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Discipline

Appeal by Credifinance Securities Limited of Violation of By-law 19.5—Allowed for Reason, in part, of New Evidence

Person Disciplined An Appeal Panel appointed pursuant to IDA By-law 20 has allowed the appeal of Credifinance Securities Limited (Credifinance), at all material times a Member of the IDA with its office in Toronto, Ontario.

By-laws, Regulations, Policies Violated Following an appeal hearing held on July 3, 2007 an Appeal Panel allowed the appeal by Credifinance of a decision of a Hearing Panel which found Credifinance guilty of failing to co-operate with the IDA.

The decision appealed from was released on October 25, 2006.

Summary of Facts The Appeal Panel, as a preliminary matter, allowed the introduction of new evidence by Credifinance. The new evidence consisted of excerpts of transcripts of evidence given at IDA interviews by three individuals who are principals at Credifinance. These transcripts had been released to Credifinance in June 2007 during the course of an OSC investigation. The transcripts were not part of the evidence before the original Hearing Panel. As well the transcript of evidence given by one of the three principals at the penalty hearing portion of the hearing was also allowed as fresh evidence at the appeal.

The Appeal Panel reviewed the relevant portions of the decision of the Hearing Panel (See Bulletin #3591) and in particular two events

that resulted in the finding of failure to co-operate, namely two letters of demand from the IDA to Credifinance dated November 3, 2005 and November 10, 2005.

With respect to the November 3, 2005 demand, the Appeal Panel found that the new evidence demonstrated that it was understood between the parties that no answers would be given until the demand was made and the undertakings given were summarized in a letter which the IDA was to send to Credifinance.

The Appeal Panel determined that Credifinance was not obligated to provide the information until the demand letter was received. This was contrary to the finding of the original Hearing Panel that Credifinance had failed to co-operate by taking no steps to fulfill the undertakings it had given until after receipt of the letter of demand dated November 3, 2005. The appeal was therefore allowed on this issue. The Appeal Panel then considered the second finding of the Hearing Panel in respect of the demand of November 10, 2005.

The Appeal Panel found that the Hearing Panel's decision that Credifinance failed to co-operate with the IDA by virtue of its failure to even try to obtain the backs of certain cheques from its carrying broker could not stand. In light of the fact that the new evidence resulted in the Appeal Panel allowing the appeal in respect of the first finding, the second finding was not sufficient on its own to make out the charge as it was set out in the Notice of Hearing and Particulars. Although the firm's actions constituted a failure, the conduct was not sufficient to make out the charge that: From or about November 2004 to January 2006 the Respondent failed to cooperate with the Association, in that it failed to provide information and documents as required by the Association, in violation of Association By-Law 19.5.

Kenneth A. Nason
Association Secretary