Margin Account, stated the investment objectives to be 30% long-term growth, 40% short-term trading, and 30% venture; investment knowledge was recorded as “Good”.

B64. On or about May 14, 1996, \$82,000.00 worth of a new issue security, Barrington Petroleum Ltd. (“Barrington Shares”), had been purchased in E's Margin Account by GRIFFITH. The purchase was done entirely on margin. In June of 1996, the Barrington Shares were sold by GRIFFITH for \$81,930.00.

B65. As at December 31, 1996, the approximate value of E's Margin Account was \$87,700.00.

B66. Commencing in or about January of 1997, GRIFFITH began to utilize a trading style in E's Margin Account consisting of the purchase, and quick sale, of new issue securities.

B67. Throughout 1997, numerous short-term trades of new issue securities were made in E's Margin Account by GRIFFITH.

B68. In addition, in 1997, GRIFFITH's use of margin in E's Margin Account was consistent and excessive.

B69. In December of 1997, CHRISTIE noticed that the November balance of E's Margin Account was approximately \$68,000.00. This amount was approximately ½ of what the account value had been in the previous 3 months. CHRISTIE was shocked by the low value and contacted GRIFFITH for an explanation.

B70. GRIFFITH informed CHRISTIE that he had been trying to make money for him, but that the market had kept going down.

B71. Over the course of 1996 and 1997, E's Margin Account suffered a loss of \$68,237.00. For that same period, excluding the results of two securities chosen by CHRISTIE, E's Margin Account had suffered a loss that totaled almost \$78,500.00.

B72. Also from January to November of 1997, E's Margin Account incurred margin interest costs of approximately \$6,467.00.

#### Compensation for Financial Loss

B73. The Director, Legal and Enforcement ("Director") of the Commission has received an application for a claim against GRIFFITH for compensation for financial loss in favour of CHRISTIE, now deceased. The amount of the Financial Loss Compensation claim as approved by the Director for a request for an order to issue from the Commission is \$68,237.00.

B74. Staff have received a Consent to Order to be filed at the Settlement Hearing from Elize Berryman on behalf of the estate of CHRISTIE agreeing to the issuance of the order for Financial Loss Compensation in the amount of \$68,237.00.

#### **C. Acknowledgements**

C1. GRIFFITH acknowledges and agrees that he acted contrary to the public interest in that he:

(a) as to the client BANERJEE:

(i) churned BANERJEE's Margin Account;

(b) as to the client CRAWFORD:

(i) churned CRAWFORD's Margin Account and RRSP Account;

(ii) conducted unauthorized trades in the three accounts of CRAWFORD;

(c) as to the clients FLETCHER:

- (i) churned the FLETCHER Account;
- (d) as to the client CHRISTIE:
  - (i) churned CHRISTIE's Margin Account.

#### **D. Terms of Settlement**

D1. In order to effect a resolution of the issues raised by the ANOH, Staff and the respondent have entered into this Settlement Agreement. Upon this basis, Staff seek an order ("Consent Order") from the Commission pursuant to subsections 19(5) and 148.2 of the Act that:

- (a) the Settlement Agreement be approved;
- (b) pursuant to subsection 19(5) of the Act:
  - (i) subsections 19(1) and 19(3) of the Act do not, with respect to such of the trades referred to in those sections, apply to GRIFFITH; and
  - (ii) subsection 19(2) of the Act does not, with respect to such securities referred to in that section, apply to GRIFFITH,for a period of ten (10) years from the date of the order;
- (c) pursuant to subsection 148.2 of the Act, GRIFFITH pay to the estate of Robert Christie the amount of \$68,237.00.

D2. GRIFFITH has made certain representations and has provided certain documentation to Staff as to his financial situation including his current level of income and income for the years 2003 and 2004. Based upon his representations and in the overall circumstances of the terms of the Settlement Agreement, the claims for an administrative penalty and for costs as raised by the ANOH and the ASOA are abandoned by Staff.

D3. GRIFFITH has represented to Staff that for the period of time since his registration under the Act ceased on March 26, 2001 to present, he has not traded in securities in the Province of Manitoba whatsoever whether in reliance on an exemption or otherwise.

#### **E. Procedure for Approval of Settlement**

E1. The approval of this Settlement Agreement and the making of the Consent Order set out in this Settlement Agreement shall be sought at a public hearing pursuant to the ANOH.

E2. Staff and the respondent agree that if this Settlement Agreement is approved by the Commission, it, together with the Consent to Order of the Financial Loss Claimant, will constitute the entirety of the evidence to be submitted to the Commission in connection with the

Proceedings and the respondent hereby waives his right to a full hearing and appeal of this matter.

E3. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the Consent Order referred to in paragraph D. above is not made by the Commission, Staff will be entitled to proceed with the hearing commenced by the ANOH unaffected by this Settlement Agreement or the settlement discussions. If this Settlement Agreement is not approved or the Consent Order set out in paragraph D. above is not made by the Commission, the terms of this Settlement Agreement will not be raised in the Proceedings or in any other proceeding.

E4. Staff and the respondent agree that if this Settlement Agreement is approved by the Commission and the Consent Order made upon the terms set out in this Settlement Agreement, this Settlement Agreement will be a public document.

E5. The respondent agrees that he will not raise in any proceeding this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as a basis for an attack on the Commission's jurisdiction, alleged bias, alleged unfairness or any other challenge that may be available.

E6. If this Settlement Agreement is approved by the Commission and the Consent Order is made upon the terms set out in this Settlement Agreement, neither Staff nor the respondent will make any statement inconsistent with this Settlement Agreement.

**DATED** at Winnipeg, Manitoba, this "15th" day of July, 2005.

Witness

Charles Edward Griffith

**DATED** at Winnipeg, Manitoba, this "15th" day of July, 2005.

Staff of the Manitoba Securities Commission

per: Director, Legal and Enforcement