

Re TD Waterhouse Canada Inc

IN THE MATTER OF:

**THE DEALER MEMBER RULES OF THE
INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA**

AND

THE BY-LAWS OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA

AND

TD WATERHOUSE CANADA INC

2008 IIROC 3

Investment Industry Regulatory Organization of Canada
Hearing Panel (Ontario District)

Heard: June 25, 2008 in Toronto, ON

Decision: June 26, 2008

(2 paras.)

Hearing Panel:

Mr. Terrance Sweeney

Mr. David Kerr

Mr. Michael Walsh

Appearances:

Ms. Tamara Brooks, Enforcement Counsel

Ms. Laura Paglia, Respondent's Counsel

DECISION

1. This hearing proceeded pursuant to a Settlement Agreement as a joint submission. The Settlement Agreement is reproduced below:

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The Enforcement Department Staff ("Staff") of the Investment Industry Regulatory Organization of Canada ("IIROC") has conducted an investigation ("the Investigation") into the conduct of TD Waterhouse Canada Inc. ("the Respondent").
2. The Investigation was commenced by Enforcement Department Staff ("IDA Staff") of the Investment Dealers Association of Canada ("IDA") prior to May 30, 2008. On June 1, 2008,

IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada and Market Regulation Services Inc. With respect to conduct of IDA registrants occurring before June 1, 2008, the IDA has retained IIROC to provide services necessary for the IDA to carry out its regulatory functions pursuant to the *Administrative and Regulatory Services Agreement* between the IDA and IIROC.

3. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No. 1, Schedule C.1, Part C (“the Hearing Panel”).

II. JOINT SETTLEMENT RECOMMENDATION

4. The Respondent consents to be subject to the jurisdiction of IIROC.
5. Staff and the Respondent consent and agree to the settlement of these matters by way of this settlement agreement (the “Settlement Agreement”) in accordance with IIROC Dealer Member Rule 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.
6. The Settlement Agreement is subject to acceptance by the Hearing Panel.
7. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
8. The Settlement Agreement will be presented to the Hearing Panel at a hearing (“the Settlement Hearing”) for approval. Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.
9. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her/its right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
10. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement; or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.
11. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
12. Staff and the Respondent agree that if the Hearing Panel accepts the Settlement Agreement, they, or anyone on their behalf, will not make any public statements inconsistent with the Settlement Agreement.
13. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

III. STATEMENT OF FACTS

(i) Acknowledgement

14. Staff and the Respondent agree with the facts set out in this Section III and acknowledge that the terms of the settlement contained in the Settlement Agreement are based upon those specific facts.

(ii) Factual Background

15. The investigation by Staff was commenced in response to an investigation by the Ontario Securities Commission (“OSC”) into the trading of shares of a security listed on the U.S. Over-the-Counter Bulletin Board (“U.S. OTC-BB”) quotation system. As a result of Staff’s own investigation, it was determined that the Respondent discount brokerage did not have proper written procedures and systems in place to review customer trading and accounts in relation to the receipt of speculative over-the-counter securities and the detection of suspicious activity, contrary to Association Policy No. 9.
16. From January to September, 2006, the Respondent discount brokerage had been accepting transfers directly from U.S. transfer agents without consideration for securities trading on the U.S. OTC-BB markets. The Respondent’s discount brokerage clients initiated transactions to transfer in U.S. OTC-BB shares by providing the Investor Services Centre with an account number, security name and quantity as well as a Deposit/Withdrawal at Custodian (“DWAC”) reference number. Once client instructions were matched against DWAC instructions, the shares would be placed into the client account.
17. IDA policy 9 provided discount brokerages a reference to IDA Policy 2 criteria for review of trading for concerns other than suitability. As of June 13, 2007, the Respondent discount brokerage has changed its policies and procedures to reflect the risks involved in the U.S. OTC-BB and speculative securities markets and no longer accept transfers directly from transfer agents for securities trading on these markets. Exceptions to the Respondent discount brokerage’s policy can be granted pursuant to a new protocol directed at monitoring the transactions through stringent processes that require management approvals. Further, all DWAC transfers must now be closely monitored with similar policies and procedures designed to facilitate the monitoring and reporting of suspicious activity.
18. The Respondent has co-operated with Staff in the investigation of all of these matters.

IV. CONTRAVENTIONS

19. The Respondent admits to the following contraventions of IIROC Rules, Guidance, IDA By-Laws, Regulations or Policies:
 - a) In the period January to September, 2006, the Respondent discount brokerage failed to have written procedures and systems in place to review customer trading and accounts in relation to the receipt of speculative over-the-counter securities and the detection of suspicious activity, contrary to IDA Policy 9.

V. TERMS OF SETTLEMENT

20. The Respondent agrees to the following terms of settlement:
 1. A fine in the amount of \$25,000
21. The Respondent shall pay a portion of Staff’s costs of this proceeding in the amount of \$8,500.
22. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.

23. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

AGREED TO by the Respondent at the City of Toronto in the Province of Ontario, the 19th day of June, 2008.

Original Executed by

“Witness Signature”

“John See”

“WITNESS”

“TD WATERHOUSE CANADA INC.”

AGREED TO by Staff at the City of Toronto in the Province of Ontario this 20th day of June, 2008.

“Kathryn Andrews”

“T. Brooks”

“WITNESS”

“TAMARA BROOKS”

Kathryn Andrews

Enforcement Counsel on behalf of Staff
of the Investment Industry Regulatory
Organization of Canada

2. We are of the opinion that the Settlement Agreement is fair to both parties. The Settlement Agreement is, therefore, approved and we accept it.

DATED at Toronto, this 26th day of June, 2008.

Terrance Sweeney, Panel Chair
David Kerr, Panel Member
Michael Walsh, Panel Member

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