INVESTMENT DEALERS ASSOCIATION OF CANADA

bulletin

ASSOCIATION CANADIENNE DES COURTIERS EN VALEURS MOBILIÈRES

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For distribution to relevant parties within your firm

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Discipline

Discipline Penalties Imposed on John Frederick Brighten – Violation 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 John Frederick Brighten (Brighten), at all material times Executive Vice-President, Branch Manager, Compliance Manager and Ultimate Designated Person (UDP) working at the Vancouver head office of IPO Capital Corp. (IPO), a Member firm which has since resigned its membership in the IDA.

By-laws, Regulations, Policies Violated

At a Settlement Hearing on October 18, 2005 in Vancouver, British Columbia, a Hearing Panel considered and reviewed a Settlement Agreement negotiated between Brighten and Staff of the Enforcement Department of the Association. With one of the three panel members dissenting, the Hearing Panel accepted the Settlement Agreement.

Pursuant to the Settlement Agreement, Brighten admitted that he failed to observe high standards of conduct contrary to Association By-law 29 in that he:

> between March 16, 1999 and June 3, 1999, as Branch Manager and UDP of IPO, failed to ensure that distributions of the Debtor Certificates of Value Software Corporation complied with the prospectus requirements of the *Securities Act* of British Columbia and failed to prohibit a Registered Representative at IPO from marketing the Debtor Certificates to IPO clients without ensuring that RR had done sufficient due diligence to qualify the investment for IPO clients.

Penalty Assessed

The penalties imposed and costs assessed against Brighten are:

1) a fine in the amount of $10,000;
2) a requirement to pay $2,500.00 towards the Association's investigation costs; and
3) a condition on his continued approval in any capacity by the Association that the fine and costs be paid.

Summary of Facts

Background

The Settlement Agreement had been previously considered by a panel of the Pacific District Council but on September 9, 2005 the British Columbia Securities Commission ordered it be referred to a new panel after it ruled that the presence of one member on the first panel raised a reasonable apprehension of bias against Brighten.

Overview

The matter relates to the period from March 16, 1999 to June 3, 1999 (the Relevant Period) when Brighten was Executive Vice-President, Branch Manager, Compliance Manager and UDP, at IPO.

Alan Bruce Alexander Thomson (Thomson) was a RR at IPO. Steven Nizam Khan (Khan) was the Chairman and Chief Executive Officer (CEO) of IPO.

The Debtor Certificates

On March 16, 1999, the United States Bankruptcy Court for the District of Nevada (the Bankruptcy Court) made an Order Authorizing the Incurring of Debt (the Authorizing Order) by a Nevada corporation, Value Software Inc. (Value) that was in a voluntary proceeding for reorganization under Chapter 11 of the Bankruptcy Code in the United States.

The Authorizing Order enabled Value to incur debt pursuant to Class A and Class B Debtor Certificates (the Debtor Certificates) to fund operations and comply with terms of a merger with AutoFinance Companies of America Inc. (AutoFinance) which formed the basis of Value's plan of reorganization (the Plan).

The Bankruptcy Court further ordered that the Debtor Certificates be in a required form that stated, "Pursuant to the Order, the sums will be held in a segregated account at the Law Offices of Alan R. Smith."

Opportunity Presented to Thomson

James W. Wolff (Wolff) was a promoter who resided in Florida. He was discharged from personal bankruptcy in 1997. Wolff was President and CEO of his own company First Internet Capital (FI Capital) a Florida based Internet Marketing and Consulting company formed in 1997 to assist issuers in "going public". Among a number of other credentials, Wolff claimed to have previously been a financial advisor to Ferdinand Marcos and the family of the Shah of Iran as well as having been Ross Perot's banker.

Wolff knew Ron Tremblay (Tremblay), another RR at IPO, through previous unspecified business dealings.

In March, 1999, Tremblay received a letter from Wolff (Wolff's Letter), and presented it to Thomson as an opportunity for each of them to "get some business going." Wolff's Letter promoted investment in the Debtor Certificates.

What Brighten Knew

Sometime between March 23, 1999 and April 13, 1999, Thomson advised Brighten, that he was marketing the Debtor Certificates to his clients. The proposal was then referred to IPO's Corporate Finance Manager, Paul Wiebe (Wiebe). Wiebe concluded that the Debtor Certificate financing was a "high-risk venture".

After discussing the proposal with Brighten, Khan advised Thomson that while IPO would not sponsor the Debtor Certificate private placement, he could sell it to IPO clients provided that they were sophisticated, aware of the risk involved, and willing to instruct IPO to forward funds on their behalf. Khan advised Thomson to consult with Wiebe to ensure IPO was properly compensated.

This non – broker sponsored deal arrangement was different from a broker-sponsored deal whereby the Member firm reviewed the project and decided to vet and sponsor the deal and therefore received an extra financing commission for its work.

In meetings and in a series of four memoranda, from April 13 - 27, 1999, Thomson kept Brighten and Khan advised of his activities marketing the Debtor Certificates to existing and prospective IPO clients.

In an April 13, 1999 memo to Khan, which was copied to Brighten, Thomson indicated that he was working with Tremblay and Wolff "to put together a due diligence package and develop a Subscription Agreement complete with Term Sheet" to facilitate sales of the Debtor Certificates, which he was marketing to his clients. Thomson also advised that the Debtor Certificates could be "marketed in any jurisdiction and without a securities license" and enclosed a sales forecast that indicated that potential subscribers would invest a total of $130,500.

After Brighten and Khan discussed the Debtor Certificates, Brighten, in a memo dated April 19, 2003, advised Thomson that IPO would "not be doing any due diligence or research of this project" and instructed Thomson to ensure IPO's name did "not appear in any of the materials used by Value/AutoFinance to present the deal." Brighten did, however, authorize Thomson to sell the Debtor Certificates to IPO clients by writing in the memo, "Your solicitations of expressions of interest should be based only on the material provided by the issuers and your subscribers must base their decisions on that material."

In an April 19, 1999 memorandum to Khan, which was copied to Brighten, Thomson updated his total sales forecast to $339,300 and advised that the sales would close on April 30, 1999.

In a subsequent memorandum to Khan which was copied to Brighten, also dated April 27, 1999, Thomson revised his total sales forecast to $670,800. Thomson also advised that, pursuant to Brighten's request, he spoke with Wiebe about using the "finder's fee approach to getting paid" which was the normal procedure for a brokerage firm's remuneration in a non-brokered private placement.

Sales to IPO Clients

Thomson solicited interest in the Debtor Certificates by presenting clients with a 6 page Fact Sheet (the Fact Sheet) that was prepared by Wolff and included much of the same information originally presented in Wolff's letter.

Thomson solicited and raised US $172,000 from fourteen (14) IPO clients.

Clients purchased the Debtor Certificates by signing a Subscription Agreement that identified Florida lawyer Gerald D'Ambrosio (D'Ambrosio) as the "Attorney-in-Fact" for both AutoFinance and Value and included wire instructions specifying that funds

should be sent to him.

Between April 30, 1999 and May 31, 1999, Thomson drafted memoranda (the Client Memoranda) that clients signed to authorize IPO to withdraw money from their accounts to pay for the Debtor Certificates. The Client Memoranda stated the money would be paid to D'Ambrosio, In-Trust.

Nine Client Memoranda were drafted on IPO letterhead that listed the regulatory bodies of which IPO was a Member, including the Association.

On May 31, 1999, Thomson instructed Brighten's Assistant, Shannon Obara (Obara), to wire the client's funds to a trust account of D'Ambrosio and on June 1, 1999, IPO wired the client's funds, to that account.

The wire instructions on the Subscription Agreement; the instructions on the Client Memoranda; Thomson's instructions to Obara; and IPO's wire to D'Ambrosio were all contrary to the Authorizing Order from the Bankruptcy Court which stated, that the money was to "be held in a segregated account at the Law Offices of Alan R. Smith."

On June 2, 1999, Thomson's employment at IPO was terminated by IPO because he failed to meet internal sales targets and was actively soliciting offers of employment from other firms while employed by IPO.

On June 3, 1999, Brighten wrote Wolff requesting payment of commissions to IPO because he was concerned that commissions would be paid directly to Thomson who by then was no longer employed at IPO. Ultimately no commissions were paid.

Plan Not Confirmed

Contrary to the guarantees contained in Wolff's Letter and the Fact Sheet, the Bankruptcy Court had not approved the Plan.

On or about June 29, 1999, the Bankruptcy Court asked for additional evidence of feasibility before confirming the Plan. AutoFinance provided bank statements (the Bank Statements) that showed the company had a very substantial bank balance over the previous 12 months, usually in excess of $ 1 Million dollars.

Thomson had previously given the Bank Statements to investors who were looking for further information on the Debtor Certificates. The United States Securities and Exchange Commission (the SEC), who had intervened in the case before the Bankruptcy Court, reviewed the Bank Statements and determined they had been falsified.

Value later discovered, in or about July 1999, that AutoFinance had essentially been closed for some time, had no money and that the entire AutoFinance business was a scam. As a result, Value withdrew the Plan at the next confirmation hearing in Bankruptcy Court on August 13, 1999. After the Plan was withdrawn, the use to which the money raised by the Debtor Certificates was to be applied no longer existed. On August 13, 1999 the Bankruptcy Court ordered D'Ambrosio to hold the money raised in his trust account and not to do anything with it.

On or about September 30, 1999, the Bankruptcy Court ordered D'Ambrosio to turn over and account for all funds held in his trust account and under his control, evidenced by the Debtor Certificates. D'Ambrosio was unable to comply with the order of the Bankruptcy Court because he had previously disbursed the funds. It is unclear whether D'Ambrosio, who was the Registered Agent for Wolff's company FI Capital, deliberately orchestrated a scam and misappropriated the money. The money was not, however returned to the investors who purchased the Debtor Certificates from Thomson.

On or about March 20, 2000, Thomson filed a 'Complaint of Fraud' against D'Ambrosio with the Department of Lawyer Regulation of the Florida State Bar. The Florida State Bar filed a formal complaint against D'Ambrosio in the Supreme Court of Florida on August 2, 2001. D'Ambrosio filed a Conditional Admission and Consent to Sanction voluntarily resolving the matter.

On January 2, 2002, a Referee of the Supreme Court of Florida found D'Ambrosio acted intentionally and ordered him to provide each of the contributing investors the option, in writing, to continue with the investment or to receive a full refund of their contribution.

In or about the second half of 2002, more than three years after they initially subscribed to the Debtor Certificates, some of the investors received approximately 3/4 of the original amount they invested back from D'Ambrosio without interest. It is unclear exactly how much money was repaid to the investors and whether all of the investors were reimbursed by D'Ambrosio.

No Due Diligence

Notwithstanding, any statement in Wolff's letter or the Fact Sheet, the Debtor Certificates were *securities* as defined by the *British Columbia Securities Act* (the Act). Neither AutoFinance nor Value was ever a reporting issuer in British Columbia.

Thomson did not conduct any reasonable or appropriate due diligence into the legality, validity, structure or risk involved with the Debtor Certificates. He assumed it was a good investment for his clients only because Tremblay endorsed Wolff who appeared to have an impressive resume. Thomson did not perform any checks on Wolff or verify any of his alleged credentials.

Brighten allowed Thomson to sell the Debtor Certificates to IPO clients with Thomson conducting his own due diligence and drafting his own subscription agreements when he knew, or ought to have known that Thomson had no experience with bankruptcy reorganizations.

Reasons

Written reasons for the majority and dissenting decisions will be posted on the Association's website in due course.

Kenneth A. Nason
Association Secretary