INVESTMENT DEALERS ASSOCIATION OF CANADA

bulletin

ASSOCIATION CANADIENNE DES COURTIERS EN VALEURS MOBILIÈRES

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For distribution to relevant parties within your firm

BULLETIN #3332
September 21, 2004

Discipline
Discipline Penalties Imposed on Alan Bruce Alexander Thomson – Violations of By-law 29.1

Person Disciplined

The Pacific District Council of the Investment Dealers Association of Canada (the "Association") has imposed discipline penalties on Alan Bruce Alexander Thomson, who was at all material times a Registered Representative ("RR") at the Vancouver Branch of IPO Capital Corp., a member of the Association.

By-laws, Regulations, Policies Violated

After a hearing held on July 20, 2004 a panel of the Pacific District Council, in a decision dated August 3, 2004, found that Mr. Thomson:

- On 14 occasions distributed Debtor Certificates of Value Software Corporation ("Value") to clients of IPO without a receipt for a prospectus having been issued for those securities contrary to Section 61 of the *Securities Act* of British Columbia or without any exemptions for the requirements of this Section 61 being available for such securities and thereby breached Association By-law 29.1.

- On 3 further occasions distributed Debtor Certificates of Value and recorded the transactions off the books of IPO in breach of Association By-law 29.1.

- Recommended the purchase of and/or accepted orders from clients to purchase the Debtor Certificates without using due diligence to ensure that the securities were a legitimate investment and thereby acted contrary to Association By-law 29.1

Penalty Assessed

The penalties assessed against Mr. Thomson are:

(a) a fine in the amount of $25,000.00;
(b) a 7 year suspension from registration , with no possibility of reinstatement until payment of all monetary penalties and costs has been made;
(c) a condition of re-approval of Mr. Thomson by the Association in any registered capacity that Mr. Thomson re-write and pass the examination based on the *Conduct and Practices Handbook for Securities Industry Professionals* administered by the Canadian Securities Institute.

Mr. Thomson is also required to pay $26,500.00 towards the Association's costs of this matter.

Summary of Facts

Thomson and James Wolff

Mr. Thomson was first employed in the investment industry in 1990. He worked for various members of the Association as a RR until July 31, 1998 when he started his employment with IPO Capital Corp. ("IPO"). He was employed by IPO from July 31, 1998 until June 2, 1999.

While employed by IPO, Mr. Thomson worked with Ron Tremblay ("Tremblay"), a RR also employed by IPO. Mr. Thomson was under pressure from IPO to generate additional commissions. Tremblay introduced Mr. Thomson to James W. Wolff ("Wolff"), a promoter residing in Florida, with whom Tremblay had done business in the past. Wolff was President and CEO of First Internet Capital Inc. ("FI Capital"), an Internet marketing and consulting company formed in 1997 to assist issuers in selling securities to the public.

Wolff's resume disclosed that he had at "various times been a financial advisor to Ferdinand Marcos of the Philippines, the family of the Shah of Iran, and the President of the Republic of Haiti", as well as having "been a banker to such notables as H. Ross Perot of EDS, Dan Lufkin of DLJ, Fred Joseph of Drexel, Harold Goodbody of Goodbody & Co., James Thompson, Chairman of Merrill Lynch, Henry Kravis of KKR, Inc., Neil Austrian, President of the NFL and others too numerous to mention". However, Wolff's resume did not disclose that he had been discharged from personal bankruptcy two years earlier in 1997.

FI Capital was involved in a transaction that Wolff summarized as "In my 30 years of Investment Banking I know of no other deal which (*sic*) there is absolutely no risk and the return is so demonstrable".

The Debtor Certificates

FI Capital was distributing a security called a "Debtor Certificate" which was described in marketing material on FI Capital's letterhead as "a sort of super-creditor debt instrument (court approved) which gives a prior, senior claim on the assets of"" Value, a public company whose shares were listed on the Over the Counter Bulletin Board. Value was a shell company with no assets and was going through Chapter 11 reorganization under the US bankruptcy laws.

The reorganization plan for Value appeared to include the acquisition of a company called AutoFinance Companies of America, Inc. ("AutoFinance"), a privately owned Florida company engaged in the business of financing automotive installment sales contracts. AutoFinance was represented as having a "hard net capital" of $16 million, with nominal debt, and having earned approximately $1.1 million after tax in its previous fiscal year.

The Debtor Certificates bore interest and were capable of being exchanged for "free trading" stock in Value following the completion of the acquisition of AutoFinance.

The marketing material for the Debtor Certificates represented that they were "US Bankruptcy Court approved" and that anyone could buy or sell them. A commission of 10% in cash or stock was to be paid to "Sellers who find Investors". As well, this marketing material offered potential investors the opportunity to make "2, 4, 6 or 8 times your money in a few weeks".

Mr. Thomson's Sales Efforts

Mr. Thomson advised IPO's senior officers that he was marketing the Debtor Certificates to his clients. His memo stated that he was putting together a due diligence package for these securities, that he planned to sell approximately $130,500 of them to clients of IPO, and that the Debtor Certificates could be "marketed in any jurisdiction and without a securities license".

After reviewing the material on the Debtor Certificates provided by Mr. Thomson, IPO advised Mr. Thomson that IPO would not sponsor the sale of the Debtor Certificates, nor would IPO be doing any due diligence or research into the Debtor Certificates. However, IPO authorized Mr. Thomson to sell these securities to clients of IPO provided that such clients were sophisticated, aware of the risk involved, and willing to instruct IPO to forward funds on such clients' behalf.

Mr. Thomson's sales efforts were successful. Mr. Thomson apparently raised between US $252,000 and US $308,000 from IPO clients and from parties who were not clients of IPO.

Funds Transfer Form

The documentation surrounding these sales included a subscription agreement whereby the purchaser subscribed for the Debtors Certificates ("Subscription Agreement") and an authorization ("Funds Transfer Form") signed by each of the purchasing clients authorizing IPO to withdraw monies from that client's account and to transfer these monies in trust to Gerald D'Ambrosio ("D'Ambrosio").

D'Ambrosio was a Florida lawyer whom the Subscription Agreement identified as the attorney-in-fact for both AutoFinance and Value. The Funds Transfer Form instructed IPO to transfer the funds to D'Ambrosio even though the form of certificate for the Debtor Certificates included in the marketing materials specified that such funds were to be held in a segregated account at the offices of Alan R. Smith, the attorney who was representing Value in the bankruptcy proceedings before the US Bankruptcy Court.

IPO's Involvement

Although the decision was made that IPO would not sponsor the marketing of the Debtor Certificates, Mr. Thomson was still required to consult with IPO's Corporate Finance Manager to ensure that IPO was properly compensated. Consequently, Mr. Thomson kept the senior officers of IPO advised of his progress in selling the Debtor Certificates in four memos during the month of April in 1999.

In reply to one of these memos, Mr. Thomson was advised by IPO's Executive Vice-President that Mr. Thomson should ensure that IPO's name not appear on any of the marketing materials used to present the offering. Despite these instructions, communications with client's of IPO who became investors in the Debtor Certificates, including transmittal documents accompanying the Subscription Agreements, were completed on memorandum forms containing the IPO corporate letterhead. As well, the Funds Transfer Forms which were executed by investors and which contained instructions to transfer funds were all on similar memorandum forms containing the IPO corporate letterhead.

On June 2, 1999, Mr. Thomson's employment with IPO was terminated by IPO because he had failed to meet internal sales targets and because he was actively soliciting offers of employment from other employers while employed by IPO.

By facsimile letter dated June 3, 1999 addressed jointly to Value and AutoFinance and to the attention of Wolff, the Executive Vice President of IPO confirmed that the sum of US $228,000 was wired by IPO to D'Ambrosio's trust account on June 1, 1999. This letter requested that the commission of US $22,800, being 10% of the proceeds raised, be paid to IPO. The letter advised that as Mr. Thomson was a RR, he could not receive this commission directly and that it must be "flowed through" IPO. Of any commissions paid from the sale of the Debtors Certificates, Mr. Thomson was to receive 60% and IPO was to receive 40%. No commissions were ever paid.

The Reorganization Plan

Towards the end of June in 1999, the reorganization plan for Value began to unravel. The United States Securities and Exchange Commission ("SEC") intervened in the proceedings concerning Value before the US Bankruptcy Court. The SEC had reviewed the bank statements submitted by AutoFinance which purported to show that AutoFinance had had a continuing cash surplus over the previous year, usually in excess of $1,000,000, and determined that these bank statements had been falsified.

In the month of July in 1999, Value discovered that AutoFinance had essentially ceased doing business some time earlier, that it had no money, and that the entire AutoFinance business was nothing better than a scam. As a result, Value withdrew the reorganization plan from approval by the US Bankruptcy Court on August 13, 1999.

On August 13, 1999, and concurrently with the withdrawal of the reorganization plan, the US Bankruptcy Court ordered D'Ambrosio to continue to hold in trust the money forwarded to him as a result of the sale of the Debtor Certificates by Mr. Thomson. In a subsequent instruction dated September 30, 1999, the Bankruptcy Court instructed D'Ambrosio to turnover and account for all funds held in his trust account in connection with the Debtor Certificates. Unfortunately for the investors, D'Ambrosio was unable to comply with this instruction as he had previously disbursed these funds.

Recovery of Funds

In March of 2000, Mr. Thomson filed a "Complaint of Fraud" against D'Ambrosio with the Department of Lawyer Regulation of the Florida State Bar. This filing by Mr. Thomson subsequently led to a Referee of the Supreme Court of Florida finding that D'Ambrosio had acted intentionally and ordering him to provide each of the investors with the right to receive a full refund of the monies advanced by them to D'Ambrosio.

During the second half of 2002, more than three years after they had initially subscribed for the Debtor Certificates, some of the subscribers received back approximately three quarters of the principal amount of their funds forwarded to D'Ambrosio. It would appear that no further funds will be forthcoming to any parties from Mr. D'Ambrosio.

No Due Diligence

Mr. Thomson acknowledged that he did not perform proper due diligence on any aspect of the investment he was selling. He did not make phone calls, go on location, or further investigate any of the Debtor Certificates, Wolff, D'Ambrosio, Value or AutoFinance. He relied upon Tremblay's high opinion of Wolff. He did go to Florida and meet with Wolff and from that point on relied on Wolff, on Wolff's integrity and on Wolff's representation that he had done extensive due diligence on the parties involved, the Value/AutoFinance transaction and the Debtor Certificates.

The Subscription Agreement and the instructions to transfer funds were forms of documents given to Mr. Thomson by Wolff. Mr. Thomson merely completed these forms with the necessary information for each of the investors.

Decision

In its decision the panel indicated that Mr. Thomson's claims that he is not liable for breaching the Association's rules as he was relying on his employer and on third parties to ensure that all was in order, questions the very role of a RR in the investment industry.

The panel stated that they firmly believe that a RR is required to take reasonable precautions to ensure that the security in which he or she is trading complies fully with all applicable securities laws. Furthermore a RR is required to take reasonable steps to ensure that the security he or she is selling has had a reasonable level of due diligence performed on it. Finally, a RR is required to take reasonable precautions to ensure that any transaction in which he or she is involved is transacted to the benefit of and best interests of his or her client.

Similarly, the panel did not accept as reasonable Mr. Thomson's explanation that he met any duty he might have had to the investors to perform due diligence by relying on his employer and the fact that the investor's monies were going into a lawyer's trust account. He was specifically advised by his employer that IPO was not interested in participating in the offering and therefore was not doing any due diligence whatsoever with respect to the Debtor Certificates. This should have raised a red flag in Mr. Thomson's mind. A prudent person would have taken additional measures to ensure that safeguards were in place to protect his clients.

With respect to his argument that the investors' money was going to D'Ambrosio's trust account, Mr. Thomson missed the point entirely. The issue was not where the money was sent, the issue is whether or not the money should have been sent at all.

By relying entirely on the representations of Wolff, Mr. Thomson completely abrogated his responsibility to his clients to ensure a reasonable amount of independent due diligence was performed with respect to the Debtor Certificates and their investment viability.

Finally, the panel did not believe that Mr. Thomson took reasonable precautions to ensure that the advancement of funds for the purchase of the Debtor Certificates was performed in a manner which was for the benefit of and best interests of his clients. The marketing material which Mr. Thomson himself distributed to his clients stated that the investors' money was to remain in a "Court regulated Escrow Account until April 30". We are unable to comprehend how Mr. Thomson could possibly think that advancing funds to the attorney of the parties on June 1, 1999 could in any measure be in compliance with this provision.

In assessing penalty the panel noted that Mr. Thomson failed miserably in his obligation to his clients to perform due diligence on the securities he was distributing.

However, there were mitigating circumstances. Mr. Thomson had not before been disciplined by the Association. He was operating with the full knowledge and encouragement of his employer. And he had cooperated throughout with the Association in its investigation of this matter. Most importantly, Mr. Thomson did not walk away from the situation. Using his own resources, he pursued D'Ambrosio with the Department of Lawyer Regulation of the Florida State Bar. It was largely due to his efforts that the majority of the money was recovered for the investors in the Debtors Certificates.

But despite his subsequent worthy endeavors, Mr. Thomson still engaged in a very serious breach of the Association's By-laws. Without other factors being present, the panel indicated that it would have we would have imposed a fine in the amount of $70,000 and a suspension of 10 years. However, the panel was impressed by the manner in which Mr. Thomson has employed his own resources and dealt with his clients once he determined that the investment involving the Debtor Certificates was indeed a sham. The panel indicated that such activity should definitely be encouraged.

Kenneth A. Nason
Association Secretary