

INVESTMENT DEALERS ASSOCIATION OF CANADA

IN THE MATTER OF:

**THE BY-LAWS OF THE INVESTMENT DEALERS
ASSOCIATION OF CANADA**

AND

**STANDARD SECURITIES CAPITAL CORPORATION
AND MARK MARCELLO**

**REASONS FOR ACCEPTANCE OF SETTLEMENT AGREEMENT
BY THE ONTARIO DISTRICT COUNCIL OF THE INVESTMENT DEALERS
ASSOCIATION OF CANADA**

Hearing Date: January 30, 2008

Panel:

Paul M. Moore, Q.C., Chair

Norman Fraser

Donald Grant

Enforcement Counsel:

Natalija Popovic

Respondents' Counsel:

Phil Anisman

Also present:

Michael Arthur, Enforcement Officer

February 11, 2008

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Reasons for Acceptance

[1] The panel accepted the settlement agreement between staff of the Association and the respondents.

[2] We had jurisdiction to reject the settlement agreement if we concluded it was not sufficient in the public interest. We did not have jurisdiction to amend the settlement agreement, although the parties were free to follow our suggestion for change.

[3] Counsel took us through the settlement agreement and advised us that the settlement had been negotiated at length. We had several questions all of which were satisfactorily answered by counsel.

[4] Initially, we were of the view that, as part of the settlement agreement, the respondent, Mr. Marcello, should have agreed to retake the PDO (partners, officers and directors) examination.

[5] We accepted counsel's assertions that the problems faced by Mr. Marcello arose from employees that had since been dismissed from the company. There were no questions of his ethics or integrity. We were assured by Association staff that under Mr. Marcello's direction, Standard had made considerable progress in addressing issues raised by certain sales compliance reviews and that in the judgment of staff, there was little, if any, value in requiring Mr. Marcello to undertake further training at this time.

[6] We were satisfied that the penalties provided in the settlement agreement without a requirement for Mr. Marcello to retake the PDO exam did not fall outside a reasonable range of appropriateness under all the circumstances of this case.

Background

[7] The matters in issue in this matter were related to supervision of accounts and trading.

[8] Standard was fined \$80,000 by RS Inc. pursuant to a settlement agreement between RS and Standard that related to certain events arising from the conduct of the same individuals that were responsible for the events that caused concern about the level of supervision in the matter before us.

[9] According to the settlement agreement the Association's sales compliance staff carried out a sales compliance review at Standard in 2004. This resulted in a report (the 2004 report) that was issued to Standard in January 2005.

[10] The 2004 report listed a number of deficiencies together with requirements to address the deficiencies.

[11] Repeat deficiencies from previous years (2000 and 2002) were identified in the 2004 report. These repeat deficiencies had also been identified on an unannounced site visit to Standard's offices by staff of the Association on January 13, 2004.

[12] We were advised that there have been two sales compliance staff reviews since 2004. The latest was completed in December, 2007 (the 2007 review) although the report of it is not yet available.

[13] We were assured by staff of the Association and of the respondents that continual progress at cleaning up matters occurred after deficiencies were identified in 2000-2002 and again following the 2004 report.

[14] Although the sanctions provided for in the settlement agreement require Standard to engage a compliance consultant to evaluate its compliance program and make recommendations, if necessary, with a view to addressing any issues identified in the sales compliance reviews that remain outstanding after the 2007 review is reported on, in staff's view, there should be little if any matters left to be cleaned up because of the progress already made by Standard. We were advised that the requirement of a sales compliance consultant is a failsafe provision to be sure that all matters have been cleaned up.

[15] We were assured that all individuals directly responsible for problems identified at Standard, and in particular those individuals on whom Mr. Marcello had relied, have been replaced or otherwise dismissed. Indeed the underwriting department, where many of the problems occurred, no longer exists.

Sufficiency of the Sanctions

[16] We reviewed with counsel the methodology followed in arriving at the amount of the fines agreed to in the settlement agreement. The parties looked at the suggested guidelines of the Association, including the minimum amount of \$50,000 for supervisory problems. They also looked at other regulatory guidelines.

[17] We were referred to Brant Securities Ltd., Re [2004] I.D.A.C.D. No. 20, Bulletin No. 3284, May 12, 2004., Gordon (Re) MG Securities Inc., [2006] I.D.A.C.D. No. 16, Bulletin No. 3545, May 25, 2006, Ing (Re) Edward Inc., [2004] I.D.A.C.D. No. 3283, May 11, 2004, Dunn (Re) [2004] I.D.A.C.D. No. 22, Bulletin No. 3288, May 18, 2004 and Graham (Re) [2005]

I.D.A.C.D. No. 21, Bulletin No. 3434, June 23, 2005. Although the circumstances of each of these settlements were slightly different from those in the settlement agreement before us, the fines, when considered together with the fines agreed to be paid to RS on the RS settlement, are, with the exception of Gordon, reasonably consistent.

[18] We noted that in the Gordon settlement, staff's position had been that the total amount of the fine imposed, i.e. \$400,000, was appropriate in the circumstances because it was approximately two times the amount of money that the respondent had saved by not investing in sufficient compliance resources at the appropriate time. In the settlement agreement before us there was no question of savings by Standard not investing in sufficient compliant resources.

[19] Finally, with regard to the amount of the fines, we noted that Standard is a small firm and that, although it has made a profit in its latest period, it has had losses in previous periods. Consequently, the fines under the RS settlement agreement and the IDA settlement agreement together with costs are significant to it and will make a sufficient impact so that they will be a specific deterrence for Standard. Similarly, we were satisfied that, for Mr. Marcello, the three months suspension and the fines, as well as the payment of costs, will be a significant deterrence.

[20] We understand that a copy of the settlement agreement will be published by the Association, together with a copy of these reasons.

DATED at Toronto this 11th day of February, 2008.

Executed on original by:

"Paul M. Moore, Q.C."
Paul M. Moore, Q.C.

"Norman Fraser"
Norman Fraser

"Donald Grant"
Donald Grant