

Contact:

Kenneth J. Kelertas
Enforcement Counsel
(416) 943-5781

For distribution to relevant parties within your firm

BULLETIN # 3306

July 9, 2004

Discipline

Discipline Penalties Imposed on David Loftus – Violations of By-law 29.1

Person Disciplined The Ontario District Council of the Investment Dealers Association (the Association) has imposed discipline penalties on David Loftus, at the relevant time a Vice-President, Director, and Registered Representative (Options), at Thomson Kernaghan and Co. Limited (“T.K.”), a Member of the Association.

By-laws, Regulations, Policies Violated On June 21st, 2004, the Ontario District Council considered, reviewed and accepted a Settlement Agreement negotiated between Mr. Loftus and Staff of the Enforcement Department of the Association.

Pursuant to the Settlement Agreement Mr. Loftus admitted that between September 1999 and January 2000 inclusive, he failed to ensure that investments in a private placement made on behalf two investment clubs complied with the provisions of the Securities Act, R.S.O. 1990 c. S. 5, as amended, and thereby engaged in business conduct or practice unbecoming a registered representative or detrimental to the public interest, contrary to Association By-law 29.1.

Penalty Assessed The discipline penalties assessed against Mr. Loftus were:

- a fine in the amount of \$25,000;
- a suspension from approval in any capacity with any Member of the Association for a period of eight weeks, commencing on June 28th, 2004 to August 20th, 2004 inclusive;
- within three (3) months of the effective date of the Settlement Agreement, rewrite and pass the examination based on the Conduct and Practices Handbook for Securities Industry Professionals administered by the Canadian Securities Institute. Evidence of successful completion of the examination must be presented to the Association; and
- costs of the Association’s investigation and prosecution of this matter in the amount of \$7,500.

Summary
of Facts

At all material times, Mr. Loftus was employed at Thomson Kernaghan and Co. Limited ("T.K.") as a Vice-President, Director, and Registered Representative (Options). Upon the suspension of T.K. by the Association in July 2002, his employment was terminated. Mr. Loftus is currently employed as a Trading Officer (Vice-President) and Registered Representative (Options) at Canaccord Capital Corporation.

The violations of the Ontario Securities Act to which Mr. Loftus has admitted revolve around the investments made by two investment clubs that Mr. Loftus established at Thomson Kernaghan & Co. Limited in September and October 1999.

The first investment club consisted of 14 members, of all of whom (save one), had individual investment accounts with Loftus at T.K. The other investment club account was a pro-account. The members of the club were all T.K. employees.

The purpose of the investment club accounts was to invest in a private placement of debentures issued by EQuest One Corporation, a non-resident Delaware corporation (Equest) which owned 100% of eQuest Canada, a Canadian corporation.

The private placement was handled by T.K., and had been issued under the prospectus exemptions contained in subsections 72(1)(a), (c), (d) of the Ontario Securities Act.

The only exemption from the prospectus requirements under the Securities Act that applied to the members of the investment clubs was section 72(1)(d), which provides an exemption if the purchaser purchases as principal and the purchase is in a security which has an aggregate acquisition cost to each purchaser of not less than \$150,000.

This exemption was more fully explained in Ontario Securities Commission Rule 45-501. Section 3.4 of that Rule provided that the registration and prospectus exemption provided in section 72(1)(d) of the Act was unavailable for a trade in a security if the purchasing entity is an investment club, unless the share or portion of each member of the investment club of the aggregate acquisition cost to the investment club of the securities being purchased is at least \$150,000.

All of the individual investors in the investment club accounts invested less than \$150,000 CDN. The total investment in EQuest by the 14 members of the first club amounted to \$286,922.49 U.S., for an average investment per member of \$20,494.46 U.S.. The total investment in EQuest by the eight participants in the pro account totaled \$144,931.09 U.S., for an average investment per person of \$18,116.39 U.S.

Loftus had been in the industry since November 1988, and as noted above was a Director at T.K. As an experienced registrant, Mr. Loftus should have known about the nature of the prospectus exemptions and should have known that they could not be circumvented through an investment club.

Pursuant to Standard D of the Registrant Code of Ethics set out in the Conduct and Practices Handbook Course, all registrants must act in accordance with the Securities Act of the province in which registration is held.

Given the explicit direction provided to market participants in OSC Rule 45-501, Loftus' management of the investment club accounts constituted conduct unbecoming a registered representative or detrimental to the public interest, contrary to Association By-law 29.1.

In terms of penalty, the Settlement Agreement as originally negotiated provided for a fine in the amount of \$30,000, costs in the amount of \$10,000, an eight week suspension from approval, and the requirement that Mr. Loftus successfully re-write the examination based on the Conduct and Practices Handbook for Securities Industry Professionals ("the CPH exam") within three months of the effective date of the Settlement Agreement. The Ontario District Council reduced the fine to \$25,000, and the costs to \$7,500, taking into account the cooperation of Mr. Loftus, and the fact that he did not have a prior disciplinary record. The other conditions -the suspension and the requirement to successfully re-write the CPH exam- were approved by the Ontario District Council as set out in the Settlement Agreement.

Kenneth A. Nason
Association Secretary