

**IN THE MATTER OF THE SECURITIES ACT
R.S.O. 1990, c.S.5, as amended**

- and -

**ROBERT CASSELS
MURRAY HOULT POLLITT
POLLITT & CO. INC.**

**STATEMENT OF ALLEGATIONS OF STAFF
OF THE ONTARIO SECURITIES COMMISSION**

Further to a Notice of Hearing dated August 30, 2004, Staff of the Ontario Securities Commission (the “Commission”) makes the following allegations:

A. The Respondents

1. Robert Cassels (“Cassels”) is registered in Ontario as an investment counsel and portfolio manager with the firm Cassels Investment Management Inc. (“CIM”). Cassels is an officer and director and holds an approximate 70% ownership interest in CIM. Cassels serves as CIM’s Chief Compliance Officer and Ultimate Responsible Person.

2. Murray Houlth Pollitt (“Pollitt”) is registered in Ontario as an officer and director of Pollitt & Co. Inc. (“Pollitt & Co.”), a registered securities dealer and member of the Toronto Stock Exchange (“TSX”). Pollitt holds an approximate 80% ownership interest in Pollitt & Co. and serves in the capacity as Chief Compliance Officer, Vice-President and Secretary of the firm.

3. Pollitt & Co. is registered in Ontario as a securities dealer. The firm has offices in Toronto and Montreal and is a member of the TSX and the Bourse De Montreal.

B. Pollitt & Co. are Invited to Participate in a “Bought Deal” Syndicate

4. In October, 2002, officials at Scotia Capital Inc. (“Scotia”) commenced discussions with the CEO of United Grain Growers Limited (doing business as Agricore United (“Agricore”), a TSX listed company trading under the symbol “AU”) respecting a potential \$100 million convertible debenture “bought deal” financing. These discussions lead to the formation of an underwriting syndicate to be lead by Scotia and co-lead by

National Bank Financial Inc. (“NBF”). At the request of the Agricore CEO, Scotia invited Pollitt & Co. to participate as a junior member of the syndicate.

5. On November 11, 2002, at approximately 2:45 p.m. (all subsequent times referred to herein occurred on November 11, 2002) a brief conference call was convened by Scotia and NBF in order to formally invite certain other securities dealers, including Pollitt & Co., to participate in the syndicate. During this call the terms of the anticipated financing were discussed. In the 15 minutes following this brief call, each of the dealers that were invited to participate, including Pollitt & Co., confirmed to Scotia their participation in the deal. At approximately 3:15 p.m., Scotia presented Agricore with a fully syndicated bought deal.

6. The bought deal presented to Agricore consisted of a public offering of \$100 million five year convertible unsecured subordinate debentures with a 9% coupon. The debentures were convertible at the option of the holder at any time prior to maturity or redemption into limited voting common shares of Agricore at a conversion price of \$7.50 per share. The conversion price represented a premium of approximately 25% over the opening trading price of Agricore common shares.

7. Pursuant to the terms of a pre-emptive rights agreement previously entered into between Agricore and its principal shareholder, the principal shareholder had agreed to purchase \$45 million of the offering. The remaining \$55 million of convertible debentures being offered for sale to the public (not including the dealers’ option to acquire an additional \$5 million) was allocated among the members of the syndicate. As a junior member of the syndicate Pollitt & Co. was allocated 3.0% of the offering.

8. At approximately 3:26 p.m. Agricore notified Scotia that it was accepting the terms of the bought deal. It was intended that a press release, announcing the agreement in respect of the bought deal, would be issued at the close of the markets (4:00 p.m.) that day.

9. At approximately 3:38 p.m., at the issuer’s request, trading in shares of Agricore was halted by the TSX. At approximately 3:40 p.m. Agricore issued a press release announcing that it had “entered into a bought deal agreement to issue and sell to a syndicate of underwriters co-lead by Scotia Capital Inc. and National Bank Financial Inc. \$100 million aggregate principal amount of 9.0% convertible unsecured subordinated debentures due November 30, 2007”. The release noted that: the underwriters had an option to acquire up to an additional \$5 million aggregate principal amount of debentures; the debentures were convertible into common shares at a conversion price of \$7.50 per share; and pursuant to the exercise of certain pre-emptive rights Agricore’s principal shareholder was purchasing \$45 million aggregate principal amount of the debentures.

10. The market price of Agricore at the time trading was halted on November 11, 2002 was \$6.00. When Agricore resumed trading on November 12, 2002 it opened at \$5.90 and closed at \$5.31. By the close of markets on Friday, November 15, 2002 Agricore was trading at \$5.14.

C. Pollitt & Co. Market the Offering in Advance of the Press Release

11. A number of clients of Pollitt & Co. had been purchasers of Agricore shares prior to November 11, 2002. Upon learning of the terms of the proposed bought deal, Pollitt was concerned that the terms of the transaction were highly dilutive to existing shareholders of Agricore, including clients of Pollitt & Co. As a result, Pollitt decided to provide certain clients with a “heads up” about the bought deal prior to the transaction being generally disclosed by means of a press release. Pollitt personally contacted, or had contacted at his request, at least five different institutional clients of Pollitt & Co. who were known to have held shares in Agricore. Each of these communications were made subsequent to Pollitt & Co. being invited to participate in the bought deal syndicate at approximately 2:45 p.m. and prior to the issuance of any press release announcing the bought deal at approximately 3:38 p.m.

12. At approximately 3:03 p.m. Scotia received a call from one of the Pollitt & Co. institutional clients who had previously been advised by Pollitt & Co. of the anticipated bought deal. The institutional client expressed an interest in purchasing securities pursuant to the bought deal. Concerned that a would-be investor had knowledge of the bought deal prior to the deal being announced in a press release, Scotia contacted the members of the syndicate to determine whether they had been marketing the bought deal in advance of the press release. At approximately 3:16 p.m. Scotia spoke with Pollitt who confirmed that Pollitt & Co. had been the source of the information provided to the institutional client in advance of the press release. Scotia immediately instructed Pollitt to stop all such communications.

13. At approximately 3:36 p.m., Scotia advised Pollitt & Co. that it was being excluded from the syndicate as a result of engaging in pre-marketing communications in respect of the bought deal prior to the issuance of a press release. In addition to Pollitt & Co.’s pre-marketing communications giving rise to potential violations of securities law, Pollitt & Co. could not sign the certificate required of all IDA members that participate in a bought deal syndicate certifying that the member has complied with IDA By-law 29.13 (which prohibits pre-marketing communications prior to the issuance of a press-release).

D. Pollitt Contacts Robert Cassels to Advise of Bought Deal

14. One of the clients of Pollitt & Co. advised by Pollitt of the bought deal in advance of a press release was CIM. At approximately 3:08 p.m. Cassels at CIM received a voice mail message from Pollitt advising of the bought deal and indicating that if Cassels was interested in participating in the deal he should contact Pollitt. At approximately 3:14 p.m. Cassels spoke to Pollitt and was advised of the terms of the bought deal. At the time of these communications, CIM held 69,750 shares of Agricore on behalf of various clients.

E. Robert Cassels’ Instructs His Broker to Sell Agricore

15. Following Cassels’ discussion with Pollitt, at approximately 3:26 p.m. Cassels called

his registered representative (the "RR") at TD Waterhouse. During the course of this telephone discussion between Cassels and the RR, the following was stated:

Cassels: ...I'm in a bit of a quandary and I need your guidance with respect to this...this is absolutely confidential because I don't know if I am suppose to know it or not...on Agricore United, that's AU on Toronto, um, I've got 69,750 shares I want to sell them but the reason I want to sell them is that the broker called me and told me there was a convertible issue coming.

RR: Okay

Cassels: I haven't seen that on the wires yet and so I don't know if I'm suppose to know that and so I don't know if I'm trading on inside information.

RR: Well, was it speculation, I mean did he speculate?

Cassels: No, no, he knows.

RR: He knows for sure?

Cassels: He knows for sure and he...

RR: How does he know? And I don't want to know by the way,

Cassels: You and I are in the same position except I own shares and he called me directly to ask if I wanted to buy it

RR: Agricore, well there's news on it here, I mean I...

Cassels: What's the news?

RR: Um, it's not today's news so...

Cassels: Okay, no that's old

RR: How could he know for sure?

Cassels: He's in the underwriting group.

RR: Well, let me see if that is public. I'll just ask around.

Cassels: Uh, no don't ask anyone...it will come out as a new release, will it come out on Dow Jones the fastest or on Reuters?

RR: Dow, Bloomberg...if you don't want to sell ahead of it then that's fine.

Cassels: Well, I don't think I'm suppose to, do you?

RR: It depends. I mean if the issue has been talked about, you know they, there were some restructuring things they were doing

Cassels: Yup.

RR: There was some, it looks like they acquired Saskatchewan Wheatpool and it looks like they have been doing something

Cassels: Yeah, they have

RR: There could be a public story on it already

Cassels: Yeah

RR: And their intention to put out some kind of income trust could be public knowledge, I don't know, I have no knowledge of it.

Cassels: No this is not an income trust this is just a convertible which is usually hard on stock prices, right?

RR: Yeah.

Cassels: Okay so anyway, I've got 69,750 to sell

RR: Okay

Cassels: Um,

RR: Okay where do you let it go

Cassels: I'm pretty aggressive in front of a convertible uh, it's currently bid about 6 bucks. I'd start right here and uh..

RR: Well I have no knowledge of this stuff, so you're talking to somebody whose ignorant...so you know...

Cassels: Yeah, normally if someone tells you...

RR: I don't know if they are speaking from knowledge or from recommendation or if they're just guessing.

Cassels: Yeah.

RR: So you want me to sell it?

Cassels: Yup...

RR: Alright its 6 dollars bid right now and it doesn't look like it's going to go up from here.

Cassels: No it's not going up.

RR: All right well, let me come back, hopefully I can get this thing done if I can find some interest.

Cassels: Yeah...and I'm pretty aggressive on selling it so...

RR: And do you have a lower limit or just...

Cassels: I don't know what the lower limit is...um

RR: Alright. Okay, let me come back.

Cassels: And maybe we just have to go on the market but maybe you could get a bid for it, I don't know.

RR: Sure, I'll find out.

Cassels: Okay thanks...Oh will you call me on my cell...

RR: Perfect.

16. Further to Cassels' instructions, at approximately 3:30 p.m. a sell ticket was issued by the RR to sell 69,750 shares of Agricore on behalf of CIM. At approximately 3:32 p.m. 3,700 shares offered for sale by CIM were sold on the market at \$6.00. Subsequent to this trade taking place, at approximately 3:34 p.m. the RR spoke with his superior in respect of the propriety of the order placed by Cassels. Immediately following this conversation, at 3:38 p.m. the RR called Cassels and left a message advising that he did not think he could go ahead and sell the stock without further clarification in respect of the information known to Cassels. While this message was being left, at 3:38 p.m. trading in shares of Agricore was halted. The sale of the 3,700 shares which were sold prior to the halt was subsequently reversed.

F. Conduct Contrary to the Public Interest

17. It is the position of Staff that the conduct of each of the Respondents was contrary to the public interest in the following respects:

- a) Cassels acted contrary to the public interest by selling shares of Agricore with knowledge of a material fact which had not been generally disclosed, contrary to s.76(1) of the Act;
- b) Pollitt acted contrary to the public interest by engaging in communications with clients of Pollitt & Co. in respect of a bought deal financing of Agricore securities after Pollitt & Co. was invited to participate in the syndicate but before a press release announcing the bought deal was issued, contrary to ss. 53(1) and 76(2) of the Act, clause 14.1 of National Instrument 44-101, and inconsistent with the Canadian Securities Administrators' Notice "Pre-Marketing Activities in the Context of Bought Deals"; and
- c) Pollitt & Co. acted contrary to the public interest by failing to develop, implement, maintain and enforce procedures to ensure that when participating as a member of a bought deal syndicate, no inappropriate pre-marketing activities were engaged in by directors, officers, employees or agents of the dealer, including communications which were contrary to ss.53(1) and 76(2) of the Act, clause 14.1 of National Instrument 44-101, IDA By-Law 29.13, and inconsistent with the Canadian Securities Administrators' Notice "Pre-Marketing Activities in the Context of Bought Deals".

18. Staff reserves the right to make such further allegations as Staff may advise and the Commission may permit.

DATED at TORONTO this 30th day of AUGUST, 2004