

THE SECURITIES ACT ) Order No. 4911  
 )  
Subsections 8(1), 19(5) and 148.1 ) October 28, 2005

**W.H. STUART MUTUALS LTD. AND MARILYN DIANNE STUART**

**WHEREAS:**

(A) On February 24, 2004, 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 whether or not it was in the public interest to grant an order pursuant to subsections 8(1), 19(5) and 148.1(1) of The Securities Act (the "Act") with respect to W.H. Stuart Mutuals Ltd. ("W.H. Stuart") and Marilyn Dianne Stuart ("Stuart");

(B) Staff of the Commission and W.H. Stuart and Stuart entered into a Settlement Agreement (a copy of which is attached as Schedule "A") dated October 27, 2005 (the "Settlement Agreement"), which proposed settlement of the proceedings initiated by the Notice, subject to the approval of the Commission;

(C) W.H. Stuart and Stuart have consented to the issuance of this Order and have waived their 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** W.H. Stuart and Stuart will make a voluntary payment to the Treasury of the Province of Manitoba in the amount of \$50,000.00 payable within six months from such approval.
3. **THAT** a written reprimand be placed in the registration file of W.H. Stuart and Stuart.

**BY ORDER OF THE COMMISSION**

**Director, Legal and Enforcement**

SCHEDULE "A"

**Settlement Agreement**

**W.H. Stuart Mutuals Ltd., and Marilyn Dianne Stuart**

**and**

## **The Staff of The Manitoba Securities Commission**

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

### **SETTLEMENT AGREEMENT**

#### **A. INTRODUCTION**

A.1 By way of Notice of Hearing and a Statement of Allegations (collectively the "Notice of Hearing") of Staff of The Manitoba Securities Commission (the "Commission") notice was given to W.H. Stuart Mutuals Ltd. ("W.H. Stuart") and Marilyn Dianne Stuart ("Stuart"), to consider:

- (a) whether or not it is in the public interest to order, pursuant to subsection 19(5) of the The Securities Act (the "Act"), that subsections 19(1) and 19(3) of the Act do not apply to W.H. Stuart and Stuart with respect to such of the trades referred to in those sections and that subsection 19(2) of the Act does not apply to W.H. Stuart and Stuart with respect to such of the securities referred to in that section;
- (b) whether or not it is in the public interest to order that W.H. Stuart and Stuart pay an administrative penalty pursuant to Section 148.1 of the Act;
- (c) whether or not it is in the public interest to order that W.H. Stuart and Stuart pay the costs of and incidental to the hearing;
- (d) whether W.H. Stuart's registration under the Act should be suspended or cancelled; and

A.2 Discussions have been held amongst W.H. Stuart, Stuart 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").

A.3 Pursuant to the Settlement, Staff agrees to recommend to the Commission that the Proceedings initiated against W.H. Stuart and Stuart be resolved. W.H. Stuart and Stuart consent to the Settlement and to the making of the Consent Order referred to in subparagraph D.1 below, on the terms and conditions set forth in this Settlement Agreement.

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

B.1 W.H. Stuart and Stuart agree with the facts set out in this Part B.

W.H. Stuart

B.2 W.H. Stuart carries on the business as a mutual fund dealer in nine provinces in Canada. The head office of W.H. Stuart is located in Toronto, Ontario.

B.3 W.H. Stuart is registered with the Commission as a mutual fund dealer.

### **Ingram Jeffrey Eshun**

B.4 At all material times, Ingram Jeffrey Eshun ("Eshun") was a registered salesperson with W.H. Stuart in Ontario. Eshun is not, and has never been, registered under the Act to trade in securities in Manitoba.

### **W.H. Stuart's Compliance Program**

B.5 At all material times, W.H. Stuart was responsible for ensuring that it had adequate compliance supervision programs and procedures in place to ensure compliance with applicable securities laws. Its compliance supervision programs would have included reviewing new account application forms, reviewing trading activity of its employees and identifying and investigating potential problems.

B.6 At all material times, Stuart was the Compliance Officer for W.H. Stuart and responsible for its supervision and compliance procedures.

### **The Pension/RRSP Scheme**

B.7 Between 1997 to 2000, Manitoba residents were solicited to convert their locked-in pension accounts and/or registered retirement savings plan holdings (the "Locked-in Funds") into shares of companies and loans (the "Scheme").

B.8 Under the Scheme, shares of Canadian Controlled Private Corporations retirement savings plans and similar types of registered plans ("RRSPs") provided the requirements prescribed in the Income Tax Act and Regulations are met.

B.9 Locked-In Funds would be transferred to a trust company or W.H. Stuart where self-directed RRSP accounts (the "Accounts") would be opened. The Clients were required to sign various documents, including a new client application form and a letter of direction providing instructions to purchase shares of the CCPC. The documentation was then obtained by the promoter of the Scheme, or individuals acting on its behalf, and forwarded to a trust company and/or W.H. Stuart where the Accounts were opened in the Clients' name.

B.10 Under the Scheme, a registrant would identify himself as the account representative for the Clients.

B.11 Once received, the trust company and/or W.H. Stuart would act on the letter of direction and forward the cash in the Client's account to the CCPC. Shares for the CCPC were then registered in the name of the trust company and/or W.H. Stuart in trust for the Client.

B.12 The Clients who purchased shares of CCPCs using their Locked-in Funds, would concurrently apply for a loan arranged by the promoter of this Scheme representing a portion of the purchase price of the CCPCs. The remaining portion of the purchase price would be charged by the promoters of the Scheme as a fee for consultation, processing, membership and pre-payment of interest on the loan made.

B.13 The CCPCs participating in the Scheme were not eligible investments under the *Income Tax Act*, and the Scheme thus facilitated the improper withdrawal of the Locked-in Funds from the Accounts.

B.14 Under the Scheme, Eshun received documentation from the promoter to open accounts with a trust company for Manitoba residents. Eshun proceeded to review and/or complete this documentation to open accounts with a trust company for Manitoba residents, including identifying himself as the account representative and W.H. Stuart as the dealer.

B.15 Eshun did not meet, nor have any contact, with the Manitoba residents for whom accounts were opened with a trust company under the Scheme.

B.16 Eshun forwarded the account opening documentation to W.H. Stuart, who, in turn, forwarded this documentation to a trust company where accounts were opened for the Manitoba residents. W.H. Stuart concurrently opened client accounts for these Manitoba residents.

B.17 Between approximately September 1997 and December 1998, Eshun was involved in opening 27 Accounts for the Manitoba residents with a trust company. Subsequent to these Accounts being opened with the trust company, Locked in Funds were transferred into the trust company Accounts which were used to purchase CCPCs under the Scheme.

B.18 Once the account opening documentation was sent to the trust company, W.H. Stuart had no further involvement in the purchase of the CCPCs through the trust company, and was unaware that the promoter continued to deal directly with the trust company.

B.20 Other than forwarding the account documentation to the trust company to open an account, W.H. Stuart did not participate in, and was not aware of, the Scheme.

1259037 Ontario Inc. and 1343575 Ontario Inc.

B.21 1259037 Ontario Inc. and 1343575 Ontario Inc. are corporations incorporated pursuant to the laws of the Province of Ontario (the "Corporations").

B.22 No preliminary prospectus or prospectus was filed under the Act with respect to the Corporations. The Corporations were used as CCPCs under the Scheme.

B.23 In or about May, 1999, Eshun opened two further accounts at W.H. Stuart with Manitoba residents. In doing so, he forwarded documentation to W.H. Stuart on behalf of the Manitoba residents, which included:

- W.H. Stuart Account Applications.
- Financial Needs and Asset Allocation Surveys.
- W.H. Stuart and Associates Self-Directed Retirement Savings Plan Applications.

B.24 The foregoing documentation was signed by Eshun and listed Eshun as the account representative for the two Manitoba residents, notwithstanding he was not registered under the Act to trade in securities in Manitoba. Eshun did not have any contact or meet with the two Manitoba residents.

B.25 Accounts were opened for the two Manitoba residents by W.H. Stuart and the sums of \$18,750.00 and \$36,350.00 were transferred into their respective W.H. Stuart Accounts.

B.26 Subsequent to the accounts being opened, the promoter of the Scheme provided W.H. Stuart Letters of Direction for the two Manitoba residents directing W.H. Stuart to use the proceeds of their account to purchase shares in the Corporations. The clients also signed a letter of indemnity confirming their instructions to W.H. Stuart.

B.27 Shares in 1259037 Ontario Inc. were purchased by one of the Manitoba residents through W.H. Stuart, and shares in 1343575 Ontario Inc. were purchased by the other Manitoba resident through W.H. Stuart. In both instances, W.H. Stuart transferred money from the Manitoba residents' W.H. Stuart accounts for the purchase of these securities.

B.28 A share certificate was issued for 1259037 Ontario Inc. to W.H. Stuart in trust for one of the Manitoba residents, and a share certificate was issued for 1343575 Ontario Inc. to W.H. Stuart in trust for the other Manitoba resident.

B.29 W.H. Stuart was not registered under the Act to trade in securities of the Corporations.

B.30 W.H. Stuart did not receive any commissions for the two foregoing trades in the Corporations. When W.H. Stuart staff brought concerns about the foregoing transactions to the attention of the Compliance Officer (Stuart) all participation in the trading of 1259037 Ontario Inc. and 1343575 Ontario Inc. was immediately terminated. Thereafter all trading in CCPCs was terminated.

## **C. ACKNOWLEDGEMENTS BY W.H. STUART AND STUART**

C.1 W.H. Stuart and Stuart admit that the following actions were contrary to public interest:

- (a) the failure of W.H. Stuart and Stuart to detect that Eshun was opening accounts with Manitoba residents when he was not registered to trade in securities under the Act;

(b) W.H. Stuart traded in securities in the Corporations without being registered to do so under the Act and without a prospectus being filed under the Act for the Corporations.

C.2 Staff acknowledges that W.H. Stuart and Stuart have co-operated and assisted in the investigation of these matters.

C.3 Staff acknowledges that W.H. Stuart and Stuart have taken remedial actions to improve compliance and supervision programs and procedures in order to address the supervisory deficiencies referred to in this Agreement.

#### **D. TERMS OF SETTLEMENT**

D.1 Staff seek an Order (the "Consent Order") from the Commission consistent with the terms contained in Section D.2 of this Settlement Agreement, pursuant to the provisions of the Act.

D.2 The Consent Order sought by Staff is as follows:

- (a) that this Settlement Agreement be approved;
- (b) upon approval of this Settlement, W.H. Stuart and Stuart will make a voluntary payment to the Treasury of the Province of Manitoba in the amount of \$50,000.00 payable within six months from such approval;
- (c) a written reprimand be placed in the registration file of W.H. Stuart and Stuart.

#### **E. PROCEDURE**

E.1 The approval of this Settlement Agreement shall be sought at a public hearing.

E.2 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, W.H. Stuart and Stuart waive its right to a full hearing and appeal of this matter.

E.3 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, W.H. Stuart and Stuart shall have all of the usual rights of a person subject to such proceedings.

E.4 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 shall remain confidential and shall not be raised in this or any other proceeding, and any admissions contained in this Settlement Agreement shall be considered as without prejudice communications and furtherance of settlement discussions which will not be binding upon the parties and which will be inadmissible in any proceeding whatsoever.

E.5 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.

E.6 W.H. Stuart and Stuart agree 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, W.H. Stuart and Stuart 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 such other challenges to the validity of the Consent Order.

E.7 W.H. Stuart and Stuart further agree that if this Settlement Agreement is approved by the Commission and the Consent Order is made upon the terms set out in this Settlement.

E.8 Agreement, it will not make any statements inconsistent with the terms of this Agreement.

**Dated** at Toronto, Ontario this 21st day of October, 2005

**W.H. STUART MUTUALS LTD.**  
Per: "M. Dianne Stuart"

**Dated** at Toronto, Ontario this 21st day of October, 2005

**Marilyn Dianne Stuart**  
Per: "M. Dianne Stuart"

**Dated** at Winnipeg, Manitoba this "27" day of October, 2005

**STAFF OF THE MANITOBA  
SECURITIES COMMISSION**  
Per: "Douglas R. Brown"