

THE SECURITIES ACT

)

Order No. 3337

)

Section 8(1)

)

May 23, 2001

**TWC FINANCIAL CORP.**

**WHEREAS:**

(A) On May 9, 2001, The Manitoba Securities Commission (the "Commission") issued a Notice of Hearing (the "Notice") giving notice of its intention to hold a hearing (the "Hearing") to consider, *inter alia*, whether or not it was in the public interest to suspend or cancel the registration of TWC Financial Corp. (the "Respondent") as a broker-dealer under *The Securities Act* (the "Act");

(B) Staff of the Commission and the Respondent entered into a Settlement Agreement (a copy of which is attached as Schedule "A") dated May 15, 2001 (the "Settlement Agreement"), which proposed settlement of the proceedings initiated by the Notice, subject to the approval of the Commission;

(C) The Respondent has consented to the issuance of this Order and has waived its respective rights to a full hearing;

(D) The Commission has reviewed 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** TWC make a one time payment to the Treasury of the Province of Manitoba of \$19,000.00, to be paid on or before May 24, 2001.
3. **THAT** TWC pay to the Commission costs in the amount of \$4,000.00 to be paid on or before May 24, 2001.

**BY ORDER OF THE COMMISSION**

**Director, Legal and Enforcement**

Settlement Agreement

TWC Financial Corp.

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 May 9, 2001, The Manitoba Securities Commission (the "Commission") issued a notice of hearing and Statement of Allegations (collectively the "Notice of Hearing") giving notice of its intention to hold a hearing under *The Securities Act* (the "Act") to consider:

(a) whether or not it is in the public interest to order, pursuant to subsection 8(1) of the Act that the registration of TWC Financial Corp. ("TWC") as a broker-dealer under the Act be suspended or cancelled;

(b) whether or not it is in the public interest to order that TWC pays the costs of and incidental to the hearing.

A2. Discussions have been held between TWC and staff of the Commission ("Staff") in an effort to settle all issues in connection with the matters set out in the Notice of Hearing (the "Proceedings") and this agreement. A settlement (the "Settlement") has been reached based on the terms and conditions set forth in this agreement (the "Settlement Agreement").

A3. Pursuant to the Settlement, Staff agrees to recommend to the Commission that the Proceedings initiated against TWC be resolved and disposed of in accordance with the terms and conditions of this Settlement Agreement as set forth below. TWC consents to the Settlement and to the making of the consent order referred to in subparagraph D1. below, on the terms and conditions set forth in this Settlement Agreement.

### **B. STATEMENT OF FACTS**

Registration

B1. TWC Financial Corp. ("TWC") has been continuously registered as a broker-dealer under *The Securities Act*, R.S.M. 1988, c. S50 (the "Act") since November 23, 1990.

B2. TWC registered a branch office under the Act located at 503 – 386 Broadway, Winnipeg, Manitoba on November 23, 1990 (the "Winnipeg Office") which continues to be so registered.

B3. TWC registered a branch office under the Act located at 723 Rosser Avenue, Branch, Manitoba (the "Brandon Office") on August 5, 1998. Between July 18, 1991 and August 5, 1998 the Brandon Office was operated as a sub-branch of the Winnipeg Office and was under the supervision of David John Kramer.

B4. David John Kramer ("Kramer") has been continuously registered under the Act since July 27, 1988 and has since on or about November 23, 1990 been registered under the Act as a branch manager with TWC for the Winnipeg Office.

B5. Richard Dean Whittington ("Whittington") was registered under the Act as a salesman with TWC continuously from January 25, 1993 until November 6, 1997 when his registration was suspended by virtue of his no longer being employed by TWC as of that date.

B6. On August 12, 1999 the Commission approved a settlement agreement between staff and Whittington and issued by consent Commission Order No. 2595 whereby the Commission removed Whittington's abilities to rely upon the exemptions under the Act for life (the "Whittington Order"). Pursuant to the Consent Order Whittington acknowledged having acted improperly and contrary to the public interest by, amongst other things:

(a) providing false information to clients purportedly showing investments those clients held for which information was in fact exaggerated or entirely fictitious;

(b) in accepting instructions and executing trades on behalf of residents of provinces other than Manitoba without being registered to trade in securities in those other provinces;

(c) having clients execute applications to purchase mutual funds without completing the actual purchase information and inducing clients to provide him with monies which he represented would be invested on those client's behalf but were instead deposited into a bank account in the name of RDW Investments Limited ("RDW") which was controlled by Whittington and was used by him in carrying on his activities as a mutual fund salesperson. In particular, monies payable to Whittington as commission on sales would be received by RDW before being disbursed to Whittington.

#### Activity

B7. In addition to the activities acknowledged in the Whittington Order, Whittington did on occasion issue cheques from RDW's bank account to purchase mutual funds on behalf of clients.

## Supervision

B8. Kramer was TWC's provincial manager for the Province of Manitoba and acted as TWC's branch manager for both the Winnipeg Office and the Brandon Office.

B9. Kramer visited the Brandon Office between three and five times a year with visits lasting from 15 minutes to 1 ½ hours.

B10. Kramer was not involved in the day to day operations of the Brandon Office.

B11. Kramer performed no compliance function and did not review any trades or files or any of the day to day operations of the Brandon Office.

## Supervision generally

B12. Compliance with respect to the Brandon Office was overseen by TWC's head office in Saskatchewan.

B13. While compliance procedures had been adopted by TWC, such procedures were deficient or not properly applied as follows:

(a) Lacked a sufficient process to detect if salespersons accepted instructions and executed trades on behalf of residents in provinces other than Manitoba without being registered to trade in securities in those other provinces;

(b) Did not ensure the maintenance of current KYC information;

(c) Lacked internal systems to prevent a salesperson from placing an order for a client's account which was paid for using a cheque drawn on the salesperson's corporate bank account;

(d) Did not establish and implement a process for file reviews by either the branch manager or compliance personnel;

(e) Lacked internal mechanisms to detect that salespersons were obtaining purchase applications which were signed by the client but left blank to permit the salesperson to fill in purchase information at a later date;

B14. The deficiencies noted in paragraph B13 above were identified by staff and brought to the attention of TWC in November 1997. TWC undertook a voluntary review of its policies and procedures in consultation with staff to address these deficiencies as well as others identified by it during the review.

B15. Following the review, TWC proposed new and updated procedures and policies to address the deficiencies in supervision and compliance identified during the review (the "New Procedures") which were acceptable to staff.

## **C. ACKNOWLEDGEMENTS BY TWC**

C1. TWC admits that that its actions were contrary to the public interest:

- (a) TWC did not adequately supervise the Brandon Office;
- (b) TWC's compliance policies and procedures in place prior to the New Procedures were deficient or not properly applied by staff responsible for compliance and supervision of salespeople;

## **D. TERMS OF SETTLEMENT**

D1. Staff seek an order (the "Consent Order") from the Commission consistent with the terms contained in section D2 of this Settlement Agreement, pursuant to the provisions of the Act.

D2. The Consent Order sought by Staff is as follows.

- (a) TWC will make a one time payment to the Treasury of the Province of Manitoba in the amount of \$19,000.00, on or before May 24, 2001;
- (b) TWC will make a contribution to costs of the investigation in the sum of \$4,000. The money is payable to the Commission on or before May 24, 2001.

## **E. PROCEDURE**

E1. The approval of this Settlement Agreement shall be sought at a public hearing.

E2. If this Settlement Agreement is approved by the Commission, and if a Consent Order issues in accordance with this Settlement Agreement, this Settlement Agreement will constitute the entirety of the evidence to be submitted to the Commission in connection with the Proceedings and, upon the making of the Order contemplated by this Settlement Agreement, TWC waives its right to a full hearing and appeal of this matter.

E3. Notwithstanding any other provision of this Settlement Agreement, if, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the Consent Order referred to in section D. above is not made by the Commission, Staff will be entitled to proceed with whatever steps it is entitled by law to take, including but not restricted to, the commencement of a hearing before the Commission, unaffected by this Settlement Agreement or the settlement discussions. In the event that such steps are taken, TWC shall have all of the usual rights of a person subject to such proceedings. If the Settlement Agreement is not approved or the Consent Order set out in section D. above is not made by the Commission, the terms of this Settlement Agreement will not be raised in any other proceeding, and any admissions contained in this Settlement Agreement shall be considered as without prejudice communications in furtherance of settlement discussions which will not be binding upon the parties and which will be inadmissible in any proceeding whatsoever.

E4. 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. If this Settlement Agreement is approved by the Commission, none of TWC, its officers, directors, employees or representatives will make any statement that is inconsistent with this Settlement Agreement.

E6. TWC agrees that, if this Settlement Agreement is approved by the Commission and the Consent order is made upon the terms set out in this Settlement Agreement, TWC will not raise as a basis for attack on the Order this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement, alleged bias, alleged unfairness or any other such challenge to the validity of the Order.

DATED at Radville, Saskatchewan, this "15<sup>th</sup>" day of May, 2001.

TWC Financial Corp.  
Per: "Tammie Kwochka"

DATED at Winnipeg, Manitoba, this "9<sup>th</sup>" day of May, 2001.

Staff of The Manitoba Securities Commission  
Per: "Douglas R. Brown"  
Director Legal