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**BULLETIN # 3395**  
February 15, 2005

## Discipline Panel Rules that Branch Manager Failed to Adequately Supervise

Nature of Proceeding      The Pacific District Council of the Investment Dealers Association of Canada (the “Association”) has released a written decision in the discipline hearing in the matter of Douglas Francis Corrigan who was, at the material time, Branch Manager at the Vancouver Branch of Thomson Kernaghan & Co. Limited (“TK”), a former member of the Association.

By-laws, Regulations, Policies Violated      After a contested hearing held over 7 days in the fall of 2004, a panel of the Pacific District Council, in a decision dated January 25, 2005, found that:

- Mr. Corrigan as Branch Manager failed to adequately supervise the activities of SRJ when he was an Investment Representative (“IR”), and thereby failed to ensure that the handling of client business was within the bounds of ethical conduct, consistent with just and equitable principles of trade and not detrimental to the interests of the securities industry, in contravention of Association Regulation 1300.2.

The Panel dismissed a second allegation that Mr. Corrigan failed to maintain evidence to support the daily supervision of client accounts at the Branch in contravention of Association Policy 2.

Penalty      The hearing will resume with a penalty phase at a date to be announced.

Summary  
of Facts

In 1996, Mr. Corrigan was approved as Branch Manager of the Vancouver Branch of Dominick and Dominick Securities Inc. (“Dominick”) and worked there as a Registered Representative (“RR”) and Branch Manager until April, 1999, when Dominick’s Vancouver branch was assumed by TK, and re-opened as TK’s Vancouver branch (the “Branch”).

Mr. Corrigan was employed as an RR, and Branch Manager at the Branch from May 3, 1999 until July 31, 2001 (the “Relevant Period”).

During the Relevant Period, Mr. Corrigan, as Branch Manager, was responsible for approving, at the Branch, proposed new accounts.

During the Relevant Period, Mr. Corrigan, as Branch Manager, was also responsible for the daily supervision of account activity, and was responsible for the supervision of SRJ, an IR at the Branch.

**SRJ Held Out as an RR**

SRJ had been under the supervision of Mr. Corrigan since March, 1997, when SRJ, who was then an RR, joined Dominick’s Vancouver branch where Mr. Corrigan was the Branch Manager.

In April, 1997, SRJ’s registration as an RR was suspended because he failed to meet the education requirements to maintain his RR registration. In May, 1997, SRJ’s registration status was changed from RR to IR. Mr. Corrigan was fully aware of these events.

Throughout the Relevant Period, SRJ was an IR; he did not obtain his RR registration again until December 18, 2002.

SRJ lost his registration as an RR, and carried on business as an IR. SRJ and Mr. Corrigan both well knew the limitations upon SRJ, and Mr. Corrigan agreed to supervise SRJ to ensure there was no breach of conduct by SRJ acting as an IR. SRJ did not give up or transfer his book of business. He had his own personal identification code for Commission tracking purposes (“Broker Code”) that was not shared with any RR.

During the Relevant Period, SRJ opened 228 client accounts (the “Accounts”). All but 9 of the 228 new client forms were signed by Mr. Corrigan. Further, Mr. Corrigan testified that due to the one room office configuration at the Branch, and his close proximity to all of the brokers, he was very familiar with and monitored the day-to-day activities in the Branch.

With respect to the Accounts, SRJ signed the NCAFs as the RR of record; his name was on the monthly reporting forms, and there was no other RR on those reporting forms; and SRJ was the contact person for the Accounts, all of which were retail accounts. For each of the Accounts, SRJ was the person responsible for the client’s income, net worth, investment knowledge, risk tolerance and account objectives information, although the forms may have been filled in by the clients in some cases.

For each of the Accounts, SRJ signed the NCAFs in the section for the RR signature, and entered his Broker Code in the section designated for that item. Mr. Corrigan authorized the opening of most, if not all of the Accounts, and signed the NCAF as Branch Manager, even though he knew that SRJ was registered only as an IR and not an RR.

Throughout the Relevant Period, Mr. Corrigan knew, or ought to have known, that for each of the Accounts, SRJ was the person primarily responsible for servicing the Accounts, and that in so doing he was not acting as an assistant for any other RR. Mr. Corrigan took no action to ensure that an RR was in charge of the Accounts.

Of the 228 Accounts, 121 were for clients who resided in Ontario, Quebec, Manitoba, and Alberta when SRJ was not registered in any capacity in the those provinces.

On or about June, 2004, the Association and SRJ entered into a Settlement Agreement (the "Settlement Agreement") in which SRJ admitted, for the purpose of the Settlement Agreement, contraventions that he, "...by running his own book of business, and by being the primary person responsible for servicing the Accounts, and by signing NCAFs for the Accounts, acted as an RR, when he was only qualified and registered as an IR, ...".

The Panel was satisfied, on the whole of the evidence, that SRJ did not give advice with respect to specific securities or solicit orders from his clients.

The Panel was satisfied that the Association had proved that to the knowledge of Mr. Corrigan, SRJ opened 228 client Accounts and completed the New Client Application Forms as the RR of record. Once the NCAFs were completed, and after the Accounts were opened, copies of the NCAFs were sent to the clients. SRJ was being held out as an RR.

Further, Mr. Corrigan, as Branch Manager responsible for SRJ's conduct, permitted SRJ's name to appear as RR, or Account Representative on the monthly account statements and trade confirmations for the Accounts.

Further, the Panel was satisfied that Mr. Corrigan either knew, or ought to have known, that SRJ sent a letter to the new Account clients, which enclosed the New Client Application Form as well as other information, and that SRJ signed those letters as "Investment Advisor" which he was not permitted to do as an IR.

### **Count 2 Not Proven**

Mr. Corrigan supervised 9 brokers at the Branch. As Branch Manager, Mr. Corrigan was required by Association Policy 2 to undertake daily reviews of the previous day's trading within the Branch to detect undesirable account activity, and maintain evidence of those daily reviews.

Neither the Association nor Mr. Corrigan were able to locate and identify the documentation from the Branch that may have indicating the daily reviews were undertaken, and thus there was no documentary evidence presented of any reviews.

Considerable time at the hearing focused on the issue of whether or not Mr. Corrigan carried out the daily and monthly account supervision at the Branch. On a number of different occasions, Mr. Corrigan advised representatives of the Association who were conducting inquiries, that he did not do the daily or monthly supervision in the Branch, but that it was done, by arrangement, in Toronto. The Panel was satisfied, on a preponderance of the evidence, that in fact, on a day-to-day basis, reviews of the Branch were primarily conducted in Toronto by the compliance department of TK.

The Panel was disturbed by the fact that notwithstanding the reviews by the Association in 1999 and 2000, according to Mr. Corrigan, no one said to him that his descriptions of how the daily and monthly reviews were handled at the Branch were unacceptable, or a serious violation of Association Policies. Given that the purpose of the Association audits and reviews were remedial, the Panel was of the view that in some respects Mr. Corrigan was lulled into a false sense of well-being because no one spelled out to him, in clear and unambiguous terms that he was in breach and had to change his procedures.

The case for the Association on Count 2 relied heavily upon Mr. Corrigan's initial statements in 1999 and 2000. At the hearing, other evidence was led which, in the Panel's view, raised a reasonable doubt as to the accuracy, or completeness, of Mr. Corrigan's statements in 1999 and 2000. Also, the Panel was not satisfied, on the evidence that some or all of the documentation from the Branch could not have been located, or that Serj Johal could not have been called to testify as to the Branch review procedure.

The Panel, as a practical matter, was satisfied that the procedures that Mr. Corrigan and TK had in place with respect to the daily and monthly reviews of the business at the Branch, were more than adequate to protect the interests of the clients, and the public. The Panel was satisfied that Mr. Corrigan was, on a day-to-day basis, a hands-on manager who was aware of the trading that was taking place in the Branch, and communicated with the brokers and the administrative assistant, with respect to the daily events. The daily and monthly supervision that was conducted resulted in the type of effective supervision that the Association demands.

After careful review of the whole of the evidence, the Panel was not satisfied the Association had proven the violations alleged in Count 2, and that count was dismissed.

A full copy of the Decision of the Pacific District Council is available on the Association's website under Enforcement > Reasons for Decisions in Disciplinary Hearings.

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*Association Secretary*