

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

- and -

IN THE MATTER OF W. JEFFERSON T. BANFIELD

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

Further to a Notice of Hearing dated July 14, 2004, Staff of the Ontario Securities Commission makes the following allegations:

Background

1. The respondent, W. Jefferson T. Banfield (“Banfield”), was registered under Ontario securities laws as the trading and advising officer of Banfield Capital Management Inc. (“Banfield Capital”) from May 1997 to December 2001. Banfield Capital was registered as a limited market dealer, investment counsel and portfolio manager under Ontario securities laws from May 1997 to December 2001. Banfield was a director and majority shareholder of Banfield Capital during the Material Time. The Material Time in this matter is the years 2000 and 2001.
2. Banfield Capital provided investment advice to Banfield Capital Management General Partner Ltd. (“BCM General Partner Ltd.”). Banfield was the president of BCM General Partner Ltd., which was a company incorporated under the laws of Ontario.

3. BCM General Partner Ltd. was the General Partner of a limited partnership called the BCM Arbitrage Fund. Banfield wound up the BCM Arbitrage Fund in 2001. He has not been registered in any capacity under Ontario securities law as of December 31, 2001.

BCM Arbitrage Fund - Partnership Organization

4. BCM Arbitrage Fund (also referred to herein as the “Partnership”) was a limited partnership formed under the laws of Ontario. The purpose of the Partnership was to engage in various investment strategies. High net worth individuals and institutions purchased units of the Partnership pursuant to an offering made in June 1997.

5. Banfield Capital was the investment advisor of the BCM Arbitrage Fund. As such, Banfield Capital was responsible for the investment and reinvestment of the Partnership’s assets.

6. Banfield Capital had several employees during the Material Time. Banfield had authority for all trading by Banfield Capital and was responsible for all significant decisions in relation to the investment strategies for the BCM Arbitrage Fund.

BCM Arbitrage Fund – Investment Strategy

7. The investment objective of the Partnership was described in the 1997 Offering Memorandum filed by BCM Arbitrage Fund as follows:

The Partnership will engage in various hedged and arbitrage related investment strategies with the objective of earning above average rates of return by exploiting market inefficiencies. The Partnership seeks to meet its objective by investing in a variety of financial instruments and emphasizing hedging techniques to earn attractive rates of return with minimal correlation to the price fluctuations in the equity and bond markets. Generally, the Partnership will invest in equity and equity-linked securities. The Partnership will seek to reduce overall risk and raise the rate of return by using various styles of hedging.

Burntsand Inc.

8. Burntsand Inc. (“Burntsand”) is a corporation incorporated under the laws of British Columbia. During the Material Time, Burntsand was an electronic business

solutions integration firm maintaining its head office in Vancouver, British Columbia. Burtsand was a reporting issuer in Ontario and other provinces. The common shares of Burtsand were listed and posted for trading on The Toronto Stock Exchange (the “TSX”).

Burtsand Special Warrant Financing in February 2000

9. In February 2000, Goepel McDermid Inc. (“Goepel McDermid”), then a registered dealer, and Burtsand engaged in discussions about a proposed special warrant financing of Burtsand.

10. On February 16, 2000, Burtsand sought “price protection” from the TSX for an offering of special warrants based on the \$8.20 closing price of its common shares on February 15, 2000.

11. On February 21, 2000, Burtsand executed an engagement agreement with Goepel McDermid, together with other firms (the “Underwriters”) under which Burtsand proposed to raise approximately \$45 million by issuing 4,285,714 special warrants priced at \$10.50 each (referred to as the “Burtsand Special Warrants Offering”).

12. Pursuant to subsections 619(a) and (b) and 622 of the TSX Company Manual, special warrants exchangeable into listed common shares may be issued at a discount to the closing price of the common shares of the TSX on the day before the date on which price protection is sought. Each special warrant would entitle the holder to acquire one common share without additional payment.

13. By means of a press release dated February 22, 2000, Burtsand publicly announced that it signed an agreement with the Underwriters pursuant to which Burtsand agreed to issue 4,285,714 Special Warrants to the Underwriters at a price of \$10.50 per Special Warrant for total gross proceeds of \$45,000,000.

14. In addition, Burtsand announced on February 22, 2000 that certain members of senior management of Burtsand agreed to sell 1,200,000 common shares to the purchasers of the Special Warrants (the “Secondary Offering”).

Pre-Marketing of Burtsand Special Warrants Offering by Goepel McDermid

15. On February 17, 2000, Burtsand made a road show presentation in Toronto at the office of Goepel McDermid to selected institutional investors. An employee of Banfield Capital other than Banfield was in attendance. The presentation dealt with the nature of Burtsand’s business in general terms. On or about February 17, 2000, following the road show presentation, Goepel McDermid salespeople engaged in the pre-marketing of the Burtsand Special Warrants Offering.

16. As of 5:00 p.m. (EST) on Friday, February 18, 2000, Goepel McDermid recorded expressions of interest by 29 institutional investors for the proposed Burtsand Special Warrants Offering. The expressions of interest were in excess of \$85 million. Goepel McDermid recorded on February 18, 2000 Banfield Capital’s expression of interest in the amount of \$2 million in respect of the proposed Burtsand Special Warrants Offering.

17. Goepel McDermid contacted Banfield Capital at some time prior to 5:00 p.m. EST on February 18, 2000 to solicit its interest in the proposed Burtsand Special Warrants Offering, and Banfield Capital expressed its interest. Banfield Capital received information from Goepel McDermid concerning the approximate size of the proposed Burtsand Special Warrants Offering, and that the special warrants would be priced in the context of the market.

Banfield Capital’s Short Sales¹ in Burtsand Common Shares

18. On Friday February 18, 2000 at or shortly after 2:40 p.m., Banfield contacted Credit Suisse First Boston Canada (“CSFBC”), a registered dealer, and placed an initial order with CSFBC to short sell 50,000 shares of Burtsand on behalf of the BCM Arbitrage Fund. The order was filled at an average price of \$13.904. Banfield increased

¹ Short selling is defined as the sale of securities that the seller does not own. (Canadian Securities Course Textbook Volume 1, Winter 2004, prepared and published by the Canadian Securities Institute).

the order later in the day to include the short sale of an additional 50,000 shares of Burtsand. The average price for the short sale of the 100,000 Burtsand shares was \$13.858.

19. On Monday February 21, 2000, Banfield acquired 193,500 Burtsand Special Warrants at an average price of \$10.50 per unit for a total cost of \$2,031,750 for the BCM Arbitrage Fund. Each of the Special Warrants was exercisable into one common share of Burtsand at no additional cost. In addition, Banfield purchased 45,800 common shares of Burtsand in respect of the Secondary Offering referred to in paragraph 14 above for the BCM Arbitrage Fund.

20. On Monday, February 21, 2000 at 11:31 a.m., Banfield contacted CSFBC and placed an order to short sell 50,000 common shares of Burtsand on behalf of the BCM Arbitrage Fund. By the close of trading, Banfield had sold short an additional 43,300 shares of the 50,000 short sale order at an average price of \$13.315 on behalf of the BCM Arbitrage Fund.

21. Banfield was aware of material facts concerning the proposed Burtsand Special Warrants Offering prior to it being publicly disclosed on February 22, 2000. Goepel McDermid was in a special relationship with Burtsand prior to the public disclosure of the Offering on February 22, 2000. The information concerning the proposed Burtsand Special Warrants Offering were material facts which had not been generally disclosed until the announcement by Burtsand of the Special Warrants Offering on February 22, 2000. Banfield was deemed to be in a special relationship with Burtsand within the meaning of subsection 76(5)(e) of the Act.

22. Pursuant to subsection 76(1) of the Act, no person or company in a special relationship with a reporting issuer shall purchase or sell securities of the reporting issuer with knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed. As a result, Banfield, on behalf of the BCM Arbitrage Fund, engaged in short sales in shares of Burtsand on February 18 and 21, 2000 in circumstances which constitute a violation of subsection 76(1) of the Act.

23. Banfield authorized the BCM Arbitrage Fund to sell short 143,300 Burntsand common shares on February 18 and 21, 2000, at an average price of \$13.694, and on February 22, 2000 purchase Burntsand special warrants at a price of \$10.50 (which warrants were exercisable by the BCM Arbitrage Fund, without additional payment into common shares on a one-for-one basis). By engaging in the short sales described above, Banfield effected a strategy to lock in net profits for the BCM Arbitrage Fund. BCM Arbitrage Fund made a profit of \$136,865.00 calculated in accordance with paragraph (b) of subsection 122(6) of the Act.

24. Banfield disclosed the Burntsand short sales to the TSX in Banfield Capital's response to the TSX's Private Placement Questionnaire and Undertaking.

Kasten Chase Applied Research Limited – Special Warrant Financing

25. Kasten Chase Applied Research Limited ("KCA") is a corporation incorporated under the *Business Corporations Act* (Ontario). KCA develops and applies technology to provide secure remote access to computer networks. During the Material Time, KCA was a reporting issuer in Ontario and other provinces. The common shares of KCA were listed and posted for trading on the TSX.

26. On February 11, 2000, KCA executed an engagement agreement with Yorkton Securities Inc. ("Yorkton") under which KCA proposed to raise \$5 million by issuing 4 million special warrants priced at \$1.25 each (referred to herein as the "KCA Special Warrants Offering"). Pursuant to subsections 619(a) and (b) and 622 of the TSX Company Manual, special warrants exchangeable into listed common shares may be issued at a discount to the closing price of the common shares on the TSX on the day before the date on which price protection is sought. Each special warrant was to entitle the holder to acquire one common share of KCA and one warrant to acquire one-half of one common share at an exercise price equal to \$1.75 per common share.

27. By means of a press release dated February 11, 2002, shortly after 4 p.m., KCA publicly announced that it had entered into an agreement with Yorkton relating to the offering of \$5 million KCA special warrants.

28. Between 12:54 p.m. and 1:30 p.m. on February 11, 2000, Yorkton's institutional salespeople solicited subscription orders for the KCA Special Warrants Offering from Banfield Capital.

29. On February 11, 2000, prior to the public disclosure of the KCA Special Warrants Offering, Banfield placed a subscription order for BCM Arbitrage Fund for 250,000 KCA special warrants. Banfield's requested allotment was reduced to 134,000 KCA special warrants priced at \$1.25 because of the excess demand for the KCA Special Warrants Offering.

Banfield Capital's Short Sales in KCA Common Shares

30. On February 11, 2000, prior to the opening of the market, Banfield had a discussion with a member of Yorkton concerning KCA. During the discussion Banfield attempted to place an order with Yorkton, prior to the market opening, to short sell 50,000 KCA that morning. The Yorkton employee declined to take Banfield's order.

31. Banfield then placed an order with Versus Brokerage Services Inc. (now E* Trade Canada Securities Corporation) to sell 10,000 KCA shares for the BCM Arbitrage Fund at a price of \$2.00 at approximately 9:37 a.m. on February 11, 2000. Versus Brokerage did not inquire whether or not Banfield held a long position in KCA through any of Banfield Capital's trading accounts. Banfield also placed an order with CSFBC to sell for the BCM Arbitrage Fund 50,000 shares of KCA at market price at approximately 9:40 a.m. on February 11, 2000. Banfield amended the order placed with CSFBC to increase the order to sell 100,000 KCA shares for the BCM Arbitrage Fund. CSFBC executed the order for the sale of the 100,000 KCA shares at an average price of \$2.2601. The CSFBC trader did not inquire whether or not Banfield held a long position in KCA through any of Banfield Capital's trading accounts.

32. At the time Banfield placed the orders with Versus and CSFBC to sell the KCA common shares, Banfield did not disclose to either dealer that the BCM Arbitrage Fund did not own the KCA shares. In failing to declare short sales by the BCM Arbitrage Fund

in respect of the orders for the sale of 110,000 KCA shares, Banfield contravened section 48 of the Act.

Conduct Contrary to the Public Interest

33. It is the position of Staff that Banfield's conduct was contrary to the public interest in that Banfield engaged in trading in securities of Burtsand with knowledge of a material fact or material facts which had not been generally disclosed, contrary to section 76(1) of the Act, and in failing to declare short sales in respect of the orders Banfield placed with Versus and CSFBC for the sale of 110,000 KCA shares by BCM Arbitrage Fund, contrary to section 48 of the Act.

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

Dated at Toronto this 14th day of July, 2004