

**THE SECURITIES ACT**  
**Subsections 8(1) and 148.1(1)**

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**Order No. 4557**  
**August 25, 2004**

**JON WAYNE HOLEMAN**

**WHEREAS:**

(A) On August 23, 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) and 148.1(1) of The Securities Act (the "Act") with respect to Jon Wayne Holeman ("Holeman");

(B) Staff of the Commission and Holeman entered into a Settlement Agreement (a copy of which is attached as Schedule "A") dated July 30, 2004 (the "Settlement Agreement"), which proposed settlement of the proceedings initiated by the Notice, subject to the approval of the Commission;

(C) Holeman has consented to the issuance of this Order and has waived his 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** under s. 148.1 of the Act, Holeman pay an administrative penalty of \$2,500 on or before September 8, 2004.
3. **THAT** Holeman will make a payment of \$1,500 to the Commission as a contribution to the Commission's costs with respect to the investigation of this matter and the costs of the hearing, on or before September 8, 2004.
4. **THAT** a written reprimand be placed in the registration file of Holeman.

**BY ORDER OF THE COMMISSION**

**Director, Legal and Enforcement**

SCHEDULE "A"

SETTLEMENT AGREEMENT

**JON WAYNE HOLEMAN**

**AND**

**THE STAFF OF THE MANITOBA SECURITIES COMMISSION**

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

SETTLEMENT AGREEMENT

**A. INTRODUCTION**

A1. Staff of the Commission ("Staff") has advised Jon Wayne Holeman. ("Holeman") of the intention of The Manitoba Securities Commission (the "Commission") to issue a Notice of Hearing and a 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:

(i) Holeman be reprimanded;

(ii) terms and conditions be imposed on the registration of Holeman; or

(iii) the registration of Holeman as a trading official be suspended or cancelled.

(b) whether or not it is in the public interest to order that Holeman pay the costs of or incidental to this Hearing;

(c) whether or not it is in the public interest to order that Holeman pay an administrative penalty pursuant to subsection 148.1(1) of the Act; and

(d) whether or not it is in the public interest to make any other order or orders.

A2. Discussions have been held between Holeman 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 Holeman be resolved and disposed of in accordance with the terms and conditions of this Settlement Agreement as set forth below. Holeman 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**

### **The Parties**

B1. Holeman is registered under the Act as a trading official with RBC Dominion Securities Inc. Holeman has been continuously registered under the Act since April 8, 1981.

### **The Manitoba Telephone System Offering**

B2. Pursuant to The Reorganization Act (Manitoba) the authorized share capital of Manitoba Telephone System ("**MTS**") consisted of an unlimited number of common shares, an unlimited number of preference shares and one special share. In order to effect the Reorganization, 70,000,000 common shares and the one special share were issued to the Province of Manitoba. Common shares would then be acquired by a group of underwriters for the purpose of distributing the shares to the public (the "**Offering**") by way of an initial public offering by secondary distribution pursuant to a prospectus.

B3. On December 20, 1996 MTS filed with the Commission and obtained a receipt from the Director for a prospectus (the "**Final Prospectus**") qualifying the distribution of 70,000,000 common shares of MTS (the "**MTS Shares**"). The offering of the MTS Shares to the public was done by a group of underwriters which included RBC Dominion Securities.

B4. The Offering included an offering of common shares to Manitoba residents only pursuant to an instalment plan for which the Instalment Receipts were issued (the "**Instalment Offering**").

B5. Commission Order No. 1509, dated October 29, 1996, was issued permitting, amongst other things, certain activities taking place in connection with the Instalment Offering prior to a receipt being issued for the Final Prospectus. The Order provided, among other things, that specified non-registered persons were entitled to sell Instalment Receipts, including

Specified Employees of MTS and certain Staff of Financial Institutions

B6. Commission Order No. 1509 prescribed certain special procedures for the sale of Instalment Receipts. To subscribe for Instalment Receipts under the Instalment Offering, Commission Order No. 1509 required potential purchasers to complete a form which was referred to as a Priority Application Form Under the Instalment Plan (the "**PAF**"). All PAFs had to be received by a Dealer, Registered Representative or Financial Institution (as those terms are defined in Commission Order No. 1509) no later than December 14, 1996. The PAFs were submitted by the

Dealer, Registered Representative or Financial Institution to Montreal Trust, which processed the forms and allotted the Instalment Receipts.

B7. The PAF contained a series of four screening questions relating to the suitability of the investment for the particular investor (the "**Suitability Questions**"). If any of the Suitability Questions were answered in the negative, the PAF stated that the investor should consider seeking investment advice from a Registered Representative

B8. The PAF was required to be completed in addition to whatever other documentation a registered dealer would require for opening or trading on an existing account with that registered dealer.

B9. The underwriting group, pursuant to the terms of the Final Prospectus, placed limits on the number of Instalment Receipts that a person could subscribe for (the "**Personal Allotment**"). The initial restriction was a maximum of 4,000 Instalment Receipts available to each Manitoba resident. The Personal Allotment was subsequently changed to a maximum of 1,600 Instalment Receipts in the Final Prospectus.

B10. An Instalment Receipt entitled a holder to pay for an MTS Share in two payments, the first payment of \$7.00 per MTS Share being due on or before January 7, 1997 and the second payment of \$6.00 per MTS Share being due on or before January 8, 1998.

B11. The Prospectus provided that "for the purposes of calculating a Manitoba Resident's limit, when Common Shares are jointly purchased under the Instalment Plan by more than one person, each person will be considered to have purchased the number of Common Shares divided by the number of joint purchasers."

B 12. The special arrangements for the sale of Instalment Receipts together with the high volume of sales, required RBC Dominion Securities to modify its standard procedures to accommodate this new issue. There was considerable discussion and some uncertainty in the industry as to how standard systems and procedures should be adapted to accommodate the special arrangements applicable to the transaction.

B13. It was common industry practice to permit immediate family members such as a spouse or a child to purchase their Personal Allotments in one account for the Offering.

### **Sales of Instalment Receipts by Holeman and his Assistants**

B 14. At the time of the Instalment Offering, Holeman had a number of sales assistants who were also registered under the Act (the "**Assistants**").

B15. Holeman and his Assistants were responsible for selling approximately 2% of the Instalment Offering.

B16. Holeman's Assistants were responsible for the completion of the PAF forms for Holeman's clients, but Holeman signed all of the PAF forms completed in respect of his clients.

B17. At the time of the Instalment Offering, as a result of discussions with an RBC manager, Holeman and his Assistants incorrectly believed that it was the policy of RBC to allow up to 8 family or friends to acquire their Personal Allotments in one account.

B18. In fact, it was the policy of RBC that multiple purchases of 1,600 Instalment Receipts could only be made in a single account if the beneficial holders of Shares were immediate family members of the account holder.

B19. There were commission savings available to clients upon the sale of Instalment Receipts if the Instalment Receipts were held in one account rather than in several accounts.

### **The MDS Transactions**

B20. MDS is a Manitoba resident and at all material times was a client of Holeman.

B21. MDS owned several businesses in Winnipeg.

B22. MDS became aware that there was to be an offering of Shares.

B23. MDS was confident that the Shares would be a good investment and approached a number of his employees about the possibility of buying shares. MDS offered to buy the shares on behalf of the employees, their family members and friends. The shares would be sold after the Offering and a portion of the profits on the sale would be given to the employees, their family member or friends. MDS would assume any losses if such occurred on the sale of the Shares. MDS organized a group of 14 individuals who would buy shares on this basis.

B24. After determining that there was some interest by the employees, their family members and friends, MDS contacted Holeman and advised him that he wished to set up an investment club for certain employees and family members to purchase Instalment Receipts.

B25. Holeman advised MDS that it was possible for up to eight family members or friends to purchase their Personal Allotments in one account, such that an investment club would not be necessary.

B26. MDS then dealt with Holeman's Assistants with respect to his purchases of Instalment Receipts.

B27. Holeman's Assistants instructed MDS to obtain the name and social insurance number for each of the individuals who would be purchasing the Shares.

B28. MDS advised Holeman's Assistants that there were 14 individuals who wished to participate in the purchase of Instalment Receipts. Holeman's Assistants arranged for the purchases to be made through two accounts, MDS's account and an account belonging to GM, the common-law spouse of MDS.

B29. On January 7, 1997, 8 purchases of 1,600 Instalment Receipts for a total of 12,800 Instalment Receipts at a price of \$7.00 each were made in MDS's account.

B30. On January 7 1997, 6 purchases of 1,600 Instalment Receipts for a total of 9,600 Instalment Receipts at a price of \$7.00 each were made in GM's account.

B31. On January 10, 1997, 12,800 Instalment Receipts were sold from MDS's account at a price of \$8.05 each.

B32. On January 10, 1997, 9,600 Instalment Receipts were sold from GM's account at a price of \$8.05 each.

B33. PAFs for each of the individuals who purchased shares through the accounts of MDS and GM were prepared by Holeman's Assistants. Holeman executed the declaration on the PAF which verified that the Suitability Questions were posed to the purchaser without confirming the accuracy of the information contained in the PAF as it pertained to the beneficial owner and in some cases without ever having any contact with the beneficial owner.

B34. Subsequent to the Offering, staff of the Commission contacted RBC requesting further information concerning accounts where multiple purchases of Instalment Receipts exceeding 1,600 per account occurred.

B35. Holeman was approached for information by Alan Dunnett ("Dunnett"), his branch manager concerning the MDS and GM accounts. Holeman confirmed that there were multiple purchases and not all of the purchasers were family members.

B36. Since the original intention of the MDS had been to organize an investment club, Dunnett gave instructions to have the purchases recontracted as an investment club.

B37. In August 1997 JT, a sales assistant to Holeman, approached all the individuals whose name and social insurance number had been provided by MDS to complete the forms required by RBC to establish an account for an investment club which appointed MDS as the person authorized to provide trading instructions on behalf of the investment club.

B38. In August 1997, the purchases and sales described in paragraphs 22 through 25 above were reversed from MDS's and GM's accounts and recontracted through the investment club's account.

### **Dr. M.S. Transactions**

B39. Dr. MS, a resident of Manitoba, was a client of Holeman and had been a client since 1992.

B40. MRS, a resident of Manitoba, is the son of Dr. MS and was a client of Holeman since 1995.

B41. MKS, a resident of Manitoba, is the son of Dr. MS and was a client of Holeman since 1993.

B42. Dr. MS became aware that there was to be an offering of Shares through newspaper reports

B43. Dr. MS, MRS and MKS approached a number of their friends about the possibility of buying shares. Dr. MS offered to buy the shares in the names of the friends. The shares would be sold after the Offering and the profits on the sale would be for Dr. MS. Dr. MS would assume any losses if such occurred on the sale of the Shares. Dr. MS organized a group of individuals including other members of their family and their friends to permit Dr. MS to buy shares on this basis.

B44. When the Instalment Offering was initially announced, Dr. MS contacted Holeman and told him that he and certain family and friends were interested in purchasing shares. Dr. MS sought Holeman's advice as to the merits of the potential investment. Holeman advised Dr. MS that he believed that the shares would be a good investment. At that time Holeman advised Dr. MS that each purchaser would have to open up a separate account.

B45. Dr. MS contacted Holeman shortly prior to the closing of the Instalment Offering. The price had by that time been announced and Dr. MS again sought Holeman's opinion. At that time Holeman advised Dr. MS that it would not in fact be necessary to open individual accounts if he were buying for up to 7 or 8 friends and family.

B46. Dr. MS ultimately decided to participate in the Instalment Offering and contacted one of Holeman's Assistants.

B47. Dr. MS provided the Assistant with the name and social insurance number for each of the individuals who would be purchasing the Shares.

B48. The Assistant arranged for all the purchases to be made through three accounts, Dr. MS's account MRS's account and MKS's account.

B49. On January 7 1997, 8 purchases of 1,600 Instalment Receipts for a total of 12,800 Instalment Receipts at a price of \$7.00 each were made in Dr. MS's account.

B50. On January 7 1997, 8 purchases of 1,600 Instalment Receipts for a total of 12,800 Instalment Receipts at a price of \$7.00 each were made in MRS's account.

B51. On January 7 1997, 7 purchases of 1,600 Instalment Receipts for a total of 11,200 Instalment Receipts at a price of \$7.00 each were made in MKS's account.

B52. On January 10, 1997, 12,800 Instalment Receipts were sold from Dr. MS's account at a price of \$7.95 each.

B53. On January 10, 1997, 12,800 Instalment Receipts were sold from MRS's account at a price of \$8.25 each.

B54. On January 10, 1997, 11,200 Instalment Receipts were sold from MKS's account at a price of \$8.05 each.

B55. PAFs for each of the individuals who purchased shares through the accounts of Dr. MS, MRS or MKS were prepared by Holeman's Assistants. Holeman executed the declaration on the PAF which verified that the Suitability Questions were posed to the purchaser without confirming the accuracy of the information contained in the PAF as it pertained to the beneficial owner and in some cases without ever having any contact with the beneficial owner.

B56. Subsequent to the Offering, staff of the Commission contacted RBC requesting further information concerning accounts where multiple purchases of Instalment Receipts exceeding 1,600 per account occurred.

B57. Holeman was approached for information by Alan Dunnett ("Dunnett"), his branch manager concerning the DR. MS, MRS and MKS accounts. Holeman confirmed that there were multiple purchases and not all of the purchasers were family members.

B58. Dunnett gave instructions to have the purchases recontracted to the individual purchasers.

B59. In or about June of 1997 RBC contacted each of the people who purchased Instalment Receipts in the accounts of MRS and MKS accounts, opened accounts for each of those persons, and recontracted the purchases and sales in the new accounts.

B60. As a result of an administrative error, RBC did not contact the people who purchased Instalment Receipts in the account of Dr. MS until 1999. However, in June of 1999, RBC contacted each of the people who purchased Instalment Receipts in the account of Dr. MS, opened accounts for each of those persons, and recontracted the purchases and sales in the new accounts.

B61. Dr. MS deposited sufficient funds to RBC which distributed the profits from the purchases and sales to each of the individuals in accordance with his/her interest.

### **C. ACKNOWLEDGEMENTS BY HOLEMAN**

Cl. Holeman admits that he acted contrary to the public interest :

a) in failing to confirm the accuracy of the suitability information in the PAF as it specifically related to the individuals in whose name purchases were made;

b) by permitting trading of Instalment Receipts in the MDS, GM, Dr. MS, MRS and MKS accounts when those securities were beneficially owned by persons other than the account holder without adequately documenting that the beneficial owners had appointed the account holder to give trading instructions on their behalf.

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

Dl. 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) The Settlement Agreement be approved.
- (b) A written reprimand will be placed on Holeman's registration file relating to the matters set out in this Settlement Agreement.
- (c) Holeman be assessed an administrative penalty in the amount of \$2,500.00, payable on or before September 8, 2004.
- (d) Holeman will make a contribution to costs of the investigation in the sum of \$1,500.00, payable to the Commission on or before September 8, 2004.

## **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, Holeman waives his 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, Holeman shall have all of the usual rights of a person subject to such proceedings.

E4. 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.

E5. 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.

E6. Holeman 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, Holeman 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.

E7. If this Settlement Agreement is approved by the Commission and the Consent Order is made upon the terms set out in this Settlement Agreement, Holeman and Staff agree not to make or issue any public statements which contradict the facts and acknowledgements set out in this agreement.

DATED at Winnipeg, Manitoba, this 11th day of May, 2004.

Jon Wayne Holeman

DATED at Winnipeg, Manitoba, this 30th day of July, 2004.

Staff of The Manitoba Securities Commission

Per: Director Legal