

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

**- and -**

**JAMES ANDERSON**

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

Further to a Notice of Hearing dated June 15, 2004, Staff of the Ontario Securities Commission (the "Commission") makes the following allegations:

**A. The Respondent**

1. James Anderson ("Anderson") is a partner and director at Savoy Capital Management Ltd. ("Savoy"), and is at present registered in Ontario as an extra-provincial investment counsel, junior portfolio manager, and officer (non-advising, non-resident). During the material time Anderson, on behalf of Savoy, acted as an analyst/trader of Gladiator Offshore Fund Limited ("GOFL") and Gladiator Limited Partnership ("GLP").

**B. The Bioscrypt Offering**

2. By letter dated October 11, 2001, Bioscrypt Inc. ("Bioscrypt"), a reporting issuer in Ontario, listed and posted for trading on the Toronto Stock Exchange ("TSX"), under the trading symbol "BYT" was advised by National Bank Financial Inc. ("NBF") that a syndicate of agents would be formed to work with Bioscrypt in connection with a proposed private placement of special warrants (the "Offering"). NBF agreed to invite Paradigm Capital Inc. ("Paradigm"), as well as other securities dealers, to act as an agent. The letter specified that Paradigm was

- to be allocated 42.5% of the Offering and that the terms of the Offering were to include the following: that the special warrant would be exercisable for no additional consideration into a common share; that the Offering would be for gross proceeds of \$10 million; that the agents would market the Offering on a best efforts basis; that the Offering would close on November 13, 2001; and that the agents' commission would be 6.5% of the gross proceeds of the Offering, as well as compensation options. On October 12, 2001 the President and CEO of Bioscript, Pierre Donaldson ("Donaldson"), accepted the terms and conditions set out in the October 11, 2001 letter, subject to a minor amendment specifying that only 5% commission would be paid in connection with gross proceeds received from insiders.
3. On October 17, 2001, a meeting was held at the offices of NBF attended by the members of the syndicate, including Paradigm, and management of Bioscript. At this meeting, a dry run was held of the presentation which was to be given during a cross country "road show" which was to commence on October 22, 2001. The dry run included the presentation of the Terms of the Issue (the "Terms") which specified the nature of the security being offered (special warrants), the size of the Offering (approximately \$10 million, of which \$1 million had been committed to by Donaldson), the closing date (November 13, 2001), the escrow conditions, and the agents on the Offering.
  4. By letter dated October 17, 2001, Bioscript made an initial request to the TSX to grant price protection in respect of the Offering, noting that the closing price of Bioscript's common shares on October 16, 2001 was \$2.38. In a further letter to the TSX dated October 22, 2001, Bioscript provided additional details in respect of the terms of the proposed Offering including the fact that insiders of Bioscript intended to participate in the Offering. By letter dated October 26, 2001 the TSX confirmed that price protection had been granted by the TSX to yield a minimum issue price of \$2.12 per special warrant. A subsequent amendment of the price protection was sought by Bioscript on October 30, 2001 in order to reflect the closing price of Bioscript's common shares of \$1.95 on October 29, 2001. The TSX granted the amendment, but only in respect of arm's length purchasers of the Offering. As a result, the special warrants were ultimately issued to arm's length purchasers at \$1.60, and to insiders (i.e. Donaldson) at \$1.74.
  5. In the period October 22, 2001 to October 30, 2001 the road show was conducted. A series of presentations to market the Offering were made to various institutional investors in Montreal, Toronto, Winnipeg and Vancouver by senior officers of Bioscript, and representatives from the syndicate. At these meetings, the Terms of the Offering were discussed with the would-be investors. In addition to the formal "road show" presentations, during this same period, the members of the syndicate also solicited the interest of institutional investors via telephone communications.
  6. On November 2, 2001 Bioscript issued a press release in respect of the Offering

announcing that NBF, as lead agent, together with Paradigm as co-lead, and two other securities dealers, had agreed to act as agents on a “best efforts” basis in connection with a private placement of \$10 million of Special Warrants to be issued at \$1.60 each. The private placement closed on November 14, 2001.

**C. Anderson Purchases Special Warrants on Behalf of the GLP and GOFL**

7. Savoy did not participate in a formal road show presentation in connection with the Offering. In the period between October 11, 2001 and November 2, 2001 there were several telephone communications between Anderson and Patrick McCarthy (“McCarthy”), an institutional salesperson at Paradigm, who was, among other things, soliciting expressions of interest in the Offering.
8. As of October 30, 2001, the Bioscrypt “Soft Book” maintained by Paradigm in respect of the Offering recorded that Savoy had expressed an intention to purchase 150,000 special warrants pursuant to the Offering. When the Offering closed, Savoy purchased a total of 125,000 special warrants: 95,000 on behalf of GLP and 30,000 on behalf of GOFL at a price of \$1.60 per special warrant.

**D. Anderson Sells Short Shares in Bioscrypt**

9. In the period October 17, 2001 to November 2, 2001, at the same time that McCarthy was soliciting Anderson’s interest in the Offering, Anderson sold short 125,000 shares of Bioscrypt on behalf of two funds managed by Savoy (the GLP and the GOFL). These short sales were transacted in a Savoy account at TD Newcrest. The particulars respecting these short sales are as follows:

|             | <b>Trade Date</b> | <b>Settlement Date</b> | <b>Quantity</b> | <b>Price</b> |
|-------------|-------------------|------------------------|-----------------|--------------|
| a) Re: GLP  | October 17, 2001  | October 22, 2001       | 56,000          | \$2.37       |
|             | October 31, 2001  | November 5, 2001       | 33,800          | \$2.03       |
|             | November 2, 2001  | November 7, 2001       | 5,200           | \$1.70       |
| b) Re: GOFL | October 17, 2001  | October 22, 2001       | 19,000          | \$2.37       |
|             | October 31, 2001  | November 5, 2001       | 9,500           | \$2.03       |
|             | November 2, 2001  | November 7, 2001       | 1,500           | \$1.70       |

**E. Conduct Contrary to the Public Interest**

10. It is the position of Staff that Anderson acted contrary to the public interest by selling short shares of Bioscrypt with knowledge of a material fact which had not been generally disclosed, contrary to s.76(1) of the Act;
11. Staff reserves the right to make such further allegations as Staff may advise and the Commission may permit.

Dated: June 15, 2004