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

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Discipline

Discipline Penalties Imposed on TD Waterhouse Canada Inc.; Violations of Regulation 1300.2, 1300.1(o) and Policy 2

Person Disciplined

A Hearing Panel appointed pursuant to the Investment Dealers Association of Canada ("IDA") By-law 20 has imposed discipline penalties on TD Waterhouse Canada Inc. (TD), at all material times a Member firm of the IDA.

By-laws, Regulations, Policies Violated

On December 16, 2004, in Toronto, Ontario, a Hearing Panel considered and accepted a Settlement Agreement negotiated between TD and the IDA.

Pursuant to the Settlement Agreement, TD admitted that:

During the period from January 1, 2002 to December 31, 2003, TD failed to implement supervisory systems to address red flags and thereby detect and prevent potentially harmful market timing practices. Specifically, TD failed to implement supervisory systems to:

a) adequately supervise the activities of its employees in these circumstances;

b) conduct adequate due diligence into the activities of its employees and clients, in these circumstances;

c) review and approve the written special arrangements; and

d) enforce, track and distribute the written warnings from mutual fund companies; to enforce its internal policy related to cut-off times for the acceptance and entering of mutual fund orders; and thereby was in violation of Association Regulations 1300.2 and 1300.1(o) and Policy 2.

Penalty Assessed

The total monetary penalty assessed against TD is as follows:

i) a fine in the amount of $10,324,356.69;

ii) disgorgement in the amount of $10,324,356.69; and

iii) costs in the amount of $50,000.00.

In addition to the monetary penalty assessed, TD is required to set up an internal committee to consider how to identify and address emerging issues in the securities industry. TD will consult with the IDA in setting up the mandate of the committee.

Mitigating factors in assessing the penalty included the fact that: the majority of IDA Member Firms did not have policies or procedures in place to detect or prevent market timing and that TD co-operated with the IDA during the course of the investigation.

Summary of Facts

TD acknowledged that from January 1, 2002 to December 31, 2003, it engaged in potentially harmful practices by executing market timing trades for five select retail clients. These clients had written and verbal special arrangements to conduct market timing activities.

During this time period, TD executed in excess of 5,830 trades, involving at least 39 funds within 20 fund companies; one of the funds was TD Canadian Small-Cap Equity Fund. Another fund, TD Mutual Funds, rejected a proposal by TD for a special arrangement to conduct market timing activities.

TD should have been aware that this practice was potentially harmful to long-term unitholders. TD received at least 8 written warnings from 6 mutual fund companies regarding frequent trading by the five retail clients. The written warnings put TD on notice that market timing was potentially harmful to long-term unitholders and was not welcome or permitted by the funds. The written warnings went unheeded or ignored by TD as it continued to execute the market timing activities of the clients.

An internal report prepared by TD concluded that the firm had encouraged and promoted market timing by recruiting and hiring a broker that it knew had market timing clients; by financing a client’s market timing activities through a margin loan of approximately $42.3 million, and by allowing mutual fund orders of the select clients to be entered up to 4:00 pm EST, while the internal policies of the firm cut off orders from retail clients at 3:00 pm EST.

For further details, please refer to the Settlement Agreement also posted on the IDA website.

Kenneth A. Nason
Association Secretary