



THE MANITOBA
SECURITIES
COMMISSION

THE SECURITIES ACT)
)
Sections 8(1), 148.1(1) and 148.2)

Order No. 6029

November 25, 2009

**JOHN WILLIAM DUNCAN NICHOLSON,
NATIONAL BANK FINANCIAL LTD.,
AND EDWARD GORDON ALEXANDER PERCIVAL**

WHEREAS:

(A) On April 22, 2008, The Manitoba Securities Commission ("Commission") issued a Notice of Hearing ("NOH") and Statement of Allegations ("SOA") giving notice of its intention to hold a hearing ("Proceedings") to consider whether it was in the public interest to grant orders under *The Securities Act* ("Act") with respect to John William Duncan Nicholson ("NICHOLSON"), NATIONAL BANK FINANCIAL LTD. ("NATIONAL BANK FINANCIAL") and Edward Gordon Alexander Percival ("PERCIVAL");

(B) Staff of the Commission and NICHOLSON, NATIONAL BANK FINANCIAL and PERCIVAL (collectively, "respondents") entered into a Settlement Agreement (a copy of which is attached as Schedule "A") dated November 17, 2009 ("Settlement Agreement"), which proposed settlement of the Proceedings, subject to the approval of the Commission;

(C) The respondents have consented to the issuance of this Order and have each waived their respective rights to a full hearing;

(D) On November 25, 2009, the Commission held a hearing ("Settlement Hearing") to consider whether or not to approve the Settlement Agreement;

(E) The Commission 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" with the clarifications noted below and acknowledged by the parties during the Settlement Hearing, be and the same is hereby approved:

- (a) At paragraph B20, "May of 2000," was intended to be and is "May of 2000.";
- (b) At paragraph B45(j), "\$ -14,375.00" was intended to be and is "\$ 14,375.00";
- (c) At paragraph B60, section "1482" was intended to be and is section "148.2";
- (d) At paragraph D1.(i), "\$1,000" was intended to be and is "\$1,000".

2. THAT pursuant to subsection 8(1) of the Act, for each of NICHOLSON, NATIONAL BANK FINANCIAL, and PERCIVAL, a written reprimand be placed on the applicable registration files with the Commission with a copy of this order and Settlement Agreement attached as Schedule "A" to the reprimand.

3. THAT pursuant to subsection 148.1(1) of the Act, NATIONAL BANK FINANCIAL pay an administrative penalty of \$20,000.00 within seven (7) days of the date of this order.

4. THAT pursuant to subsection 148.1(1) of the Act, PERCIVAL pay an administrative penalty of \$10,000.00 within seven (7) days of the date of this order.

5. THAT pursuant to subsection 148.1(1) of the Act, NICHOLSON pay an administrative penalty of \$5,000.00 within seven (7) days of the date of this order.

6. THAT pursuant to subsection 8(1) of the Act, it is a term and condition of NICHOLSON's registration that NICHOLSON's conduct and practices as a salesperson registered under the Act be closely supervised by an individual acceptable to and upon such terms as are deemed appropriate by the Director, Registrations of the Commission for a period of nine (9) months from the date of this order.

7. THAT pursuant to subsection 8(1) of the Act, it is a term and condition of NICHOLSON's registration that NICHOLSON enroll in and successfully complete the Canadian Securities Institute Conduct & Practices Handbook course within six (6) months of the date of this order.

8. THAT pursuant to section 148.2 of the Act, NICHOLSON and NATIONAL BANK FINANCIAL jointly and severally pay to Sharon Mae Smith

financial loss compensation in the amount of \$78,847.00 to be paid by December 31, 2009.

9. **THAT** NICHOLSON, NATIONAL BANK FINANCIAL, and PERCIVAL each pay to the Commission costs in the amount of \$1,000.00, to be paid forthwith upon approval of the Settlement Agreement.

BY ORDER OF THE COMMISSION



Director, Legal and Enforcement

SCHEDULE "A"

Settlement Agreement

John William Duncan Nicholson,
National Bank Financial Ltd.,
and Edward Gordon Alexander Percival

and

The Staff of The Manitoba Securities Commission

The Manitoba Securities Commission
500 — 400 St. Mary Avenue
Winnipeg, Manitoba
R3C 4K5

SETTLEMENT AGREEMENT

A. Introduction

- A1. On April 22, 2008, The Manitoba Securities Commission ("Commission") issued a Notice of Hearing ("NOH") and Statement of Allegations ("SOA") naming John William Duncan Nicholson ("NICHOLSON"), NATIONAL BANK FINANCIAL LTD. ("NATIONAL BANK FINANCIAL") and Edward Gordon Alexander Percival ("PERCIVAL") as respondents giving notice of its intention to hold a hearing under *The Securities Act* ("Act").
- A2. Discussions have been held between the respondents and staff of the Commission ("Staff") in an effort to settle the matters set out in the NOH and SOA ("Proceedings"). A settlement ("Settlement") has been reached based on the terms and conditions set forth in this agreement ("Settlement Agreement").
- A3. Pursuant to the Settlement, Staff agrees to recommend to the Commission that the Proceedings initiated against the respondents be resolved and disposed of in accordance with the terms and conditions of this Settlement Agreement as set forth below. The respondents each for themselves consent to the Settlement and to the making of the consent order referred to in Part D. below, on the terms and conditions set forth in this Settlement Agreement.

B. Statement of Facts

Registration History —

- B1. NICHOLSON is a resident of Winnipeg, Manitoba.
- B2. NICHOLSON was first registered under the Act as a salesman on or about May 4, 1998 and was thereafter registered under the Act almost continuously to present, except for two short periods of time each a matter of days in length.
- B3. At all material times, NICHOLSON was registered under the Act as a salesman with NATIONAL BANK FINANCIAL in its Winnipeg office, except for a period of time in 1999 when he was registered with its predecessor Levesque Securities Inc.
- B4. At all material times, NATIONAL BANK FINANCIAL was registered as an Investment Dealer under the Act and on November 30, 2000 also became registered under The Commodity Futures Act as a Futures Commission Merchant. NATIONAL BANK FINANCIAL was formerly known as Levesque Securities Inc., until it became NATIONAL BANK FINANCIAL effective November 4, 1999. At all material times, Levesque Securities Inc. was registered as an Investment Dealer under the Act.

- B5. NICHOLSON is currently registered under the Act as a Dealing Representative with NATIONAL BANK FINANCIAL.
- B6. PERCIVAL is a resident of Winnipeg, Manitoba.
- B7. At all material times, PERCIVAL was registered as a Branch Manager with NATIONAL BANK FINANCIAL supervising NICHOLSON at the Winnipeg office.
- B8. PERCIVAL is currently registered under the Act as an Officer and Dealing Representative with NATIONAL BANK FINANCIAL.

Commencement of Client/Registrants Relationship; Initial Account Opening and Activity —

- B9. At all material times, Sharon Mae Smith ("SMITH") was a resident of Winnipeg, Manitoba.
- B10. In 1999, SMITH informed NICHOLSON that she liked to buy bonds and had enquired as to whether he could find her any deals on bonds which were better than that of her principal investment firm.
- B11. At the time, SMITH was turning 52 years of age and was employed as an assistant superintendant of a Winnipeg school division. SMITH's investment experience consisted of investments predominantly in GIC's, Bonds, and money market, with the odd stock and income trust and some mutual funds.
- B12. NICHOLSON confirmed to her that he did trade in bonds.
- B13. Accordingly, in 1999, SMITH became a client of NICHOLSON and NATIONAL BANK FINANCIAL, then known as Levesque Securities Inc.
- B14. On or about May 3, 1999, a New Account Form was completed by NICHOLSON stating SMITH's Risk Factors as 60% low and 40% medium and her Investment Knowledge as "Good" ("1999 NAF").
- B15. The Investment Objectives section of the 1999 NAF was left blank.
- B16. The incomplete 1999 NAF was signed by NICHOLSON as the Investment Adviser and by PERCIVAL as Branch Manager.
- B17. At the time, it was not the practice of NATIONAL BANK FINANCIAL to send copies of NAF's to clients. Accordingly, a copy of the 1999 NAF was not sent to SMITH.
- B18. After the completion of the 1999 NAF, the following bond purchases were made:

	<u>Settlement Date</u>	<u>Transaction</u>	<u>Description</u>	<u>Quantity</u>	<u>Amount</u>
(a)	May 12, 1999	Buy	Bank of Nova Scotia CL-09 5.75% 12MY14	5,000	-\$4,984.60
(b)	July 12, 1999	Buy	Alta Energy 6.1% 1JN09	5,000	-\$4,826.76

(collectively, the "1999 Bond Purchases").

- B19. The 1999 Bond Purchases were done with SMITH's knowledge, consent, and authorization.
- B20. Except for a very small amount of cash, the 1999 Bond Purchases constituted the entirety of SMITH's portfolio holdings with NATIONAL BANK FINANCIAL for 1999 and into 2000, until May of 2000,

Additional Accounts and Arbitrage —

- B21. In 2000, NICHOLSON discussed with SMITH an investment strategy called "arbitrage". SMITH understood from NICHOLSON there was little risk in arbitrage because of how closely the deals were watched. Based upon the recommendation of NICHOLSON, SMITH was prepared to try arbitrage.
- B22. On or about May 2, 2000, NICHOLSON opened margin and margin short accounts, in Canadian and U.S. funds, for SMITH. In so doing, a client account form was again prepared for the additional accounts ("2000 AAF"). The Risk Factors for SMITH remained stated as 60% low and 40% medium.
- B23. The Investment Objectives section of the 2000 AAF was left blank.
- B24. The incomplete 2000 AAF was signed by NICHOLSON and PERCIVAL.
- B25. A copy of the 2000 AAF was used to open all of the new accounts.
- B26. A copy of the 2000 AAF was not provided to SMITH, in accordance with NATIONAL BANK FINANCIAL's practice at the time.
- B27. SMITH was unaware that margin short accounts were being opened by NICHOLSON, in addition to an ordinary margin account.
- B28. On May 9, 2000, Ms. S signed a Margin Account Agreement.

Arbitrage Trading –

- B29. In May of 2000, the first risk arbitrage transaction proceeded in a margin account of SMITH.
- B30. In July of 2000, NICHOLSON invited SMITH to a seminar conducted by NATIONAL BANK FINANCIAL on arbitrage deals. SMITH attended the seminar. Again, SMITH understood from the seminar that NATIONAL BANK FINANCIAL's close monitoring of the deals meant less risk and that if there was going to be a problem in achieving the anticipated money on a particular deal NATIONAL BANK FINANCIAL would inform her and advise her to sell.
- B31. Based upon her conversations with NICHOLSON and the seminar, SMITH continued to authorize the use of the arbitrage strategy in her account.
- B32. Risk arbitrage transactions were conducted by NICHOLSON in the margin accounts and in the margin short accounts of SMITH from May of 2000 through August of 2001 ("Risk Arbitrage Transactions").
- B33. SMITH had great difficulty understanding her account statements and relied heavily upon NICHOLSON.
- B34. Some of the Risk Arbitrage Transactions conducted by NICHOLSON involved short-selling. As these transactions occurred, SMITH says she was unaware that short-selling was being done.
- B35. The Risk Arbitrage Trading resulted in a loss to SMITH.

Bond Trading –

- B36. After the period of Risk Arbitrage Transactions, NICHOLSON recommended to SMITH Government of Canada Bonds ("GOC Bonds").
- B37. SMITH has advised staff she had understood GOC Bonds to be very secure investments. In her investment experience prior to NICHOLSON and NATIONAL BANK FINANCIAL, SMITH had purchased bonds to hold them to maturity.
- B38. At the time that NICHOLSON recommended GOC Bonds, SMITH was still holding the original 1999 Bond Purchases in her portfolio with NATIONAL BANK FINANCIAL.
- B39. At the time, SMITH did not have experience in buying and selling bonds to be held for short-terms.

- B40. NICHOLSON further recommended that the GOC Bond trades be done on margin.
- B41. SMITH understood from NICHOLSON that buying and selling bonds on margin meant that she would not have to put up the whole amount of money for the trade and that she would be able to buy more bonds, resulting in a larger gain than if she was to use only her own money. SMITH informed NICHOLSON that in the event it ever appeared she would lose money, her intention would be to buy out her position in the bonds and hold them until maturity, rather than incurring a loss.
- B42. SMITH followed the advice of NICHOLSON to buy GOC Bonds on margin, to be held for short-terms.
- B43. The following GOC Bond transactions occurred:

	<u>Settlement Date</u>	<u>Transaction</u>	<u>Description</u>	<u>Quantity</u>	<u>Amount</u>
(a)	March 18, 2002	Buy	Canada 8% 1JUN23	500,000	-\$631,476.03 ¹
(b)	April 10, 2002	Sell	Canada 8% 1JUN23	500,000	\$635,496.58 ²
(c)		Margin interest			-\$1,579.00

("First GOC Bond Transactions").

- B44. After the First GOC Bond Transactions, a series of Bond trades were conducted by NICHOLSON in the accounts of SMITH which involved short sales.
- B45. This short-selling of GOC bonds consisted of the following transactions ("ShortSale GOC Bond Transactions"):

SHORT-SALE GOC BOND TRANSACTIONS

	<u>Settlement Date</u>	<u>Transaction</u>	<u>Description</u>	<u>Quantity</u>	<u>Amount</u>
(a)	June 3, 2002	Sell	Canada 5.75% 1JN29	250,000	\$247,375.00 \$ 78.77 ³ \$247,453.77 ⁴

¹Dollar amounts on buy/sell include accrued interest paid or received at the time, as applicable.

² See footnote #1.

³Second figure for each transaction in the Chart of Bond Short-Sell Transactions represents accrued interest at the time of the transaction.

⁴Third figure for each transaction in the Chart of Bond Short-Sell Transactions represents the total of price and accrued interest at the time of the transaction.

(b) September 5, 2002	Sell	Canada 5.75% 1JN29	250,000	\$257,375.00 \$3,780.82 \$261,155.82
(c) October 30, 2002	Buy	Canada 5.75% 1JN29	125,000	-\$125,937.50 -\$2,973.46 -\$128,910.96
(d) November 4, 2002	Buy	Canada 5.75% 1JN29	375,000	-\$381,187.50 -\$9,215.75 -\$390,403.25
(e) March 7, 2003	Sell	Canada 5.75% 1JN29	250,000	\$260,000.00 \$3,780.82 \$263,780.82
(f) March 11, 2003	Sell	Canada 5.75% 1JN29	250,000	\$261,500.00 \$3,938.36 \$265,438.36
(g) March 20, 2003	Buy	Canada 5.75% 1JN29	500,000	-\$519,000.00 -\$8,585.62 -\$527,585.62
(h) April 11, 2003	Sell	Canada 5.75% 1JN29	125,000	\$127,562.50 \$2,579.62 \$130,142.12
(i) April 22, 2003	Sell	Canada 5.75% 1JN29	125,000	\$128,375.00 \$2,796.23 \$131,171.23
(j) April 30, 2003	Sell	Canada 5.75% 1JN29	250,000	\$258,750.00 \$5,907.53 \$264,657.53
(k) June 13, 2003	interest Buy	Canada 5.75% 1JN29	250,000	-\$ -14,375.00 -\$283,625.00 -\$472.60 -\$284,097.60
(l) June 18, 2003	Buy	Canada 5.75% 1JN29	250,000	-\$285,750.00 -\$669.52 -\$286,419.52

B46. SMITH has advised Staff she believed the bond transactions to be simply buying, and then selling, bonds and that short-selling of bonds was done without her knowledge, consent, or authorization. SMITH has further advised that she was not aware of the June 2003 transactions at all until after she had reviewed her account statement.

- B47. For his part, NICHOLSON says he believed at the time SMITH was aware the short-selling strategy was being used, however, NICHOLSON acknowledges he failed to take all required and sufficient steps to ensure SMITH was, in fact, aware of the use of the strategy and its risks.
- B48. The First GOC Bond Transactions and the Short-Sale GOC Bond Transactions together resulted in a loss to SMITH.

Risk Tolerance —

- B49. At all material times, from 1999 to 2003 inclusive, SMITH's actual tolerance for risk remained the same.
- B50. In August of 2002, NICHOLSON says he conducted a review of his client files as they were being converted to computerized records. At that time, NICHOLSON changed the Risk Factors for SMITH's accounts to "very high". To effect this change, NICHOLSON prepared an Update document ("2002 Update"). This change to the Risk Factors in the NATIONAL BANK FINANCIAL record was made without the knowledge of SMITH.
- B51. NICHOLSON states that the 2002 Update was done as a result of asset information he had received in the past, but had delayed in recording. NICHOLSON states that on or about the time of opening the additional accounts back in 2000, he had become aware that SMITH had assets greater than recorded. No update to the asset information was done in 2000. No update to the accounts of SMITH was done until the 2002 Update. In 2002, the 2002 Update still did not amend the value of assets held by SMITH. The Financial Information portion of the 2002 Update was left blank.
- B52. During the period of time for which the Risk Factors for SMITH had been stated as 60% low and 40% medium, trading occurred in her accounts inconsistent with the stated Risk Factors and SMITH's actual risk tolerance, involving arbitrage, short-selling, and leveraged GOC Bonds.
- B53. Following the change to the stated Risk Factors made by NICHOLSON in August of 2002, trading occurred in the accounts of SMITH inconsistent with her actual risk tolerance, including leveraged GOC Bonds transactions and short-selling of GOC Bonds.
- B54. To the extent that trades were conducted and strategies employed in the accounts of SMITH inconsistent with stated Risk Factors, PERCIVAL and NATIONAL BANK FINANCIAL did not detect the unsuitable activity in a timely manner and do not have any record or information that enquiries into the inconsistencies were made in a timely manner.
- B55. From August 2002 and onward, to the extent that trades were conducted and strategies employed in the accounts of SMITH inconsistent with her actual level of risk tolerance, PERCIVAL and NATIONAL BANK FINANCIAL did not detect

the unsuitable activity in a timely manner and do not have any record or information that enquiries into the inconsistencies were made in a timely manner.

2000 KYC Documentation –

- B56. During the investigation which resulted in the Proceedings, NATIONAL BANK FINANCIAL produced to Commission Investigators various documents at various times. In so doing, a representative of NATIONAL BANK FINANCIAL produced a know-your-client document as having been done for the opening of the additional accounts in the year 2000. The 2000 AAF, with its Investment Objectives section in blank, was produced (“2000 AAF “A”).
- B57. Other representatives of NATIONAL BANK FINANCIAL also produced a know-your-client document, as having been done for the opening of accounts in the year 2000, which was virtually identical to the 2000 AAF “A” document, including signatures of the Investment Adviser and Branch Manager and handwritten date of form completion (“2000 AAF “B”), except that, unlike 2000 AAF “A”, 2000 AAF “B” showed a completed Investment Objectives section.
- B58. NATIONAL BANK FINANCIAL advises that, at some point, head office identified that the Investment Objectives section of 2000 AAF “A” was blank and returned the 2000 AAF “A” document for completion. Thereafter, information was inserted by hand into this section resulting in 2000 AAF “B”. NATIONAL BANK FINANCIAL has no record as to who identified the deficiency, or who inserted the information into the document.

Compensation for Financial Loss –

- B59. The Director, Legal and Enforcement (“Director”) of the Commission has received an application for a claim for compensation for financial loss and requests that the Commission make an order that NICHOLSON and NATIONAL BANK FINANCIAL pay SMITH compensation.
- B60. Staff and each of the respondents NICHOLSON and NATIONAL BANK FINANCIAL agree to the making of the consent order referred to in Part D. below which includes the financial loss order pursuant to section 1482 in favor of SMITH as stated in Part D.

C. Acknowledgements

C1. NICHOLSON acknowledges and agrees that he:

- (a) recommended and/or conducted trades and recommended and/or utilized investment strategies in the accounts of SMITH involving risk arbitrage and leveraging and short-selling in the arbitrage and GOC Bond transactions, which were unsuitable;
- (b) failed to follow the Know Your Client Rule by:
 - (i) signing the incomplete 1999 New Account Form;
 - (ii) signing the incomplete 2000 Additional Account Form;
 - (iii) changing the Risk Factors for SMITH's accounts to "very high" in reliance upon the value of his client's assets, while failing to give sufficient weight to the client's adversity to risk;

and therefore the terms of settlement are in the public interest.

C2. PERCIVAL acknowledges and agrees that he failed in his supervisory role by:

- (a) signing the incomplete 1999 New Account Form;
- (b) signing the incomplete 2000 Additional Account Form;
- (c) failing to adequately review documentation and make all necessary enquiries to detect and prevent unsuitable trading in the accounts of SMITH;

and therefore the terms of settlement are in the public interest.

C3. NATIONAL BANK FINANCIAL acknowledges and agrees that it:

- (a) failed to adequately review documentation and make all necessary enquiries to detect and prevent unsuitable trading in the accounts of SMITH;
- (b) failed to maintain a clear and accurate record of the Know Your Client documentation regarding the opening of additional accounts in 2000;

and therefore the terms of settlement are in the public interest.

- C4. As to the production of the 2000 AAF "A" and 2000 AAF "B" documents to the Commission during the investigation, NATIONAL BANK FINANCIAL says that the provision of these documents was done in an effort to comply with requests for documentation without recognizing at the outset that there was a difference between the two and without any intention to mislead.
- C5. Staff acknowledges the co-operation of NICHOLSON, PERCIVAL, and NATIONAL BANK FINANCIAL during the investigation.
- C6. This Settlement Agreement is conditional upon receipt from SMITH of a Consent to the order for financial loss compensation as stated in Part D below, thereby resolving her claim for financial loss compensation in this matter, and receipt by the Respondents from SMITH of a Full Release in a form acceptable to the Respondents, within fourteen (14) days of execution of this Settlement Agreement by all respondents and Staff.

D. Terms of Settlement

- D1. In order to effect a resolution of the issues raised by the Proceedings, Staff and the respondents have entered into this Settlement Agreement. Upon this basis, Staff seek an order ("Consent Order") from the Commission in the public interest and pursuant to sections 8(1), 148.1(1) and 148.2 of the Act that:
 - (a) the Settlement Agreement be approved;
 - (b) pursuant to subsection 8(1) of the Act, for each of NICHOLSON, NATIONAL BANK FINANCIAL, and PERCIVAL, a written reprimand be placed on the applicable registration files with the Commission with a copy of this order and Settlement Agreement attached as Schedule "A" to the reprimand;

- c) pursuant to subsection 148.1(1) of the Act, NATIONAL BANK FINANCIAL pay an administrative penalty of \$20,000.00 within seven (7) days of the date of this order;
- d) pursuant to subsection 148.1(1) of the Act, PERCIVAL pay an administrative penalty of \$10,000.00 within seven (7) days of the date of this order;
- e) pursuant to subsection 148.1(1) of the Act, NICHOLSON pay an administrative penalty of \$5,000.00 within seven (7) days of the date of this order;
- f) pursuant to subsection 8(1) of the Act, it is a term and condition of NICHOLSON's registration that NICHOLSON's conduct and practices as a salesperson registered under the Act be closely supervised by an individual acceptable to and upon such terms as are deemed appropriate by the Director, Registrations of the Commission for a period of nine (9) months from the date of this order;
- g) pursuant to subsection 8(1) of the Act, it is a term and condition of NICHOLSON's registration that NICHOLSON enroll in and successfully complete the Canadian Securities Institute Conduct & Practices Handbook course within six (6) months of the date of this order;
- h) pursuant to section 148.2 of the Act, NICHOLSON and NATIONAL BANK FINANCIAL jointly and severally pay to Sharon Mae Smith financial loss compensation in the amount of \$78,847.00 to be paid by December 31, 2009;
- i) NICHOLSON, NATIONAL BANK FINANCIAL, and PERCIVAL each pay to the Commission costs in the amount of \$1,000, to be paid forthwith upon approval of the Settlement Agreement.

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 NOH.
- E2. Staff and the respondents 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 respondents hereby waive their respective rights to a full hearing and appeal of this matter.

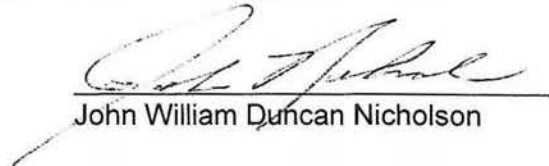
- E3. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the Consent Order referred to in Part D. above is not made by the Commission, Staff will be entitled to proceed with the hearing commenced by the NOH unaffected by this Settlement Agreement or the settlement discussions. If this Settlement Agreement is not approved or the Consent Order set out in Part 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 respondents 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 respondents agree each for themselves that they 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 respondents will make any statement inconsistent with this Settlement Agreement.

F. Execution of Settlement Agreement

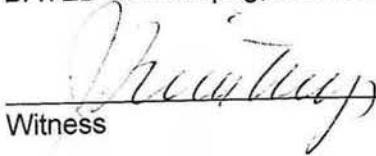
- FI. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement and a facsimile copy of any signature shall be as effective as an original signature.

DATED at Winnipeg, Manitoba, this ¹¹ day of *November*, 2009.


Witness


John William Duncan Nicholson

DATED at Winnipeg, Manitoba, this ¹⁶ day of *November*, 2009.


Witness



Edward Gordon Alexander Percival

DATED at *Montreal, Canada*, this *16th* day of *November*, 2009.

National Bank Financial Ltd.



Witness

Per: 

Authorized signatory for
National Bank Financial Ltd.

DATED at Winnipeg, Manitoba, this *17th* day of *November*, 2009.

Staff of the Manitoba Securities Commission

Per: 

Director, Legal and Enforcement