

2005 BCSECCOM 671

Settlement Agreement

TD Waterhouse Canada Inc.

Securities Act, RSBC 1996, c. 418

¶ 1 TD Waterhouse Canada Inc. (TDW) has settled the following issues with the Executive Director.

¶ 2 **Agreed Statement of Facts**

As the basis for the undertakings and order referred to in this settlement, TDW acknowledges the following facts as correct:

Moneta and Stratcomm

1. On September 11, 1990, the Executive Director issued an order (the Moneta Order) that all trading cease in the securities of Moneta Porcupine Mines Inc. (Moneta).
2. On November 8, 2000, the Executive Director issued an order (the Stratcomm Order) that all trading cease in the securities of Stratcomm Media Ltd. (Stratcomm).
3. On March 28, 2003, the Executive Director issued BC Instrument 57-501 *Partial Variation for Cease Trade Orders of Certain Issuers* (the Umbrella Variation Order) that referred to the Moneta Order and the Stratcomm Order.
4. The British Columbia Securities Commission published the Moneta Order in its Weekly Summary, and it published the Stratcomm Order and the Umbrella Variation Order on its website. TDW had, or ought to have had, notice of the Moneta Order and the Stratcomm Order.

TDW

5. TDW has been registered under the *Securities Act*, R.S.B.C. 1996, c.418 as an investment dealer since June 28, 1999.
6. Between July 1999 and November 2001, as a result of deficiencies in their internal systems, TDW and other registrants executed trades on behalf of their clients in securities of an issuer that were subject to a cease trade order. On December 4, 2001, the Executive Director made a settlement agreement with TDW and the other registrants under which each registrant agreed to develop and implement, within 12 months of the date of the agreement, either (a) an interface between a Commission database listing cease trade orders and related

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revocation and variation orders and the order management system used by the registrant, or (b) another process that informed the registrant of outstanding cease trade orders on a current basis.

7. The Commission's cease trade order database was not available until February 2003. When it became available, the information contained in the cease trade order database was not sufficient to permit TDW to implement an interface between the cease trade order database and TDW's order management system.
8. In order to comply with the terms of the settlement agreement, TDW created its own internal cease trade order database based on information available from the Commission and other securities regulators and created an interface between that database and TDW's order management system. The creation of TDW's internal cease trade order database and the implementation of the interface with its order management system were completed by late September 2002.
9. In mid-2004, TDW discovered that, in the development of its cease trade order database, it had inadvertently omitted Moneta and Stratcomm from its list of issuers whose securities were subject to cease trade orders. As a result, TDW had, since the creation of its internal database, executed trades on behalf of clients in the securities of Moneta and Stratcomm contrary to the Moneta Order and the Stratcomm Order.

Mitigating Factors

- ¶ 3 The Executive Director has taken into account the following facts as factors mitigating the sanctions that would otherwise have applied in the public interest:
1. TDW took the initiative in bringing these matters to the attention of Commission staff.
 2. TDW took the initiative in applying for and obtaining the required Exemptive relief to permit its clients to sell the securities they had purchased and committed to ensuring that clients did not suffer a loss as a result of the trades.
 3. TDW has taken steps and devoted significant resources to correct the deficiencies in its system and put in place procedures to prevent further cease trade order violations.

Public Interest

- ¶ 4 TDW acted contrary to the public interest by trading in the securities of Moneta and Stratcomm contrary to the Moneta Order and Stratcomm Order.

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Undertaking(s)

- ¶ 5 TDW undertakes to do the following:
1. to pay to the British Columbia Securities Commission the sum of \$20,000 (twenty thousand dollars); and
 2. not to say anything, in writing or orally, that may contradict the terms of this settlement or call those terms into question.

Order

- ¶ 6 TDW consents to an order by the Executive Director (the Order) under section 161(1)(a) of the *Securities Act*, RSBC 1996, c. 418 that TDW comply fully with the Act, the Securities Rules, and any applicable regulations, policies and guidelines.

Waiver

- ¶ 7 TDW 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.

- ¶ 8 November 3, 2005

- ¶ 9 “John S. .Gee”)
TD Waterhouse Canada Inc.)
(John G. See))
)
“Christopher Climo”)
Witness Signature)
Christopher Climo)
Witness Name (please print))
66 Wellington Street W.)
Toronto, Ontario M5Y 1A2)
Address)
Chief Compliance Officer)
Occupation)

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¶ 10 November 8, 2005

“Brenda Leong”

¶ 11 Brenda M. Leong
Executive Director