

2011 BCSECCOM 252

Settlement Agreement

TD Waterhouse Canada Inc.

Securities Act, RSBC 1996, c. 418

- ¶ 1 The Executive Director of the British Columbia Securities Commission (the Executive Director) and TD Waterhouse Canada Inc. (TDW) agree as follows:

Agreed Statement of Facts

1. TDW holds registration across Canada as an investment dealer and is a member of the Investment Industry Regulatory Organization of Canada, with a head office in Toronto, Ontario.
2. In December 2001, TDW (then TD Waterhouse Investor Services Canada Inc.) and others reached a settlement with the Executive Director respecting trades, executed by TDW and the other registrants on behalf of their clients in securities of an issuer that were subject to a cease trade order. TDW and the other registrants agreed to develop and implement systems to monitor and report outstanding cease trade orders. As a result of their conduct, TDW agreed to pay \$28,923.07 to the BC Securities Commission.
3. In November 2005, TDW reached a settlement with the Executive Director and agreed to an order under section 161 of the Act respecting trades executed by TDW on behalf of its clients in securities of two issuers that were subject to a cease trade order. As a result of their conduct, TDW agreed to pay \$20,000 to the BC Securities Commission.

Trend & Americas CTOs

4. Trend Technology Corporation (Trend) is an Over-the-Counter (OTC) reporting issuer under BC Instrument 51-509 *Issuers Quoted in the U.S. Over-the-Counter Markets* (BCI 51-509).
5. On October 20, 2009, under section 164(1) of the Act, the Executive Director issued a cease trade order against Trend, for failure to file its required auditor's report (Trend CTO).
6. On October 20, 2009 at 6:00 pm, the Canadian Securities Administrators (CSA) sent an email to its subscribers, including TDW, announcing the Trend CTO.

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7. On November 27, 2009, under section 164(1) of the Act, the Executive Director issued a Variation Order of the Trend CTO stating Trend changed its company name to Americas Energy Company – Aeco (Aeco) on October 14, 2009, and continued the cease trade order under the new company name (Aeco CTO).
8. On November 27, 2009 at 7:00 pm, the CSA sent an email message to its subscribers, including TDW, announcing the Aeco CTO.
9. In October 2009, staff became aware that TDW conducted or permitted trades on behalf of BC residents, contrary to the Trend and Aeco CTOs.
10. TDW failed to enter the information respecting the Trend and Aeco CTOs, as communicated by the CSA email, into its maintenance tables to ensure trades of the cease-traded security were blocked in the appropriate jurisdictions. As a result, from October 20, 2009 to November 27, 2009, TDW allowed trades in Trend for BC client accounts.
11. Following the CSA email respecting the Aeco CTO on November 27, 2009, TDW updated its maintenance tables on November 30, 2009, to block trades of Aeco. However, in order to permit trades of a security in jurisdictions where the Aeco CTO is not in effect, TDW staff temporarily removed the order from one of its maintenance tables, but failed to reinstate it after the trades were completed. Consequently, TDW completed trades in Aeco for BC clients through its system after the Aeco CTO was issued but before the Aeco CTO was reinstated in its system on May 7, 2010.

Flotek and Oriens CTOs

12. Flotek Industries Inc. (Flotek) is a reporting exchange issuer as at April 21, 1999.
13. On November 3, 1999, under section 164(1) of the Act, the Executive Director issued a cease trade order against Flotek for failure to file certain required financial statements and reports (Flotek CTO).
14. Oriens Travel & Hotel Management Corp. (Oriens) is an OTC reporting issuer under BCI 51-509.
15. On January 20, 2009, under section 164(1) of the Act, the Executive Director issued a cease trade order against Oriens for failure to file certain required financial statements (Oriens CTO).

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16. On January 20, 2009, at 2:11 pm, the CSA sent an email message to its subscribers announcing the Oriens CTO.

17. In October 2010, TDW reported to staff that it had identified and had inadvertently permitted trades on behalf of BC residents, contrary to the Oriens CTO and the Flotek CTO.

Sungro & Lux CTOs

18. Sungro Minerals Inc. (Sungro) is an OTC reporting issuer under BCI 51-509.

19. On July 29, 2009, the Executive Director issued a Temporary Order and Notice of Hearing (Sungro CTO) ordering all persons to cease trading in the securities of Sungro until a hearing was held and a decision rendered. The Sungro CTO remains in effect.

20. On July 29, 2009, at 4:00 pm, the CSA sent an email to its subscribers, including TDW, announcing the Sungro CTO.

21. Lux Energy Corp. is an OTC reporting issuer under BCI 51-509.

22. On September 7, 2010, under section 164(1) of the Act, the Executive Director issued a cease trade order against Lux for failure to file certain required financial statements (Lux CTO).

23. On September 7, 2010, at 2:00 pm, the CSA sent an email to its subscribers, including TDW, announcing the Lux CTO.

24. In March 2011, TDW advised staff that it had identified that it had inadvertently permitted trades on behalf of BC residents, contrary to the Flotek CTO, Sungro CTO, and Lux CTO.

25. TDW acquired a trading system in June 2009. This trading system did not have an established process to identify and block cease traded securities. As a result, TDW facilitated trades in Aeco, Oriens, Flotek and other issuers through this system after cease trade orders had been issued by the Executive Director.

Kunekt CTO

26. Kunekt Corporation (Kunekt) is an OTC reporting issuer under BCI 51-509.

27. On February 28, 2011, under section 89 of the Act, the Executive Director issued a halt trade order against Kunekt, due to unexplained and unusual trading fluctuations (Kunekt Halt Order).

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28. On February 28, 2011, at 4:00 pm, the CSA sent an email to its subscribers, including TDW, announcing the Kunekt Halt Order.
29. On March 3, 2011, the Executive Director extended the Kunekt Halt Order until March 8, 2011. On March 8, 2011, under section 161 of the Act, the Executive Director issued a temporary order and notice of hearing, cease trading the securities of Kunekt (Kunekt CTO).
30. The Commission extended the Kunekt CTO two times between March 8, 2011 and April 8, 2011. On April 8, 2011, the Commission extended the Kunekt CTO until a hearing is held and a decision rendered. As at April 12, 2011, the Kunekt CTO remains in effect.
31. The CSA sent emails to its subscribers, announcing each extension and order in respect of Kunekt.
32. On April 6, 2011, staff became aware that TDW conducted or permitted trades on behalf of BC residents, contrary to the Kunekt CTO.
33. TDW represents that on April 5, 2011, a TDW representative manually overrode TDW's system controls to place two trades for a BC resident client, contrary to the Kunekt CTO.

Misconduct

34. TDW contravened orders issued under section 164(1) of the Act.

Mitigating Factors

35. TDW has corrected its systems and put in place additional procedures to prevent further cease trade order violations.
36. TDW reported trades conducted in Oriens, Flotek, Sungro, and Lux.
37. TDW is committed to ensuring that clients do not suffer a loss as a result of the trades.

Public Interest

38. TDW acted contrary to the public interest by engaging in the conduct set out above.

Undertakings

39. TDW undertakes to pay \$30,000 to the Commission, which is due and payable immediately without further demand.

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40. TDW undertakes, under section 161(1)(a) of the Act, to comply with the Act, the *Securities Rules*, BC Reg. 194/97, and any applicable regulations.

Waiver

- ¶ 2 TDW waives any right they 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.

Counterpart

- ¶ 3 This Settlement Agreement may be executed in counterpart or by facsimile execution and all such counterparts of executed copies or faxed copies shall be read or construed together as if they formed one originally executed document.

- ¶ 4 May 27 , 2011

- ¶ 5 “Ben Eggers”)
TD Waterhouse Canada Inc.)
(Signing Authority))
)
Ben Eggers SVP)
Print Signing Authority Name)
)
“Barbara Varro”)
Witness Signature)
)
Barbara Varro)
Witness Name (please print))
)
110 Yongest, 4th floor)
Address)
)
Toronto, ON)
)
Senior Manager, Compliance)
Occupation)

- ¶ 6 May 31, 2011

- ¶ 7 “Paul Bourque”
Paul C. Bourque, Q.C.
Executive Director