INVESTMENT DEALERS ASSOCIATION OF CANADA

bulletin

ASSOCIATION CANADIENNE DES COURTIERS EN VALEURS MOBILIÈRES

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Discipline

Charges against Michael Finkelstein and Elizabeth Leonard Dismissed – Alleged Violation of By-law 29.1

Nature of the Proceedings	A Hearing Panel of the Investment Dealers Association of Canada (the "Association") appointed pursuant to IDA By-law 20 heard a disciplinary matter involving allegations against Michael Finkelstein ("Mr. Finkelstein") and Elizabeth Leonard ("Ms. Leonard") who were at all material times registered with the Toronto office of Canaccord Capital Corporation, a Member Firm of the Association.
Decision of the Hearing Panel	By written decision (the "Decision") dated September 16, 2005, the Hearing Panel dismissed the charges against the Respondents. With respect to the third charge, one of the Panel Members provided a dissenting opinion and found that Mr. Finkelstein had breached By-law 29.1
Staff Allegations	Association Staff brought three charges against Mr. Finkelstein and one charge against Ms. Leonard. In particular, Staff alleged that between December 2001 and November 2002, both Respondents had breached By-law 29.1 and engaged in conduct unbecoming by trading in securities of certain U.S. issuers while in possession of material non-public information in violation of U.S. regulatory rules. In addition, Staff alleged that Mr. Finkelstein breached By-law 29.1 in that he failed in his gatekeeper duties by permitting certain clients to trade in securities of U.S. issuers while in possession of material non-public information. Further, Staff alleged that Mr. Finkelstein violated By-law 29.1 in that he breached certain covenants contained in subscription agreements to not short sell securities of that issuer.
Summary of Findings	The Hearing Panel found that at times relevant to the case, Mr. Finkelstein, was registered with the Association as a Registered Representative Options and through Stonestreet Corporation, controlled and managed Stonestreet Limited Partnership ("Stonestreet"). Stonestreet operated as a hedge fund and maintained a non-client account at Canaccord. At all times relevant to the case, Ms. Leonard was registered with the Association as a Registered Representative Options and as a Portfolio Manager Options. She was employed at Canaccord and was the portfolio manager of Stonestreet. Together Mr. Finkelstein and Ms. Leonard ran Stonestreet.

As part of its business operations, Stonestreet participated in private financing by issuers of securities which traded on the NASDAQ Stock Market Inc. or on the Over-the-Counter Bulletin Board. Four financings were specified in the particulars of the charges, three of which were private investment in public equity ("PIPE") sales. The fourth transaction was a shelf registration sale. In private financing of these types, restricted-trading shares of the issuers are offered to investors at a discount to the market price.

While each of the four transactions had its own particular details, there was a general pattern to Stonestreet's activities. Upon learning of an impending private financing, in which it decided to participate, it sold short the issuer's shares in the market. It then subscribed to purchase shares at the discounted price set out in the offering. Once it received free trading shares, following the required filings by the issuer with the Securities Exchange Commission (the "S.E.C.") and the public announcement of the financing was made, Stonestreet used its free trading shares to, directly or indirectly, close out its short position. Profit was the spread between the discounted private placement price and the short sell price.

The Hearing Panel concluded that a central issue in the case is the information that a particular issuer intended to do a private financing and that Stonestreet, and the Respondents, obtained that information. The issue for the Hearing Panel was whether the Respondents violated certain U.S. regulatory provisions when they sold short after obtaining that information.

The Hearing Panel received evidence from two experts in American law, one called by Staff and one by the respondents. Ultimately, the Hearing Panel was unable to conclude, based on the evidence it had received, that Association Staff had met its onus of proving the violations and, as a result, the first two charges were dismissed.

With respect to the third charge, Mr. Finkelstein executed the signature page of a subscription agreement which contained a covenant precluding the short sale of the issuer's securities. Despite the covenant, Stonestreet engaged in short selling activity. The evidence was that Mr. Finkelstein was not aware of the covenant, having only seen the signature page. A majority of the Hearing Panel found that in these circumstances, an isolated breach of a contractual provision did not amount to conduct unbecoming. A dissenting opinion found that Mr. Finkelstein executed the signature page of the contract at his own peril, and the resultant breach of the contractual covenant did constitute conduct unbecoming.

Kenneth A. Nason
Association Secretary