INVESTMENT DEALERS ASSOCIATION OF CANADA

bulletin

ASSOCIATION CANADIENNE DES COURTIERS EN VALEURS MOBILIÈRES

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Discipline

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

Person Disciplined

A Hearing Panel appointed pursuant to IDA By-law 20 has imposed discipline penalties on Stephen Brook Toban; at all times a Registered Representative (RR) at the Vancouver head office of Global Securities Corporation (Global), a Member firm.

By-laws, Regulations, Policies Violated

Following a disciplinary hearing held from July 11-14 and July 25-26, 2006, in Vancouver, the Hearing Panel released its written liability decision on November 20, 2006 in which it found that Mr. Toban failed to properly perform his role as a gatekeeper to the capital markets, contrary to By-law 29.1 and Regulation 1300.1(a), when dealing with U.S. based clients trading in a Pink Sheet listed company by:

(i) facilitating the opening of investment accounts for as many as 35 non-Canadian residents without making diligent inquiries to ensure that each clients' reason for opening an account was legitimate, and without making diligent inquiries to ensure each client intended to use the account for legitimate investment purposes in circumstances which necessitated such inquiries;

(ii) facilitating certain transactional activity in as many as 35 non-Canadian resident accounts without making diligent inquiries to ensure the legitimacy of the transactions in circumstances which should have called the transactional activity into question because it was peculiar, suspicious or appeared to be consistent with market manipulation, deception or other improper market related activity; and

Mr. Toban further breached By-law 29.1 by:

(iii) effecting transactions in a client's account based on instructions he accepted from an individual who was not authorized to trade in the account.

The Hearing Panel heard penalty submissions on December 20, 2006 and released its written penalty decision on February 16, 2007.

Penalty Assessed

The discipline penalties and costs assessed against Mr. Toban are:

(a) A permanent ban from approval by the Association;

(b) A fine of $100,000;

(c) A payment to the Association of $20,900 representing disgorgement of commissions;

(d) A payment to the Association of $25,000 for costs.

Summary of Facts

Between March 1999 and February 2001 Mr. Toban opened a number of accounts for U.S. based clients who subsequently traded, primarily in the shares of Nutraceutical Clinical Laboratories International Inc. (NCCL) a private Florida company which in June 2000 orchestrated a reverse take-over of a publicly traded shell company listed on the Pink Sheets.

These clients (or their nominee companies or trusts) included NCCL's lawyer (Zankowski), NCCL's Chief Financial Officer (Gilbert), stock promoters involved with NCCL who had regulatory disciplinary histories (Kennedy and Siciliano), and other individuals with criminal or regulatory disciplinary histories referred by Kennedy and Siciliano. The Panel found no meaningful or rational reason, especially in view of Mr. Toban's admission that he was not permitted to solicit or give investment advice to them, why these clients decided to open accounts and do business with him at Global in Vancouver.

The Panel also found that Mr. Toban did not perform any due diligence or critical analysis of a legal opinion letter he received from Zankowski, which stated that 865,000 NCCL shares to be received by Kennedy's Falcon Trust account and 100,000 NCCL shares to be received by Zankowski's Sierra account were legitimately received and free-trading even though it was extremely important, given all of the existing circumstances.

The Panel found that Mr. Toban accepted Zankowski's legal opinion in circumstances where a reasonable RR would have required an independent legal opinion from a source that was not connected with the promoters and entities who would directly benefit from the opinion. From the facts and circumstances proven in this hearing,

Mr. Toban knew or ought to have known that:

(a) Zankowski and Kennedy were both clients of his;

(b) Zankowski was associated with promoters Kennedy, Kasper and Spangler, each of whom had criminal or regulatory histories;

(c) Zankowski controlled Sierra, and was in a conflict of interest when he gave an opinion which benefited him and Sierra;

(d) Through his association with Kennedy, Zankowski was in a conflict of interest when he gave an opinion which benefited him and Sierra; and

(e) Through his association with Kennedy, Zankowski was in a conflict of interest when he gave an opinion which benefited Kennedy or Falcon Trust.

The Panel found Mr. Toban opened another 19 accounts for non-resident clients he did not solicit. The Panel found that when he was approached by these clients, unless he was part of a scheme or arrangement, he would be on notice, to exercise caution and extreme diligence before opening these accounts. In all of the circumstances, and particularly considering the fact that 16 of the 19 accounts were opened in the immediate period after he received and acted upon the Zankowski letter, Mr. Toban had a duty to make diligent enquiries to determine the reason each of these clients wanted to open an account with him. In total there were 35 non-resident clients that required prudent, diligent inquiries by Mr. Toban to ensure the legitimacy of the accounts, and the orders that he accepted and acted upon. He failed to make these inquiries.

With reference to the accounts that were opened following the Zankowski opinion letter, the primary activity, or in some cases the sole activity, in each of the accounts, was the receipt of NCCL shares from Kennedy's Falcon Trust or Zankowski's Sierra. The shares were subsequently sold in the market. In some cases, after the shares were received, a lesser number of shares were crossed back to Kennedy's Falcon Trust as market activity. Both Kennedy and Zankowski sent numerous authorizations to Mr. Toban to journal shares to these new non-resident accounts. It appears Mr. Toban simply accepted these instructions and made no inquiries.

Based upon the totality of the evidence presented at the hearing the Panel was satisfied that Mr. Toban either didn't know, or was not prepared to admit to the reason for the transfers, and thus caused the words "for services rendered" to be written on the transfer requests. The Panel was satisfied that either Mr. Toban "authorized" the transfer without making any diligent enquiries to determine the reason behind the transfer of the shares, or he was reckless and indifferent to the reason. By facilitating the transactional activity in the accounts, without reasonable assurances that there were reasonably legitimate reasons for the transactions, Mr. Toban failed

to adequately perform his role as a gatekeeper for the securities industry.

The panel also heard evidence that Mr. Toban facilitated five cross-trades between the same accounts without making any diligent enquiries regarding the reason behind each transaction. Association Staff took the position that a reasonable RR would have questioned whether the transactions were a kickback, an attempt to create the appearance of trading and volume, some other activity designed to manipulate the market, or some otherwise illegal or improper activity. The Panel found, on the evidence, that Mr. Toban facilitated the five cross-trades without making diligent enquiries to ensure the legitimacy of the transactions in circumstances which called them into question.

Finally, the Panel concluded the cross-trade between one account (War Eagle) and Kennedy's Falcon Trust on October 16, 2000 was not authorized by War Eagle. The Panel concluded that Mr. Toban took instructions for this trade from Kennedy, and allowed Kennedy to effect trading in the War Eagle account.

In the course of its decision the Hearing Panel admitted into evidence the transcript of an interview of Gilbert, the principal of War Eagle, who was also NCCL's Chief Financial Officer. Gilbert's interview was conducted by the United States Securities and Exchange Commission. The Panel noted that Gilbert was a client of Mr. Toban's, and Mr. Toban testified as to their dealings. Mr. Toban was provided with the full transcripts of Mr. Gilbert's testimony in the SEC proceeding. He had a fair opportunity to comment on the evidence, and contradict it, which he did. The Panel acknowledged that it should be cautious in the weight given to the Gilbert transcript.

In its penalty decision, the Panel stated that a permanent ban from approval is a severe economic penalty that generally should be reserved for cases involving egregious conduct. It then ruled that considering all the facts and circumstances, this was an appropriate case to order a permanent ban.

Mr. Toban was previously disciplined by the IDA in August 2005 (Bulletin #3452) and is not currently registered with the Association.

For further details and the complete reasons for decision on liability and penalty, please see Enforcement > Reasons for Decisions in Disciplinary Hearings on the IDA's web site (www.ida.ca).

Kenneth A. Nason
Association Secretary