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Discipline

Discipline Penalties Imposed on RBC Dominion Securities Inc; Violation of By-law 29.1.

Person Disciplined A Hearing Panel appointed pursuant to IDA By-law 20 has imposed discipline penalties on RBC Dominion Securities Inc. (RBC DS), a Member of the Investment Dealers Association of Canada (Association).

By-laws, Regulations, Policies Violated On April 26, 2005, a Hearing Panel considered, reviewed, and accepted a Settlement Agreement negotiated between Staff of the Enforcement Division of the Association (Association Staff) and RBC DS.

Pursuant to the Settlement Agreement, RBC DS admitted to contravening Association By-law 29.1, in that it sought and obtained the Association's approval to have W designated as the branch manager of its Penticton, British Columbia branch office for a period of approximately 46 months, when in fact it did not intend for him to perform, nor did he actually perform, any of the responsibilities that a branch manager was required to perform. These responsibilities were actually performed by S and then C, who were both not normally present at the Penticton branch office.

Penalty Assessed The following penalties were assessed against RBC DS:

- payment of a \$130,000 fine; and
- payment of \$5,000 towards the Association's investigation and prosecution costs in this matter.

Summary of Facts

Background

This matter relates to the period from November 1997 to September 2001.

RBC DS maintained a branch office in Penticton, British Columbia (the Penticton branch) and a branch office in Kelowna, British Columbia (the Kelowna branch). The distance between Penticton and Kelowna is approximately 68 kilometers.

From April 17, 1997 to October 12, 1999, S was the branch manager of the Kelowna branch.

In October 1997, S was instructed by the RBC DS to ask W to be the branch manager of the Penticton branch. At the time, W was a registered representative who worked at the Penticton branch. He had previously been the branch manager of the Penticton branch and was qualified for the position. S informed W that:

(a) if he agreed to be the branch manager of the Penticton branch, he would merely be the branch manager in name alone and he would not have any responsibilities because S, himself, would perform all branch manager responsibilities in relation to the Penticton branch; and

(b) he was being asked to be the branch manager because the Association required RBC DS to have a qualified branch manager in the Penticton branch.

W also spoke to a representative of RBC DS regarding becoming the branch manager in name alone of the Penticton branch.

Eventually, W agreed to be the branch manager in name alone of the Penticton branch.

On November 25, 1997, RBC DS applied to the Association to have W approved as the branch manager of the Penticton branch. At the time of this application, RBC DS knew that S would perform all of the responsibilities that the branch manager of the Penticton branch was required to perform.

On November 28, 1997, the Association approved W as the branch manager of the Penticton branch.

S acted as the de facto branch manager of the Penticton branch for approximately 23 months, during which time W was registered with the Association as the branch manager.

In October 1999, C replaced S as the branch manager of the Kelowna branch. In October 1999, W met with C and S. In the course of this meeting C, acting on instructions from the RBC DS, asked W to continue to be the branch manager in name alone of the Penticton branch and he told W that he would fulfill all the responsibilities that S had performed. W agreed to continue on as the branch manager of record of the Penticton branch.

C acted as the de facto branch manager of the Penticton branch for approximately 23 months, during which time W was designated by the Association as the branch manager.

On September 24, 2001, W resigned as the branch manager of the Penticton branch and left RBC DS's employ, having been designated by the Association as the branch manager for approximately 46 consecutive months, without having performed the responsibilities of the designation.

In his capacity as branch manager of record, W signed new account forms (NAFs) that S or C had reviewed and on one occasion he signed a sub-branch closure form. He did not review the NAFs in any meaningful way. He was never asked by a representative of RBC DS to perform the responsibilities that the branch manager of the Penticton branch was required to perform, nor did RBC DS expect him to perform any such responsibilities.

Despite the fact that W was designated by the Association as the branch manager, S or subsequently C were identified as the branch manager of the Penticton branch on the account statements and on other documents that were sent to clients of the Penticton branch.

Both S and C attended at the Penticton branch to carry out the responsibilities of the Penticton branch manager, but neither of them were normally present at the Penticton branch within the meaning of Association By-law 4.6.

RBC DS cooperated with Association Staff in the investigation of this matter.

March 14, 2005 Original Settlement Agreement Hearing

A Hearing Panel was convened on March 14, 2005 to consider the settlement agreement negotiated between Association Staff and RBC DS. However, at the commencement of the March 14, 2005 hearing, Association Staff applied for an order that: (i) one of the members of the Hearing Panel be recused from the panel because he was subject to an unresolved disciplinary matter with the Association; and (ii) that the matter be remitted to the National Hearing Coordinator for the appointment of a new Hearing Panel (NHC). The Hearing Panel granted Association Staff's application, the Hearing Panel member was recused from the Hearing Panel and the matter was remitted to the NHC who appointed a new Hearing Panel.

April 5, 2005 Settlement Agreement Hearing

On April 5, 2005 the new Hearing Panel convened to consider the settlement agreement (the Original Settlement Agreement). In the Original Settlement Agreement, RBC DS agreed to pay a fine in the amount of \$50,000 and to contribute \$5,000 to the Association's cost of this proceeding.

Following the submissions of counsel, the Hearing Panel expressed a number of concerns regarding the Original Settlement Agreement. The two that troubled the Hearing Panel the most were:

1. By operating the Penticton branch as it did, RBC DS achieved a strategic advantage that other members of the industry who complied with the Association's By-laws by employing a qualified on site branch manager did not enjoy; and
2. By operating the Penticton branch as it did in contravention of the Association's By-Laws, RBC DS achieved an economic benefit from not having to pay the salary and bonus entitlement a branch manager might have commanded.

Further, the Hearing Panel also expressed concern that the penalty it was being asked to accept did not properly take into account the strategic and economic benefit enjoyed by RBC DS from its admitted breach of Association By-Law 29.1.

Upon hearing the concerns expressed by the Hearing Panel, counsel requested that the hearing be adjourned to seek further instructions.

April 26, 2005 Adjourned Settlement Agreement Hearing

At the commencement of the April 26, 2005 adjourned hearing, counsel submitted for approval an amended settlement agreement (the Amended Settlement Agreement). This settlement agreement was similar in form to the Original Settlement Agreement, but in the Amended Settlement Agreement, Association Staff and RBC DS had agreed that the fine be increased from \$50,000 to \$130,000.

Further, counsel for RBC DS submitted that the Amended Settlement Agreement took into account the concerns expressed by the Hearing Panel to ensure that whatever economic benefit RBC DS might have experienced from its breach of the Association's By-Laws was considered in the agreed upon penalty. He advised that RBC DS had in fact merged its compensation scheme between its Kelowna branch and Penticton branch and had increased the compensation of the branch managers at its Kelowna branch to account for the fact that they had to oversee the operations at the Penticton branch. He further submitted that if there was an economic and strategic benefit to RBC DS from the breach of the Association By-Law, the increased fine certainly removed that benefit.

Kenneth A. Nason
Association Secretary