

**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED**

- and -

**IN THE MATTER OF
TERRENCE WILLIAM MARLOW,
MARLOW GROUP PRIVATE PORTFOLIO MANAGEMENT INC.
AND MARLOW GROUP SECURITIES INC.**

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

Staff of the Ontario Securities Commission make the following allegations:

I. The Respondents

1. Terrence William Marlow (“Marlow”) is an individual residing in the province of Ontario and is the President of both Marlow Group Private Portfolio Management Inc. (“Marlow Private”) and Marlow Group Securities Inc. (“Marlow Securities”).
2. Marlow Private is a corporation incorporated pursuant to the laws of Ontario and was registered with the Commission as an investment counsel and portfolio manager (“ICPM”) and limited market dealer (“LMD”). Marlow Private’s registrations with the Commission are currently suspended.
3. Marlow Securities is a corporation incorporated pursuant to the laws of Ontario and was registered with the Investment Dealers Association (“IDA”) as a dealer in the category of investment dealer. The registration of Marlow Securities has been terminated

by the IDA.

4. Marlow was registered with the Commission as a director and as an advising and trading officer of Marlow Private. He was the Ultimate Responsible Person and Chief Compliance Officer in respect of Marlow Private's ICPM registration and the Designated Compliance Officer in respect of Marlow Private's LMD registration. Marlow was also registered with the IDA as a director and as a trading officer of Marlow Securities. Marlow's registrations with the Commission and the IDA are currently suspended.

II. Events leading to the Respondents' Suspension

(i) Failure to File Audited Financial Statements and Maintain Proper Books and Records

5. Marlow Private failed to file its audited financial statements with the Commission for the year ended December 31, 2003, due April 1, 2004, in contravention of sections 21.10(4) and 139 of Regulation 1015 (the "Regulations") to the *Securities Act*, R.S.O. 1990, c. S.5 (the "Act").

6. On October 22, 2004, Staff conducted a preliminary compliance review of the books and records of Marlow Private. The review revealed deficiencies in the books and records of Marlow Private, including that client trust accounts and portfolios had not been reconciled for several months.

(ii) Identification of Trust Account Deficiency

7. On December 7, 2004, the interim Chief Operating Officer of Marlow Private and Marlow Securities (the "COO") advised Staff that an extensive review of the available accounting and client records, and meetings with the largest clients of Marlow Private and Marlow Securities, revealed that there was a deficiency between the cash balance owed to clients and the cash balance in the client trust account in the name of Marlow Private (the "Trust Account Deficiency").

8. The COO provided Staff with a client account balance reconciliation for both Marlow Private and Marlow Securities detailing the cash balances owed to clients (the “Reconciliation”). The COO also advised Staff that there appeared to be a number of unallocated client investments that could satisfy most of the Trust Account Deficiency.

9. Following the identification of the Trust Account Deficiency, the Commission imposed a temporary order on December 17, 2004, and the amendments thereto by orders dated December 22, 2004, and January 4, 2005, all on consent. These orders suspended the registrations of the Respondents and required the Respondents to cease trading subject to two specified exceptions, pending further order of the Commission.

10. In addition to completion of the Reconciliation, Staff also required an audit (the “Audit”) of the Reconciliation and that Marlow Private surrender the cash balance of the Trust Account totaling approximately \$476,000.

III. Events Following the Respondents’ Suspension

11. The Audit report, dated January 7, 2005, confirmed that the cash balance of Marlow Private’s account was significantly less than amounts Marlow Private was required to be holding in trust for its clients. The Trust Account Deficiency was estimated to be approximately \$3,400,000.

12. Following the completion of the Reconciliation and the Audit, Marlow and representatives of six clients (the “Six Clients”) who were owed approximately 95% of the Trust Account Deficiency attempted to address concerns regarding the missing funds and to negotiate repayment from Marlow.

13. These negotiations were unsuccessful. On March 9, 2005, the Six Clients obtained an order of the Ontario Superior Court of Justice appointing A. Farber & Partners Inc. as the receiver and manager (the “Receiver”) of all assets, undertakings, and properties of the

Respondents (the “Receivership Order”), including the \$476,000 surrendered by Marlow Private as described in paragraph 10 above.

IV. The Results of the Receiver Reports

14. Between March 2005 and January 2006, the Receiver undertook a court-approved process of identifying, recovering and distributing the assets of the Corporate Respondents.

15. The First Report of the Receiver, dated April 11, 2005, included the Receiver’s initial findings regarding the Corporate Respondents’ books and records. The Receiver reported that:

- (i) client funds were co-mingled with general corporate funds;
- (ii) record keeping and reporting systems and procedures, including those designed to maintain proper documentation and records, were weak or absent, resulting in inadequate or missing documentation with respect to many transactions; and
- (iii) unallocated client assets identified by the Receiver would not be sufficient to cover the Trust Account Deficiency.

16. Between April 2005 and September 2005, the Receiver continued its review of the Corporate Respondents’ books and records. Marlow did not cooperate with the Receiver as required by the Receivership Order.

17. The Third Report of the Receiver, dated August 15, 2005, concluded that the Trust Account Deficiency had an estimated value of \$3,415,000 and was attributable to the following:

- (i) substantial spending by the Corporate Respondents on leasehold improvements and purchases of furniture and art;
- (ii) financing of overheads and ongoing losses sustained by the Corporate Respondents; and
- (iii) a substantial investment by the Corporate Respondents in a privately owned company.

18. The Fourth Report of the Receiver dated September 30, 2005:
- (i) confirmed that the vast majority of securities purchased by Marlow Private were notionally allocated, but not registered, to individual investors; and
 - (ii) estimated that the Respondents' clients, including the Six Clients, would recover approximately 60% of cash balances owed to them.
19. Marlow has never provided any satisfactory explanation to Staff or the Receiver regarding the Trust Account Deficiency.
20. On January 6, 2006, the Ontario Superior Court of Justice made an order authorizing the bankruptcy of the Corporate Respondents, but not Marlow personally (the "Bankruptcy Order") and appointed the Receiver as the trustee in bankruptcy (the "Trustee").

V. Conduct Contrary to the Public Interest by the Respondents

21. The Respondents have breached Ontario securities law and engaged in conduct contrary to the public interest by failing:
- (i) to deal fairly, honestly, and in good faith with their clients, contrary to s. 2.1 of Rule 31-505.
 - (ii) to maintain books, records and other documents necessary for the proper recording of business transactions and financial affairs executed on behalf of others, contrary to s. 19 of the Act and s. 113(1) of the Regulations.
 - (iii) to deposit into a trust account and properly identify funds or prepayments held on behalf of clients contrary to s. 118-119 of the Regulations.
 - (iv) to file with the Commission audited financial statements for Marlow Private for the year ended December 31, 2003, in contravention of s. 21.10(4) of the Act and s. 139 of the Regulations.

22. Staff reserve the right to make such further allegations as Staff may advise and the Commission may permit.

DATED at Toronto this 4th day of April, 2006.