

# 2004 BCSECCOM 616

## Settlement Agreement

### TD Securities Inc.

#### *Securities Act, RSBC 1996, c. 418*

- ¶ 1 The following settlement of issues has been reached between TD Securities Inc. (TD) and the Executive Director.

#### **Agreed statement of facts**

- ¶ 2 As the basis for the undertakings and orders referred to in this settlement, TD acknowledges the following facts as correct:
1. TD was registered as a broker with the Vancouver Stock Exchange (the VSE), now the TSX Venture Exchange, from January 1, 1996 to June 5, 1997.
  2. TD is registered as an investment dealer with the Investment Dealers Association, and has been since February 1, 1997.
  3. TD amalgamated with Green Line Investor Services Inc. (Green Line) on January 1, 1996.
  4. Green Line entered into an introducing/carrying broker agreement with Grafton Asset Management Group Ltd. (Grafton Asset) on or about October 13, 1994 (the Carrying Broker Agreement). Under the Carrying Broker Agreement, Green Line was the carrying broker for investments sold by Grafton Asset.
  5. Grafton Asset changed its name to Grafton Global Management Ltd. (Grafton Global) on January 8, 1996.
  6. Grafton Global, a British Columbia company, had a seat on the VSE from October 17, 1994 until March 11, 1997.
  7. George Melvin Grafton (Grafton), a British Columbia resident, was registered under predecessor legislation to the *Securities Act*, RSBC 1996, c.418 (the Act) as a trading partner/director/officer with Grafton Global, and its predecessor, Grafton Asset.
  8. In or about March 1997, Grafton Global's business was sold to TD. From March 11, 1997 to July 7, 1997, when he ceased to be registered at all, Grafton was registered under predecessor legislation to the Act and the Act as an investment adviser with TD.

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9. Valley Mortgage and Investment Company Ltd. (Valley), a British Columbia company incorporated in September 1994, was never registered to trade in securities. Grafton and Valley were connected in that Grafton was a directing mind of Valley.

### **The securities**

10. In or about March 1996, during the time the Carrying Broker Agreement was in effect, approximately 90 Grafton Global clients invested a total of \$4.11 million in Valley (the 1996 Investments). Of the \$4.11 million, \$2 million came from “roll-overs” of investments previously made in Valley, and \$2.11 million came from new investments.
11. When Grafton became an investment adviser with TD, seven of his clients invested \$450,000 in Valley between March and May 1997 (the 1997 Investments).
12. The money raised from the 1996 Investments and the 1997 Investments (together, the Valley Investments), was lent to developers who were developing property in the Kelowna area (the Developers).

### **Failure to properly document the investment**

13. TD represents and the Executive Director accepts that TD provided a form of participation agreement to Grafton in order to document the 1996 Investments. Grafton was required to have his clients execute the participation agreement. This documentation was not properly completed.
14. TD failed to follow up with Grafton to ensure that the documentation was properly completed.

### **Account statements**

15. The statements provided by TD to the investors about the 1996 Investments referred to them, for a period of over a year, as “TD mortgages.” This reference may have given the investors a false sense of security regarding the safety of their investments.
16. In June 1999, Valley brought a petition of foreclosure against the Developers. Despite the fact that the mortgages underlying the Valley Investments were in default, TD continued to list the value of each of the Valley Investments at the purchase price. TD represents this value was based on the last available independent price for the Valley Investments, but acknowledges it may have given the investors a false sense of security about their investments.

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### **Failure to ensure suitability**

17. TD was obliged to ensure the 1997 Investments were suitable for the investors as Grafton was registered as an investment adviser with TD at the time. The investment may not have been suitable for some of the clients, contrary to TD's requirement to determine suitability under section 48 of the *Securities Rules* BC Reg. 479/95 and BC Reg. 194/97.

### **Actions contrary to the public interest**

18. TD's conduct as described in this settlement was contrary to the public interest.

### **Mitigating factors**

¶ 3 The Executive Director has taken into account the following facts as factors mitigating the sanctions which would otherwise have applied in the public interest:

1. TD voluntarily participated in a confidential settlement with investors in the Valley Investments as a result of which all or a significant portion of their investments will be repaid.
2. TD has revised its compliance procedures and represents that failures of the kind described in this settlement will now be detected and dealt with promptly.

### **Undertaking**

¶ 4 TD undertakes to do the following:

3. to pay to the British Columbia Securities Commission the sum of \$50,000 of which \$20,000 represents costs of the investigation.
4. not to say anything, in writing or orally, which may contradict the terms of this settlement or call those terms into question.

### **Order**

¶ 5 TD consents to an order by the Executive Director (the Order) that pursuant to section 161(1)(f) of the Act, TD be reprimanded.

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### Waiver

¶ 6 TD waives any right it may have, under the Act or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to this settlement.

¶ 7 October 8, 2004

¶ 8 “William R. Gazzard”  
TD Securities Inc. (Signing Authority)

“Christopher Climo” )  
Witness Signature )  
Christopher Climo )  
Witness Name (please print) )  
1615 Carmen Dr. )  
Mississauga, ON L5G 3Z1 )  
Address )  
SVP-Compliance )  
Occupation )

¶ 9 October 21, 2004

¶ 10 Brenda M. Leong  
Executive Director