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Contact:

For distribution to relevant parties within your firm

Charlene L. McLaughlin
Enforcement Counsel
Phone: (403) 260-6284
E-mail: cmclaughlin@ida.ca

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Discipline

Discipline Penalties Imposed on Robert De Long Violation of By-law 29.1

Person Disciplined A Hearing Panel appointed pursuant to IDA By-law 20 has imposed discipline penalties on Michael Robert De Long, at all material times a Registered Representative with the Calgary Branch Office of Canaccord Capital Corporation (“Canaccord”), a Member of the Association.

By-laws, Regulations, Policies Violated On September 20, 2005, the Hearing Panel considered, reviewed and accepted a Settlement Agreement (the “Settlement Agreement”) negotiated between staff of the Enforcement department and Mr. De Long, and presented to the Hearing Panel pursuant to Bylaw 20.38.

Previously, on March 9th, 2005, a Settlement Agreement was presented jointly by the Enforcement staff and Mr. De Long. The Hearing Panel in that instance made a determination to reject the Settlement Agreement.

Pursuant to the Settlement Agreement, Mr. De Long has admitted to a violation of Bylaw 29.1, in that:

Without legal authority he engaged in the act of forgery of a signature to a client transfer form, with the intent that the signature would be relied upon as the authentic signature of an authorized representative of Canaccord’s Trustee company, which conduct is unbecoming a registered representative and detrimental to the public interest.

Penalty Assessed The penalty terms of the Settlement Agreement, as accepted and imposed by the Hearing Panel, are as follows:

1. Fine in the amount of \$10,000;
2. Completion of eighteen (18) months of close supervision (with recognition that this term of the Settlement Agreement was satisfied during the period February 24, 2004, to August 24, 2005);

TORONTO	Suite 1600, 121 King Street West, Toronto, Ontario M5H 3T9 Telephone: (416) 364-6133 Fax: (416) 364-0753
CALGARY	Suite 2300, 355 Fourth Avenue S.W., Calgary, Alberta T2P 0J1 Telephone: (403) 262-6393 Fax: (403) 265-4603
HALIFAX	Suite 1620, 1791 Barrington Street, Halifax, Nova Scotia B3J 3K9 Telephone: (902) 423-8800 Fax: (902) 423-0629
MONTRÉAL	Suite 2802, 1 Place Ville Marie, Montréal, Québec, H3B 4R4 Téléphone: (514) 878-2854 Télécopieur: (514) 878-3860
VANCOUVER	Suite 1325, P.O. Box 11614, 650 West Georgia Street, Vancouver, B.C. V6B 4N9 Telephone: (604) 683-6222 Fax: (604) 683-3491

3. Rewrite and pass the *Conduct and Practices Handbook* examination within six (6) months of the effective date of the Settlement Agreement.

Mr. De Long is also required to pay \$3,500 towards the Association's costs of investigation and prosecution.

Summary
of Facts

Facts summarized from the Settlement Agreement

On February 12, 2004, the Association received a Notice of Termination from the Canaccord, disclosing that Mr. De Long had been terminated for cause after Canaccord investigated and concluded that Mr. De Long had appended a signature on a transfer form which should have been signed by Canaccord's trustee for registered plans.

On or about October 8th, 2004, and upon the advice of a Canaccord Credit/Compliance Assistant ("Canaccord Assistant"), Mr. De Long affixed the address for Canaccord and endorsed his own signature to a transfer form to affect the transfer of a client's locked-in pension funds from Alberta Pensions to the client's locked-in retirement savings plan account held at Canaccord. The transfer form was rejected by Alberta Pensions, on the basis that Canaccord was not on Alberta Pension's approved list for transferring locked-in RSPs.

Over the next several weeks, Mr. De Long sought the advice of representative(s) of Alberta Pensions, representative(s) of Canaccord's trustee company and employees of Canaccord as part of his efforts to transfer the client's funds from Alberta Pensions to the client's Canaccord account. Those efforts did not provide Mr. De Long with any useful assistance.

After a period of approximately two (2) months, Mr. De Long completed a second transfer form, by affixing the trustee's address and a handwritten note indicating the transfer was to a Canaccord locked-in RSP account, for which the trustee as the agent for Canaccord was authorized to accept. Mr. De Long also created a form of signature, purporting to sign as an authorized representative of the trustee, on the transfer form and submitted the transfer form to Alberta Pensions.

Mr. De Long did not have authority to append a form of signature to the transfer form, purporting to sign as an authorized representative of the trustee.

Mr. De Long's client had been anxious to have the transfer of funds from Alberta Pensions to the Canaccord account completed and was pleased when the transfer was completed on or about January 23, 2004. There was no harm to the client.

Mr. De Long admitted his misconduct, stating that he acted in frustration and failed to exercise reasonable judgment, in the circumstances. Mr. De Long also expressed remorse regarding any negative impact his conduct had upon the reputation of Canaccord and its business relationship with its trustee.

Mr. De Long was terminated by Canaccord on February 12, 2004. However, his immediate supervisor at Canaccord assisted him with securing employment as a RR with another Member firm, as other than the misconduct described herein, Mr. De Long had been a valued employee at Canaccord. Mr. De Long was able to gain employment within (8) eight days of his termination from Canaccord. It was noted that

Mr. De Long had a respected work history which translated into other viable options for employment.

During the approximate period, February 2004 to October 2005, Mr. De Long worked under close supervision at Leede Financial Markets Inc. (“Leede”) in Calgary, Alberta. Mr. De Long maintained an “incident free” record with Leede.

Mr. De Long suffered a financial set-back of approximately \$80,000 over a period of more than sixteen (16) months, brought on by transfer of his book of clients from Canaccord to Leede.

Rejection of Settlement Agreement – March 9, 2005

In rejecting the previous Settlement Agreement, the members of that Hearing Panel stated that “the proposed penalties are inadequate, having regard to circumstances of the case and the principles described in the Guidelines.”

The proposed penalties were a Formal Reprimand and payment of Association costs in the amount of \$3,000.

The previous Hearing Panel noted their agreement with submissions of counsel that the mitigating factors of the case put it at the less egregious end of the spectrum of cases involving forgery, and was similar to the decision in *Re Gee*, [2004] I.C.A.D. No. 58. In *Re Gee*, a fine of \$5,000, a requirement to rewrite the Conduct and Practices Handbook exam and Association costs were imposed on the Respondent.

The previous Hearing Panel found the *Re Gee* facts less egregious and the imposed penalty consistent with the Guidelines. *Re Gee* involved forgery of a client signature in circumstances where it was clear that the client would have signed the document, whereas in this case the trustee representative had declined to sign the transfer form. Further, the previous Hearing Panel distinguished *Re Gee* from this matter, on the basis of the Respondent’s termination and subsequent fourteen (14) month absence from the securities industry as being similar to the imposition of a fourteen (14) month suspension on registration.

Acceptance of the Settlement Agreement – September 20, 2005

The Hearing Panel reviewed the Reasons for Rejecting the Settlement Agreement of the previous Hearing Panel and considered Association Disciplinary Sanction Guideline 1.2. The Hearing Panel also considered and applied the principles stated in *Re Bell* (2005) IDCD 3417, in respect of the discretionary application of the minimum \$25,000 sanction stated in Guideline 1.2 and that, although all forgeries are serious, more and less egregious examples of forgery can be discerned.

The Hearing Panel stated its reasons, in part, for accepting the Settlement Agreement, as follows:

“...we consider the facts to be indicative of a ‘less egregious’ instance of forgery. The act of forgery here was committed out of frustration with the intent of assisting the client and with no thought of unjust enrichment or financial benefit by or to the Respondent De Long. The Respondent here readily accepted his responsibility for the

act and cooperated during the investigation and prosecution of this matter. The Respondent has no disciplinary history and has operated under close supervision for the past 18 months at his member firm and has suffered a financial setback of approximately \$80,000 of lost revenue as a result of his actions. He has admitted to the inappropriateness of his conduct and has expressed remorse regarding any negative impact his conduct may have had upon the reputation of Canaccord and its business relationship with its trustee.”

For further details please see the Reasons for Decision (September 20, 2005), the Settlement Agreement (September 12, 2005) and the Reasons for Rejecting the Settlement Agreement (December 29, 2004) posted to this website.

Kenneth A. Nason
Association Secretary