

Contact:  
Elsa Renzella  
Enforcement Counsel  
(416) 943-5877

*For distribution to relevant parties within your firm*

**BULLETIN # 3232**  
December 19, 2003

## Discipline

### Discipline Penalties Imposed on James Moon and Benjamin Gelfand – Violations of Regulations 1300.1(c) and 1300.1(a)

Person Disciplined      The Ontario District Council of the Investment Dealers Association (“the Association”) has imposed discipline penalties on James Moon and Benjamin Gelfand, at the material times Registered Representatives at the Toronto office of TD Evergreen (“Evergreen”) a division of TD Securities Inc. (now TD Waterhouse Investment Advice, a division of TD Waterhouse Canada Inc.), a Member of the Association.

By-laws,  
Regulations, Policies  
Violated                      On December 11, 2003, the Ontario District Council considered, reviewed and accepted a Settlement Agreement negotiated between Messrs Moon and Gelfand and Association Staff. The facts as contained in the Settlement Agreement have been agreed to by both Messrs Moon and Gelfand for the purposes of the Association’s proceeding only and of any other proceeding commenced by a securities regulatory authority.

Pursuant to the Settlement Agreement, Mr. Moon acknowledged that:

- During the period from September 1999 to December 2000, he engaged in a short-term trading strategy in a client account that was not appropriate or keeping with the client’s personal circumstances and investment objectives contrary to Association Regulation 1300.1(c).
- Sometime during the month of May 2000, he completed a new Application Form for a client account which did not reflect the client’s true investment objectives or risk tolerances, contrary to Regulation 1300.1(a).
- Between January 29 and February 28, 2000, he executed eleven trades in a client’s account using timing discretion, contrary to Regulation 1300.4.

Pursuant to the Settlement Agreement, Mr. Gelfand acknowledged that:

- During the period from March 2000 to December 2000, he, as joint investment advisor with Mr. Moon, he was jointly responsible for the unsuitable short-term trading strategy in a client account contrary to Association Regulation 1300.1(c).
- Sometime during the month of May 2000, he completed a new Application Form for a client account which did not reflect the client's true investment objectives or risk tolerances, contrary to Regulation 1300.1(a).

#### Penalty Assessed

The discipline penalties assessed against Mr. Moon pursuant to the settlement agreement are:

- A fine in the amount of \$25,000; and
- Re-write of the Conduct and Practices examination within one (1) year of the effective date of the Settlement Agreement.

In addition, under the settlement agreement Mr. Moon is required to pay \$15,000.00 towards the Association's costs of this matter.

The discipline penalties assessed against Mr. Gelfand pursuant to the settlement agreement are:

- A fine in the amount of \$15,000; and
- Re-write of the Conduct and Practices examination within one (1) year of the effective date of the Settlement Agreement.

In addition, under the settlement agreement Mr. Gelfand is required to pay \$15,000.00 towards the Association's costs of this matter.

#### Summary of Facts

The following is a summary of the facts set out in the settlement agreement:

On June 18, 1998, C.C. opened a margin account at Evergreen and transferred approximately \$950,000 in cash and assets from a managed account held at another Member firm. At the time of opening the account at Evergreen, C.C. was a retired 64-year-old widow. The funds held in the Evergreen account were her primary source of income. According to the client's June 1998 account Application Form at Evergreen, her investment objectives were listed as 30% income and 70% long-term capital gains. Her risk tolerance was categorized as low to medium and her investment knowledge was categorized as average.

Mr. Moon became C.C.'s investment advisor sometime in January 1999, when her initial advisor left Evergreen. Mr. Gelfand did not become a joint investment

advisor for C.C. until sometime in April 2000.

In accordance with Evergreen policies, on January 25, 1999, the Application Form was updated to reflect Mr. Moon as the new investment advisor. C.C.'s investment objectives were changed to 40% income and 60% long-term capital gains. Her risk tolerance remained the same and her investment knowledge was noted as none.

Prior to Mr. Moon becoming C.C.'s investment advisor, a significant portion of C.C.'s Evergreen account consisted of fixed income securities and mutual fund investments that were held in the Canadian side of the account.

In September 1999, Mr. Moon began executing short-term equity trades in the U.S. side of the account. The short-term trading continued for the next 16 months. Starting in April 2000, when Mr. Gelfand was also responsible for CC's account as one of her investment advisors, he permitted such short-term trades to continue whether or not he placed these trades. These short-term trades related to seven securities: Entrust Technologies Inc., Nanogen Inc., Viatel Inc., Lucent Technologies Inc., Kopin Corp., Adept Technology Inc., and At Home Corp. These securities were the subject of repeated buy-sell transactions. Margin was also used in the account to execute many of these short-term trades.

The short-term trading strategy and use of margin by Messrs Moon and Gelfand was unsuitable given the client's personal circumstances, risk tolerance and true investment objectives.

From January 29, 2000 to February 28, 2000, Mr. Moon also executed 11 trades in the U.S. side of the client's account including some of the short-term trades using timing discretion.

Following various inquiries from Evergreen's Compliance Department regarding the suitability of the short-term trading in C.C.'s account, Mr. Moon indicated that the account was going to be updated. In May 2000 an updated Application Form was mailed to C.C. for her signature. The new Application Form revised the investment objectives to 33% income, 33% long-term capital gains, and 34% speculative trading. C.C.'s risk level was now noted as medium and her investment knowledge was upgraded to average. Although the client signed the updated form, there was no material change in her circumstances to justify the Application Form update. Her investment objectives did not change since the time she opened her account at Evergreen. The updated Application Form did not accurately reflect the true investment objectives of the client.

Mr. Moon is currently employed as a Registered Representative at Standard Securities Capital Corporation. Mr. Gelfand is currently employed as a Registered Representative at First Associates Investments Inc.

Kenneth A. Nason  
*Association Secretary*