

**THE SECURITIES ACT**

)

**Order No. 3101**

)

**Section 8(1) and 19(5)**

)

**October 17, 2000**

**WELLINGTON WEST CAPITAL INC.**

**WHEREAS:**

(A) On February 24<sup>th</sup>, 2000, 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 Wellington West Capital Inc. ("Wellington") as a broker and investment dealer under The Securities Act (the "Act") and/or issue an order naming Wellington pursuant to subsection 19(5) of 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 October 16, 2000 (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** a written reprimand will be placed in Wellington's registration file relating to the matters set out in the Settlement Agreement attached as schedule "A".
3. **THAT** Wellington make a one time payment to the Treasury of the Province of Manitoba of \$10,000.00, to be paid on or before October 31, 2000.
4. **THAT** Wellington pay to the Commission costs in the amount of \$7,000.00 to be paid on or before October 31, 2000.

**BY ORDER OF THE COMMISSION**

**Director, Legal and Enforcement**

**SETTLEMENT AGREEMENT**

## **A. Introduction**

A1. On January 31, 2000, 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 Securities Act (the "Act"), that the registration of Wellington West Capital Inc. ("Wellington West") as a broker and investment dealer under the Act be suspended or cancelled;

(b) whether or not it is in the public interest or pursuant to subsection 19(5) of the Act that subsections 19(1) and 19(3) of the Act do not apply to Wellington West, with respect to such of the trades referred to in those sections and that subsection 19(2) of the Act does not, with respect to such of the securities referred to in that section, apply to Wellington West;

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

A2. Discussions have been held between Wellington West 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 Wellington West be resolved and disposed of in accordance with the terms and conditions of this Settlement Agreement as set forth below. Wellington West 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. Wellington West has been continuously registered as a broker and investment dealer under the Act since October 21, 1993.

### The Manitoba Telephone System Offering

B2. Pursuant to The Reorganization Act (Manitoba) the authorized share capital of 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 Wellington West.

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 Manitoba Telephone System 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 PAF's 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."

B12. 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.

### **Supervision and Sales Practices**

B13. Wellington West held a number of sales meetings with its salespeople. At a meeting November 26, 1996, the salespersons were urged to "Go after multiple orders."

B14. At a sales meeting January 14, 1997 meeting, the salespeople were advised that they "Make sure documentation is 100% - especially multiple purchases" and that "For clubs ensure all signatures".

B15. Wellington West did not implement any special systems to monitor multiple purchases to ensure that persons did not exceed their Personal Allotments.

### **Transactions involving the Barrett Group**

B16. Douglas Percival Barrett ("Barrett") is a Manitoba resident and at all material times was a client of Wellington West and Charles Spiring ("Spiring").

B17. Barrett initially heard about the Offering through the media. Barrett contacted Spiring in the fall of 1996 and over a series of meetings and telephone calls with Spiring or Spiring's sales assistants, Barrett expressed an interest in acquiring Instalment Receipts.

B18. Barrett and his brothers Kris Barrett ("Kris") and Karl Barrett ("Karl") owned and operated several family businesses including Northern Tax Services (an income tax preparation firm operating in Northern Manitoba), Playgreen Farms (a farming operation located in Fisher Branch, Manitoba) and the Playgreen Inn (a hotel in Norway House, Manitoba).

B19. Barrett told Spiring or one of his registered sales assistants that Barrett, Kris and Karl wanted to purchase MTS Shares for other family members, as well as for certain employees of their businesses and clients of Northern Tax Services. Barrett told Spiring or one of his registered sales assistants that Barrett, Kris and Karl intended to finance the purchase of the Instalment Receipts which they intended to sell as soon as possible after the closing in the Offering, splitting any profits received amongst the persons in whose names the shares were purchased. If there were a loss incurred Barrett, Kris and Karl would be solely responsible for the loss. Barrett suggested to Spiring that since there was a group purchasing the Instalment Receipts that there should be a reduction in any commission payable on the sale of the Instalment Receipts

B20. Spiring or his sales assistants provided Barrett with blank Wellington West New Account Application Forms ("New Account Forms") with instructions that Barrett have the forms

completed by those persons on whose behalf Barrett, Kris and Karl intended to purchase MTS Shares (the "Barrett Group").

B21. Wellington West did not intend to use the New Account Forms to open accounts in the name of each member of the Barrett Group. Rather, the forms were intended to be a vehicle to obtain the information necessary to complete the PAFs on behalf of the members of the Barrett Group and to confirm authorization of the purchase of Instalment Receipts. However, Wellington West's intentions in this respect were not explained to Barrett, who believed that a separate account would be opened for each member of the Barrett Group.

B22. Barrett, Kris and Karl arranged for the completion of approximately 24 New Account Forms by family members, employees and clients of Northern Tax Services. The New Account Forms were returned to Wellington West.

B23. Wellington West employees completed PAFs for the members of the Barrett Group. The Suitability Questions were completed with reference to Barrett rather than the members of the Barrett Group. The answers to the Suitability Questions were thus, in several instances, different from the information recorded by the member of the Barrett Group on the New Account Form. Spiring signed the PAF's on behalf of each member of the Barrett Group declaring that all the information contained in the application was accurate.

B24. On January 7, 1997, Instalment Receipts were purchased in Barrett's accounts at Wellington West for the members of the Barrett Group.

B25. Barrett gave instructions to Spiring or his registered sales assistants to sell the Instalment Receipts which were in fact sold on January 13 and 14, 1997.

B26. Pursuant to instructions given by Barrett, Wellington West issued cheques from the Barrett account to the members of the Barrett Group, representing their share of the profits of the purchase and sale of the Instalment Receipts.

B27. Spiring did not obtain any formal written trading authorization from the members of the Barrett Group documenting Barrett's authority to provide trading instructions on their behalf.

B28. By purchasing the Instalment Receipts for the Barrett Group in a single account, when the Instalment Receipts were sold the commission payable to Wellington West and Spiring on the sale of the Instalment Receipts was the same or less than would have been payable had each member of the Barrett Group opened a separate account.

### **Transactions involving the Rivard Group**

B29. Meril Rivard ("Rivard") is a Manitoba resident and at all material times was a client of Wellington West and Spiring.

B30. Rivard had seen media coverage concerning MTS in the fall of 1996. Rivard spoke to a number of employees, relatives and friends suggesting they should purchase Instalment Receipts.

Rivard indicated he was prepared to finance their purchases in full. In the event that they did not want to hold some or all of the Instalment Receipts they purchased, Rivard offered to acquire the Instalment Receipts for certain financial consideration. Wellington West and Spiring were not aware of the particulars of these arrangements at the time of the transactions.

B31. Spiring or his sales assistants provided Rivard with blank New Account Forms. Rivard provided the New Account Forms to certain employees, relatives and friends whose purchase he was financing (the "Rivard Group"). The members of the Rivard Group completed the forms and returned them to Rivard who in turn provided the completed forms to Wellington West. In total, Rivard returned 34 New Account Forms to Wellington West.

B32. On January 7, 1997, 69,730 Instalment Receipts were purchased on behalf of the members of the Rivard Group in Rivard's account at Wellington West.

B33. Rivard gave instructions to sell 30,000 Instalment Receipts and directed the transfer of 3,213 Instalment Receipts to self-directed registered retirement savings plan accounts held with Wellington West, retaining the balance of 36,517 Instalment Receipts in Rivard's Account.

B34. Spiring did not obtain any formal written trading authorization from the members of the Rivard Group documenting Rivard's authority to provide trading instructions on their behalf.

B35. Between January 9, 1997 and January 20, 1997 Rivard issued cheques to members of the Rivard Group for their portion of the profits.

B36. By purchasing the Instalment Receipts for the Rivard Group in a single account, when the Instalment Receipts were sold the commission payable to Wellington West and Spiring on the sale of the Instalment Receipts was the same or less than would have been payable had each member of the Rivard Group opened a separate account.

### **Transactions Involving the Bardal Group**

B37. Stan Bardal ("Bardal") is a Manitoba resident and at all material times was a client of Spiring and Wellington West.

B38. Bardal first heard of the proposed MTS Offering through media reports. Bardal believed that the MTS Offering would be a good investment opportunity. He approached a number of friends, employees and business associates (the "Bardal Group") who agreed to invest in Instalment Receipts.

B39. Bardal and the Bardal Group agreed that Bardal would loan each member the money to purchase their Personal Allotment. Bardal would make all decisions concerning how to handle the Instalment Receipts, including their sale. If the Instalment Receipts were sold, instead of distributing the profits to members of the Bardal Group, Bardal would reinvest the profits from the sale of the Instalment Receipts in other securities. Bardal would have the sole discretion in dealing with the Instalment Receipts or other securities acquired. All purchases would be made through the Bardal Account to ensure Bardal maintained sole control over the Instalment

Receipts or other securities. Bardal discussed with Spiring that since there was a group purchasing the Instalment Receipts that there should be a reduction in any commission payable on the sale of the Instalment Receipts.

B40. Bardal assumed the financial risk of loss.

B41. Spiring or his sales assistants provided Bardal with blank New Account Forms with the instructions that Bardal have the forms completed by the members of the Bardal Group.

B42. Each Member of the Bardal Group completed a New Account Form and provided a letter directing Wellington West to purchase the full allotment of MTS Shares.

B43. Staff of Wellington West completed PAFs for the members of the Bardal Group. The Suitability Questions were completed with reference to Bardal rather than the particular member of the Bardal Group. The answers to the Suitability Questions were thus in most instances different than the information recorded on the New Account Form pertaining to the individual members of the Bardal Group. Spiring signed the PAFs on behalf of each member of the Bardal Group declaring that all the information contained in the application was accurate.

B44. On January 7, 1997 40,000 Instalment Receipts were purchased in Bardal's account at Wellington West for the members of the Bardal Group.

B45. On January 13, 1997 the 40,000 Instalment Receipts belonging to the Bardal Group were sold on the instructions of Bardal. On the instructions of Bardal, the proceeds of sale were invested in other securities. None of the proceeds of the sale of the Instalment Receipts have been distributed.

B46. Spiring did not obtain any formal written trading authorization from the members of the Bardal Group documenting Bardal's authority to sell the Instalment Receipts or to invest the proceeds in other securities.

B47. By purchasing the Instalment Receipts for the Bardal Group in a single account, when the Instalment Receipts were sold the commission payable to Wellington West and Spiring on the sale of the Instalment Receipts was the same or less than would have been payable had each member of the Bardal Group opened a separate account.

## **C. ACKNOWLEDGEMENTS BY WELLINGTON WEST**

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

- a) in providing blank New Account Forms to be used by non-registrants for the purpose of performing acts in furtherance of trades and for collecting information from individuals acquiring securities;
- b) in failing to confirm the accuracy of the information in the New Account Forms as it specifically related to the individuals who had completed same;

c) in permitting trading of Instalment Receipts in the Barrett, Rivard and Bardal 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) during the course of sales meetings, trading officers encouraged Wellington West salespersons to conduct multiple purchases in a single account without instructing that investment clubs should be used where multiple purchasers were not immediate family;

#### **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) A written reprimand will be placed on Wellington West's registration file relating to the matters set out in this Settlement Agreement.

(b) Wellington West will make a one time payment to the Treasury of the Province of Manitoba in the amount of \$10,000.00, on or before October 31, 2000.

(c) Wellington West will make a contribution to costs of the investigation in the sum of \$7,000. The money is payable to the Commission on or before October 31, 2000.

#### **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, Wellington West 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, Wellington West 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. Wellington West 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, Wellington West 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 Winnipeg, Manitoba, this "16th" day of October, 2000.

Wellington West Capital Inc.  
Per: "Charles Spiring"

**DATED** at Winnipeg, Manitoba, this "12th" day of October, 2000.

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