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*For distribution to relevant parties within your firm*

**BULLETIN #3452**  
August 16, 2005

## Discipline

### Discipline Penalties Imposed on Stephen Brook Toban; Violations of By-law 29.1.

Person Disciplined A Hearing Panel of the Investment Dealers Association of Canada (the “Association”) appointed pursuant to Association By-law 20 has imposed discipline penalties on Stephen Brook Toban. Mr. Toban is a Registered Representative (“RR”) at the Vancouver head office of Global Securities Corporation (“Global”), a member of the Association.

By-laws, Regulations, Policies Violated A Disciplinary Hearing was held over five days from May 9-12, 2005 and on July 18, 2005 in Vancouver, British Columbia. An Association Hearing Panel released its decision on liability on June 10, 2005 and released its decision on penalty on August 3, 2005. The Panel found Mr. Toban contravened Association By-law 29.1 in that he:

- 1) between January 16, 2001 and October 11, 2001, while employed as an RR at Global effected six transactions in the account of his client, RD, without prior authorization from RD;
- 2) with respect to the letters of complaint from RD dated April 21, 2001 and March 25, 2002, failed to inform the appropriate compliance or supervisory personnel at his firm of a complaint of RD;
- 3) between April 25, 2001 and May 9, 2003, attempted to personally settle a complaint of RD by offering to financially compensate RD and by making the two separate cash payments of \$1,000 each all without the approval of his employer;
- 4) on or about January 27, 2005 and February 8, 2005, attempted to delay, frustrate and/or obstruct the Association’s investigation and/or disciplinary hearing by making misrepresentations to Association Staff.

Penalty  
Assessed

The penalties imposed and costs assessed against Mr. Toban are as follows:

*Penalty*

- i) Mr. Toban shall pay a fine of \$30,000 (thirty thousand dollars) payable no later than October 31, 2005;
- ii) Mr. Toban shall rewrite the exam based on the Conduct and Practices Handbook Course and complete the course by October 31, 2005;
- iii) Mr. Toban shall, together with his employer, select a charity approved of by the Pacific Regional Director of the Association, and perform 25 hours of community work for that charity prior to December 31, 2005;

*Costs*

- iv) Mr. Toban shall pay \$5,000 (five thousand dollars) towards the Association's investigation and prosecution costs in this matter payable no later than October 31, 2005.

Summary  
of Facts

**Background**

Mr. Toban entered the securities industry as a RR in 1996 and joined Global in 1997.

In May 1999, RD was referred to Mr. Toban as a client and Mr. Toban opened accounts for RD. From late 1999 through April 2001, RD was a very active trader relying on a combination of his own trading ideas and recommendations made by Mr. Toban. During that period, RD and Mr. Toban were in regular telephone contact.

**Count 1: Unauthorized Trades**

In transactions during January and February of 2001, 20,000 shares of Norstar Ventures Corp. ("Norstar") were purchased for RD's Canadian margin account and 15,000 shares of MoneyFocusUSA.com Inc. ("MoneyFocus") were purchased for Mr. Toban's US margin account. There were two separate purchases of each company for a total of four transactions.

On October 10, 2001, 2,500 shares in Terracom Inc. ("Terracom") were sold short at \$0.50 per share through RD's US dollar margin account. The next day 2,500 shares in Terracom were purchased at a price of \$0.04 per share to cover this short sale. These Terracom trades resulted in a net trading profit after commissions of \$1,010.00 US dollars.

The allegation against Mr. Toban in Count 1 was that the above trades were unauthorized trades and that RD, contacted Mr. Toban verbally and complained to Mr. Toban that he had not authorized these trades. Mr. Toban, however, claimed that RD verbally authorized these trades.

The Hearing Panel found RD to be a credible witness and accepted RD's evidence. The Panel therefore concluded the Association had clearly established its case for unauthorized trading.

### **Counts 2 and 3: RD's Complaint and Mr. Toban's Attempt to Settle the Complaint**

On April 26, 2001, RD faxed a letter to Mr. Toban purporting to confirm a telephone conversation of the previous day between RD and Mr. Toban. This fax among other things claimed agreement between Mr. Toban and RD that Mr. Toban "will reverse all MoneyFocus and Norstar out of my account with no net cost or effect to my account".

In a subsequent letter dated May 11, 2001 and faxed to RD on May 15, 2001, Mr. Toban answered RD's letter of April 26, 2001. In this reply, Mr. Toban stated "We have gone over your accounts and come to a conclusion to your requests". He went on to agree to "cover" the loss on the MoneyFocus, and to agree to "reverse the Norstar and clear it out of your account". In this letter, Mr. Toban acknowledged that the total amount owing to RD is \$5,274.00. Mr. Toban ended this letter by apologizing for any inconvenience caused to RD and hoping that "this will resolve your concerns".

On March 25, 2002, RD faxed to Mr. Toban a copy of a letter addressed to the Vice President of Compliance (the "Draft Letter") at Global. The Draft Letter set out what RD claims is an unresolved dispute with Mr. Toban. The letter references Mr. Toban's letter of May 11, 2001 referred to above and itemizes where Mr. Toban has failed to follow through in the items referred to in that letter. The letter ends with the statement that RD is willing to settle the dispute between himself and Mr. Toban by the payment of \$4,458.72 and "reversing Norstar entirely without cost or other losses".

Following receipt of the Draft Letter, in the spring or summer of 2002, Mr. Toban made a cash payment of \$1,000 to RD's wife. Shortly thereafter, he made a cash payment of \$1,000.00 directly to RD.

On April 30, 2003 RD faxed a letter threatening Mr. Toban with legal action and full disclosure of RD's complaints against Mr. Toban to the Association.

On May 5, 2003, the Chief Compliance Officer at Global wrote RD advising that Mr. Toban has consulted the Chief Compliance Officer about the matters in dispute between Mr. Toban and RD.

Mr. Toban denied that he was attempting to settle matters with RD that required his employer's consent and knowledge. Mr. Toban says that much of this correspondence reflects differences between him and RD relating to service matters. In any event, as the Draft Letter was addressed to his employer's Compliance Officer, there was no need to notify him of its receipt. Mr. Toban claimed the payment of \$2,000 was an investment that he made in RD's real estate syndicate to develop property at Whistler, B.C.

Again, the Hearing Panel when faced with conflicting evidence between Mr. Toban and RD and Mr. Toban's employer's Compliance Officer preferred the evidence of the latter parties over that of Mr. Toban.

The Panel therefore found that with respect to the letters of complaint from RD dated April 21, 2001 and March 25, 2002 that Mr. Toban failed to inform the appropriate compliance or supervisory personnel at his firm of RD's complaint and that Mr. Toban attempted to personally settle RD's complaint by offering to financially compensate

RD and by making the two separate cash payments of \$1,000 each all without the approval of his employer.

#### **Count 4: Delay, Frustrate or Obstruct**

On January 26, 2005, the Association faxed to Mr. Toban a letter and a draft Notice of Hearing which set out Counts 1 to 3 above. The letter advised Mr. Toban that under separate cover he would be provided with a disclosure package (the "Disclosure Package") containing all of the relevant documents and interview transcripts collected by the Association in their investigation and pertaining to the matters referred to in the draft Notice of Hearing. The letter further advised Mr. Toban that he had until February 9, 2005 to review the draft Notice of Hearing and respond.

Shortly before 9:00 AM on the next day, January 27, 2005, the Association had a commercial courier deliver the Disclosure Package to an address in North Vancouver. As it turns out, the address to which the Disclosure Package was delivered was Mr. Toban's previous residence. He moved from this address on January 14, 2005 after selling it to K.

Contrary to instructions, the courier rang the doorbell and left the Disclosure Package leaning against the door rather than ensuring that the Disclosure Package was received by and signed for by someone within the premises.

The following day, January 28, 2005, Mr. Toban emailed the Association complaining that on the previous day he had had a telephone call from a former neighbour saying that personal documents with Mr. Toban's name on them are strewn across the sidewalk in North Vancouver. In this email, Mr. Toban stated that he subsequently received a telephone call from K, the new owner of his former residence in North Vancouver, stating that a package or partial package has been left on the sidewalk near her home. The email continues that Mr. Toban then went to North Vancouver as soon as he was able to do so and "spent 45 minutes in the rain trying to track down the contents of the package". In this email, Mr. Toban claims that there are gaps in some of the transcripts and that he doesn't know what else is missing from the Disclosure Package. He requested that he be advised who has signed for the Disclosure Package so that he could attempt to track down the rest of the confidential documents missing from the Disclosure Package.

Upon receipt of this email, the Association immediately provided Mr. Toban with a new Disclosure Package.

In a subsequent telephone interview with an investigator of the Association on February 8, 2005, Mr. Toban advised the investigator that around 10:00 AM on January 27, 2005 before he received the telephone call from Ms. Kran, he received a call from somebody who lived in the area of his former residence. This caller claimed to have found some documents with Mr. Toban's name on them lying in the roadway. Mr. Toban also advised the investigator that when Mr. Toban retrieved the Disclosure Package at about 5:00 PM on January 27, 2005 that it had been opened and that he had found some papers near a trash bin in a park near his former residence. He states that a number of documents were missing from the Disclosure Package.

The Association alleged the email of January 28, 2005 from Mr. Toban to the Association contains statements that are false. Similarly, the Association alleged that certain statements made by Mr. Toban to the Association's investigator in the telephone interview on February 8, 2005 were false. It was the position of the Association that these false statements were made by Mr. Toban knowing that they were false and with the view to hindering the Association's investigation of Mr. Toban and to delay the holding of this hearing.

Mr. Toban denied that he made false statements in either the email of January 28<sup>th</sup> or the telephone conversation of February 8<sup>th</sup> with the Association's investigator. As well, Mr. Toban noted that the hearing has proceeded on schedule and that, therefore, no delay has occurred.

Again, the Panel was faced with conflicting evidence. Ms. Kran, a dispatcher for the RCMP, gave evidence that she received the Disclosure Package about 9:00 AM on January 27<sup>th</sup> and shortly thereafter telephoned Mr. Toban to let him know that she had received the Disclosure Package and had not opened it. By agreement with Mr. Toban, Ms. Kran testified that she left the sealed Disclosure Package outside her door as she had to go out for the day. When she returned at about 5:00 PM, she said that she saw the Disclosure Package where she had left it. The Disclosure Package, she testified, appeared to be in the same condition as it was when she had received it that morning. About an hour later, she testified, she went out again and saw that the package was no longer where she had left it. At that time she saw no loose papers lying about which might have come from the Disclosure Package.

When faced with this conflicting evidence between Mr. Toban and Ms. Kran, the Panel found the evidence of Ms. Kran's to be preferable to that of Mr. Toban. Based upon Ms. Kran's evidence, the Panel found that the Disclosure Package remained in the condition in which it had been delivered to Ms. Kran until at least 5:00 PM on the evening of January 27, 2005. With this finding, the Panel concluded that the email from Mr. Toban to the Association dated January 28, 2005 contained misrepresentations made by Mr. Toban to the Association. Similarly, we find that the voluntary statement given by Mr. Toban to the Association's investigator on February 8, 2005 contained misrepresentations made by Mr. Toban to the Association.

**Full Text of Decision**

A full copy of both the liability and penalty decisions will be made available on the Association's website ([www.ida.ca](http://www.ida.ca)) under Enforcement > Reasons for Decisions in Disciplinary Hearings.

Kenneth A. Nason  
*Association Secretary*