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

- and -

IN THE MATTER OF
DUAL CAPITAL MANAGEMENT LIMITED,
WARREN LAWRENCE WALL, SHIRLEY JOAN WALL,
DJL CAPITAL CORP., DENNIS JOHN LITTLE,
AND BENJAMIN EMILE POIRIER

AMENDED STATEMENT OF ALLEGATIONS OF STAFF OF THE ONTARIO SECURITIES COMMISSION

Staff of the Ontario Securities Commission ("Staff") make the following allegations:

Introduction

1. Dual Capital Management Limited ("Dual Capital") is incorporated under the laws of Ontario and since October, 1994, carried on business as the general partner of Dual Capital Limited Partnership (the "Limited Partnership"). Dual Capital has not been registered in any capacity pursuant to section 25(1) of Ontario *Securities Act* R.S.O. 1990, c.S.5, as amended (the "Act").

2. Warren Lawrence Wall ("Warren Wall") is an individual residing in Ontario and at all material times was the President and a director of Dual Capital. Warren Wall has not been registered in any capacity pursuant to section 25(1) of the Act.

3. Shirley Joan Wall ("Joan Wall") is an individual residing in Ontario, and at all material times was a director and the secretary/treasurer of Dual Capital. Prior to June 28, 1995, Joan Wall was not registered in any capacity pursuant to section 25(1) of the Act. Joan Wall was registered as a salesperson with Triple A Financial Services Inc. ("Triple A"), a mutual fund dealer and limited market dealer, pursuant to section 26(1) of the Act from June 28, 1995 to October 13, 1998. As at October 20, 1998, Joan Wall was registered as a salesperson with Investment and Tax Counsel Corporation, a mutual fund dealer, and also a limited market dealer (as of May 5, 1999) pursuant to section 26(1) of the Act. Joan Wall has not been registered in any capacity since June 30, 2000.

Trading Without a Prospectus Contrary to the Requirements of Ontario Securities Law

4. During the period from October, 1994 to December, 1996, the general partner, Dual Capital, accepted subscriptions to the Units from investors residing in Ontario.

5. During the material times, the respondents, Dual Capital, Warren Wall, Joan Wall, Little and Poirier, traded in securities, namely the Units, where such trading was a distribution of such securities, without having filed a preliminary prospectus and a prospectus and obtaining receipts therefor from the Director as required by section 53(1) of the Act.

6. The Units were purportedly offered for sale pursuant to the "seed capital" prospectus exemption set out in section 72(1)(p) of the Act. The requirements of the "seed capital" exemption from the prospectus requirements in Ontario securities law were not satisfied.

7. Further, the Offering Memorandum dated October 18, 1994 as amended on December 19, 1994 for the Limited Partnership (the "Offering Memorandum") was not delivered to the Commission as required under Ontario securities law. The Offering Memorandum was also not provided to each investor who purchased the Units.

8. In addition, on or about May 27, 1997, Warren Wall, on behalf of the general partner, Dual Capital, filed with the Commission a Form 20 purporting to report a trade under clause 72(1)(p) of the Act. The Form 20 filed with the Commission did not contain complete and/or accurate information as required under Ontario securities law, including, but not limited to, accurate and complete information concerning the date(s) of the trade(s), the names of the purchaser(s), and the amount or number of securities purchased under the offering of the Units. In addition, the Form 20 filed stated that the promoter, DJL Capital, received $47,233.85 as compensation, when in fact DJL Capital received payments in the amount of approximately U.S. $161,525.00.

Trading in the Units Contrary to Requirements of Ontario Securities Law

9. Dual Capital and Warren Wall between October 13, 1994 and December 4, 1996 traded in securities, namely, limited partnership units of Dual Capital Limited Partnership without being registered to trade in such securities as required by section 25(1) of the Act.

10. Joan Wall between October 13, 1994 and June 27, 1995 traded in securities, namely, limited partnership units of Dual Capital Limited Partnership without being registered to trade in such securities as required by section 25(1) of the Act.

Misrepresentations to Investors Contrary to the Public Interest

(i) Use of Proceeds

11. The summary of the Offering Memorandum states, in part, the following with respect to "Use of Proceeds":

> "The net proceeds of this Offering, after deducting the expenses of the issue, are estimated to be a maximum of $5,000,000.00 and a minimum of $860,000.00. The Limited Partnership will use the net proceeds of this Offering to facilitate trades in financial instruments, such as bank debentures, thereby providing income to the Limited Partnership."

12. The Offering Memorandum represented that the "Trading Partner" (which party is not identified in the Offering Memorandum) would seek to provide an annual rate of return to the Limited Partnership and related parties equal to 30% of the funds placed on deposit. The Offering Memorandum further represented that the "....foregoing will be paid on a monthly basis and is subject to the Trading Partner effecting trades."

13. During the material times, Dual Capital, Warren Wall and Joan Wall failed to disclose to investors that certain funds accepted from investors for the purchase of Units were not used to "facilitate trades in financial instruments", and further failed to disclose that investors' funds instead were used for payments to various companies and persons, including monthly payments to existing investors, commissions and/or other payments to Little and/or DJL Capital, commissions and/or other payments to Dual Capital and/or Dual Financial Group Inc., a company owned by Warren and Joan Wall, and commissions and/or other payments to salespersons who sold the Units.

(ii) Representations in Promotional Material

14. Further, a brochure (the "Brochure") entitled "International Lending Programme - Investor Information" prepared by Warren Wall and/or Little under the name of Dual Capital, was distributed to investors in furtherance of the sale of the Units, and made various representations to investors which were contrary to the public interest. Such representations to investors included the promise of high annual returns under the heading in the Brochure "High Annual Returns .... with Absolutely No Risk" which representations were misleading to investors and contrary to the public interest.

Conviction of Dual Capital Management Limited, Warren Wall and Joan Wall of Violations of Ontario Securities Law

15. On October 26, 2000, in a related prosecution under section 122 of the Act before the Honourable Mr. Justice Douglas, Dual Capital, and its two officers, Warren Wall and Shirley Joan Wall, entered pleas of guilty in relation to the following five charges laid under section 122 of the Act:

(1) Dual Capital and Warren Wall between October 13, 1994 and December 4, 1996 traded in securities, namely limited partnership units of Dual Capital Limited Partnership without being registered to trade in such securities as required by section 25(1) of the Act and did thereby commit an offence contrary to section 122(1)(c) of the Act.

(2) Shirley Joan Wall between October 13, 1994 and June 27, 1995 traded in securities, namely, limited partnership units of Dual Capital Limited Partnership without being registered to trade in such securities as required by section 25(1) of the Act and did thereby commit an offence contrary to section 122(c) of the Act.

(3) Warren Wall and Joan Wall between October 13, 1994 and December 4, 1996, being a director or officer of Dual Capital Management Limited, did authorize, permit or acquiesce in the offence committed by Dual Capital described in subparagraph 1 above, and did thereby commit an offence contrary to section 122(3) of the Act.

(4) Dual Capital, Warren Wall and Joan Wall between October 13, 1994 and December 4, 1996 did trade in securities, namely limited partnership units

of Dual Capital where such trading was a distribution of such securities, without having filed a preliminary prospectus and a prospectus and obtaining receipts therefor from the Director as required by section 53(1) of the Act and did thereby commit an offence contrary to section 122(1)(c) of the Act.

(5) Warren Wall and Joan Wall between October 13, 1994 and December 4, 1996, being a director or officer of Dual Capital, did authorize, permit or acquiesce in the offence committed by Dual Capital described in suparagraph 4 above and did commit an offence contrary to section 122(3) of Act.

16. The guilty pleas were entered following twelve days of trial, after the prosecutor for the Ontario Securities Commission had called its witnesses to testify and closed its case, after the defence had called four witnesses, and during the re-examination of Warren Wall (who had testified on his own behalf and been subject to cross examination by the prosecutor for the Ontario Securities Commission.) Mr. Justice Douglas accepted the pleas, entered convictions and sentenced the two officers, Warren Wall and Shirley Joan Wall, to a total of 30 months and 22 months, respectively, and Dual Capital to a total fine of $1,000,000.

17. In the course of delivering his Reasons for Sentence, Mr. Justice Douglas made findings of fact , based on the evidence at trial, including the following findings:

(1) The direct loss to the 56 members or so of the public who relied upon the accused persons can be considered, which (ignoring, for the moment, so-called repayments of interest and principal) is something in the range of 1.5 million dollars U.S., or, at a generous current exchange rate of 66 cents Canadian to the U.S. dollar, approximately $2,265,000.00 Canadian …. It appeared to be the position of the accused that they did not particularly profit from this mis-adventure, but that other more culpable persons did.

(2) Dealing with the conduct of the accused until January 26th, 1995, during this period of time, the accused, with others, conceived and formulated this investment scheme. They in part documented it, and, importantly, sold it to their clients. In this period of time they raised $860,000.00 U.S. or 1.3 million dollars Canadian.

(3) Respecting the conceptualization, formulation and documentation of the investment scheme, Mr. Wall testified that the idea of the investment scheme (referenced under various headings, including the "Roll Programme" and the "International Lending Programme") came to him by way of Dennis Little and D.J.L. Limited, Bob Adams, Mr. Altman of A.A.A. Financial Services, all of which led to Mr. Poirier and Mr. Adams of Dundas and, ultimately, Mr. Huppe of Oakville.

(4) To varying degrees, Mr. Wall pointed to these gentlemen as being to blame for this fiasco, as through counsel, so did Mrs. Wall. I utterly reject the testimony of Mr. Wall in this regard. The evidence supports only the inference of guilty knowledge respecting these events on behalf of both Mr. Wall and Mrs. Wall.

(5) I find that the Roll Programme as conceived, was and remained utter nonsense. The programme, considered in and of itself, is a fraudulent means….

…I find that the Roll Programme was per se dishonest.

…Indeed, the evidence is conclusive and nearly complete that all of the investors were neither sophisticated (but naïve), nor rich (but poor) or, at least, dependent upon the little money they had.

(6) Any complete reading of the Investor Lending Programme One or Investor Lending Programme Two will show the nonsensical nature of the proposal. Under cross-examination, Mr. Wall was forced to admit that many of the eight representations numbered and contained in each of these were essentially false throughout the time-frame of the Programme.

(7) Referencing the investment concept provisions of the two Offering Memoranda leads one to a similar conclusion. I reject utterly that Mr. Wall, a seasoned business man, trained in the arcane of insurance contracts and insured investments, and Mrs. Wall, similarly exposed and trained and also licensed, at least from June 1995 to sell mutual funds, did not recognize the significant risks associated with the concept, even as it was described in the Offering Memoranda.

(8) For example, at page five of the First Offering Memorandum, under the heading Investment Concept, the following is stated:

> "The business of the limited partnership is to realize profits on trades of financial instruments such as bank debentures and thus provide income for the limited partners. To this end, the net proceeds of the offering will be placed through an intermediatory company on deposit with Canadian or international bank. The trading company; the trading partners will be selected by the general partner will arrange for the purchase and sale by an international bank financial institution or brokerage firm, the financial institution, a financial instrument such as

bank debentures without placing the limited partners' funds at risk. The funds placed on deposit by the limited partnership together with funds from other sources will serve as a guarantee to the other contracting party that the transactions will be effected. The trading partner will seek to provide an annual rate of return to the limited partner and related parties equal to 30 percent of the amount of funds placed on deposit by the partnership. The annual rate of return to the limited partners is expected to be 14 percent. The rate of return ultimately realized will be based on the performance of the trading partner which will be on a best efforts basis. The limited partnership will not buy or sell financial instruments and it is not expected that the funds placed on deposit will be used directly in such transactions, rather the trading partner will seek a potential purchaser of the financial instrument, and at such time as the purchase is confirmed will then identify the seller. The limited partnership's funds on deposit will be combined with funds from other sources and serve as a guarantee to the seller that the financial institution will be able to effect the purchase. The trading party will not arrange for the purchase of a financial instrument unless the ultimate purchaser has been identified and payment effected by that party. The financial institution will realize a profit on the transaction based on the spread between the price at which the financial institution buys the financial instrument and the price at which it immediately thereafter sells the financial instrument. A similar process will be followed when the trading partner first identifies a potential seller of the financial instrument as oposed to a purchase."

(9) I simply reject that Mr. and Mrs. Wall had any belief in the viability of this scheme based on this fundamental contradiction between the assertion of no risk and the assertion of placing these funds on guarantee.

(10) I find that Mr. and Mrs. Wall made a series of misrepresentations designed to mislead investors with respect to this risk, and indeed to take the risk.

(11) Turning to the sale of the investment scheme, to sell this scheme, the Investment Lending Programme and Summaries were prepared either in the Wall's office or forwarded from there. They were forwarded to clients and various brokers. No effort was made to screen the investment so that only sophisticated investors were solicited. No effort was made to ensure that only those who could afford such significant losses were solicited.

(12) Indeed, the evidence is conclusive and nearly complete that all of the investors were neither sophisticated (but naive), nor rich (but poor) or, at least, dependent upon the little money they had.

(13) The Walls told some people that they were themselves investing in this. They were not. Others were told to borrow money to invest in this scheme.

(14) As noted above, the Investment Lending Programme One and Two and Summaries were finally admitted, for the most part, to be misrepresentations.

(15) The short point, here, was that the documentation was prepared, either by the Walls or someone else, but it was accepted by the Walls, reviewed by the Walls and went out on their letterhead. It went to their clients. It was

prepared, in my view, quite deliberately to highlight the selling points. Those selling points were false. The Walls knew they were false.

(16) The Programme was not only sold by written falsehoods, but also orally, evidence dramatically points to the equal participation of both Warren and Joan Wall. Mrs. Wall, on that evidence, perhaps played somewhat of an unique role in convincing people, particularly women, to invest in this programme.

(17) What was the conduct after December 17th, 1996, the start of the Ontario Securities investigation?

(18) Well, there is no doubt that there is some bad blood between the secretary, Ms. Alderman and the Walls. I accept her evidence in all essential aspects, notwithstanding the attempts by the Walls, in my view, to seduce, co-op and buy her silence over the years of her employment.

(19) She told us the truth when she said the following. First, that the computer records were deleted to remove them from the grasp of the Ontario Securities Commission. Second, the hard copy records were put into garbage bags so they could be destroyed. Third, she was told to lie to the Ontario Securities Commission as to what happened to those records. And fourth, Exhibit Two(d) was created to falsely provide the Ontario Securities Commission with the impression there were only 24 investors, and that the Walls through D.F. Group had personally invested $440,000.00.

18. It is the position of Staff that the conduct alleged above, and the conviction of the respondents, Dual Capital, Warren Wall and Joan Wall of the offences outlined above, constitutes conduct contrary to the public interest.

19. Such additional allegations as counsel may advise and the Commission may permit.

DATED at Toronto this 30th day of April, 2003.