

Schedule "A"

**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O., 1990, C. S. 5 AS AMENDED**

-and-

IN THE MATTER OF TD WATERHOUSE CANADA INC.

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. By Notice of Hearing dated September 19th, 2005, the Ontario Securities Commission announced that it proposed to hold a hearing to consider whether pursuant to section 127 and section 127.1 of the *Securities Act*, R.S.O. 1990, C. S. 5, as amended (the *Act*), it is in the public interest to make an order that:

- (a) TD Waterhouse Canada Inc. (TDW) be reprimanded; and
- (b) TDW pays the costs of Staff's investigation and the costs of the hearing in this matter.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff recommend settlement of the proceeding initiated against TDW by the Notice of Hearing dated September 19th, 2005 in accordance with the terms and conditions contained in this agreement. TDW agrees to the settlement on the basis of the facts agreed to as provided in Part III and consents to the making of an order in the form attached as Schedule A to this agreement on the basis of the facts contained in this agreement.

III. FACTS

Acknowledgement

3. Staff and TDW agree that the facts and conclusions set out in this Part of the Settlement Agreement are solely for the purposes of this Agreement, for the settlement of this matter and as a basis for the undertakings contained in the Agreement.

4. Staff and TDW agree that this Agreement is without prejudice to either TDW or Staff in any other proceeding brought by the Commission under the *Act* or any civil proceedings which may be brought by any other person.

Background

5. TDW is a registrant and is registered in the category of Investment Dealer under the *Act*.

6. Richard Ochnik (Ochnik) is an individual who resides in Ontario. Ochnik is not affiliated in any way with TDW.

7. 1464210 Ontario Ltd. (1464210) is a company incorporated pursuant to the laws of Ontario.

TD-W facilitates transactions in 1464210

8. Between May 7, 2002 and November 18, 2002, Ochnik engaged in a RRSP/loan scheme. Ochnik incorporated 1464210 to develop a property as a retirement complex in Listowel, Ontario. Ochnik arranged for various individuals facing financial difficulty to invest in 1464210. These individuals were advised that if they collapsed their locked-in RRSPs or pensions and purchased shares in 1464210, they would receive a non-repayable loan for between 40 and 60% of their locked-in funds. If the individuals were interested, they were referred to a particular registered representative at TDW.

9. In February 2002, Ochnik met with the registered representative at TDW. He told her that he had various individuals who intended to invest in 1464210. He told her that he wanted TDW to establish accounts for them and arrange for the transfer of the shares in 1464210 to the individuals. The registered representative referred the proposed transaction to her Branch Manager, TDW Head Office and TDW Compliance. After reviewing the proposal, Head Office approved the transaction and the registered representative kept Head Office advised of the transaction as it proceeded. At TDW's request Ochnik also provided a copy of an appraisal of the retirement home property, valuations of the shares to be acquired, legal opinions, a sample subscription agreement and other due diligence documents to TDW Head Office and Compliance all of which documents were reviewed by TDW.

10. Neither TDW nor the registered representative were aware that there were to be loans associated with the investments in 1464210 shares or that the investment was designed as a method to enable investors to withdraw assets from their locked-in RRSPs. TDW Compliance, however, was aware that the OSC had issued a RRSP/loan scheme alert. At TDW's request, the registered representative specifically asked Ochnik whether there were loans associated with the investment and was advised that no loans were involved. No one at TDW, however, had any direct conversations with the bulk of the investors and so the issue of loans associated with the investments was never discussed with most of them. Had TDW been aware of the loans, it would not have proceeded with the transaction.

11. After their meeting, Ochnik provided the registered representative with the documentation necessary to transfer the shares from 1464210 to the various individuals.

12. The registered representative and Ochnik agreed that 1464210 would pay 7% of the funds paid into the client's account to TDW as its commission for facilitating the transactions.
13. The registered representative sent various documents to the clients including a New Client Application Form (NCAF).
14. When the clients returned the NCAFs to the registered representative, she reviewed each one and signed them. Based on the information contained on these forms, the financial circumstances of the investors were such that their purchases of 1464210 shares were unsuitable based on the long-term, high-risk nature of the investment.
15. The registered representative opened RRSP accounts with TDW on behalf of the clients.
16. The registered representative arranged to have the clients collapse their locked-in funds at other institutions and transfer the proceeds to accounts at TDW.
17. When the funds arrived, the registered representative notified Ochnik. Ochnik then picked up the funds and provided the registered representative with one share for every dollar invested. The shares were deposited into the client's account. Upon receipt of the funds, Ochnik provided TDW with a cheque from 1464210 for 7% of the amount of the funds received as TDW's commission.
18. Between June 7, 2002 and December 31, 2002, 43 clients of TDW deposited at least \$1,508,000 into their accounts with TDW. These funds were then transferred to 1464210 who provided 1,508,000 shares to TDW for deposit into the investors' accounts.
19. TDW received \$105,560 from 1464210 as its commission.
20. TDW did not disclose to its clients the 7% commission paid to TDW.

Allegations

21. The specific allegations advanced by Staff against TDW are:

(a) that TDW failed to comply with its suitability obligation to their clients contrary to section 1.5 of Rule 31-505; and

(b) that TDW failed to comply with its obligation to deal with their clients fairly by failing to disclose to the clients the 7% commissions that were paid to TDW contrary to section 2.1(2) of Rule 31-505.

IV. CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND CONTRARY TO THE PUBLIC INTEREST

22. TDW acknowledges that the conduct described in Part III and acknowledges that the conduct was contrary to Ontario securities law and contrary to the public interest.

V. TERMS OF SETTLEMENT

23. TDW agrees to the following terms of settlement:

(a) TDW agrees to make restitution to its clients in the amount of monies that were deposited into the client accounts at TDW and used to purchase shares of 1464210 plus interest calculated by a formula to be agreed upon by Staff and TDW. TDW will supply proof in writing to Staff of the Commission that restitution to its clients has been made.

(b) TDW agrees to make a settlement payment of \$250,000 to the Ontario Securities Commission for allocation to and for the benefit of such third parties under section 3.4(2) of the *Act*;

(c) TDW will provide a letter of comfort from its auditor to Staff of the Commission to confirm that TDW has instituted new practices and procedures related to preventing the facilitation of potential RRSP/loan schemes;

(d) pursuant to clause 6 of subsection 127(1) of the *Act*, TDW shall be reprimanded; and

(e) pursuant to section 127.1 of the *Act*, TDW agrees to pay the sum of \$125,000 in respect of the costs of the investigation and hearing in this matter.

V. STAFF COMMITMENT

24. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the *Act*, against TDW or its officers, directors or employees respecting all the facts set out in Part III of this Agreement.

25. This Settlement Agreement constitutes full answer to the allegations contained in the Notice of Hearing and Statement of Allegations.

VI. PROCEDURE FOR APPROVAL OF SETTLEMENT

26. Approval of the Settlement Agreement shall be sought at a hearing of the Commission scheduled for August 22, 2005.

27. Counsel for Staff and counsel for TDW may refer to any part or all of this Settlement Agreement at the Settlement Hearing. Staff and TDW agree that this Settlement Agreement will constitute the entirety of the evidence to be submitted at the Settlement Hearing.

28. If this Settlement Agreement is approved by the Commission, TDW agrees to waive its rights under the *Act* to a full hearing, judicial review or appeal of the matter.

29. Whether or not the Settlement Agreement is approved by the Commission, TDW agrees that it will not, in any proceeding, refer to or rely on this Settlement Agreement, the settlement discussions and negotiations or the process of approval of the Settlement Agreement as the basis of any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

30. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or an order in the form attached as Schedule "A" is not made by the Commission:

(a) this Settlement Agreement and its terms, including all discussions and negotiations between Staff and TDW leading up to its presentation at the Settlement Hearing, shall be without prejudice to Staff or TDW; and

(b) except as set out in paragraph 28, Staff and TDW shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by this Settlement Agreement or the settlement discussions and negotiations.

VII. DISCLOSURE OF AGREEMENT

31. Except as required by its terms, this Settlement Agreement will be treated as confidential by the Commission, and forever if, for any reason whatsoever, this Settlement Agreement is not approved by the Commission, except with the written consent of Staff and TDW or as may be required by law.

32. Any obligations of confidentiality attaching to this Settlement Agreement shall terminate upon approval of this settlement by the Commission.

33. Staff and TDW agree that if this Settlement Agreement is approved by the Commission, they will not make any public statement inconsistent with this Settlement Agreement.

VIII. EXECUTION OF SETTLEMENT AGREEMENT

34. This Settlement Agreement may be signed in one or more counterparts which together shall form a binding agreement.

35. A facsimile copy of any signature shall be as effective as an original signature.

DATED AT TORONTO this “19th” day of September, 2005.

“Michael E. Reilly” _____
TD-Waterhouse
President, Private Investment Advice
TD Waterhouse Canada Inc.

“Michael Watson” _____
Michael Watson
Director of Enforcement

SCHEDULE “A”

**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O., 1990, C. S. 5 AS AMENDED**

-and-

IN THE MATTER OF TD-WATERHOUSE

ORDER

(Section 127(1) and Section 127.1)

WHEREAS on August 8, 2005, the Ontario Securities Commission issued a Notice of Hearing pursuant to Section 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the *Act*) in respect of TD Waterhouse (TDW);

AND WHEREAS TDW entered into a settlement agreement with Staff of the Commission dated August 8, 2005 in which it agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing subject to the approval of the Commission;

AND UPON receiving the Settlement Agreement and the Notice of Hearing and upon hearing submissions of Staff and counsel for TDW;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS ORDERED THAT:

1. the Settlement Agreement attached to this Order as Schedule “A” is approved;
2. pursuant to clause 6 of subsection 127(1) of the *Act*, TDW is reprimanded;

3. pursuant to section 127.1 of the *Act*, TDW shall pay the sum of \$125,000 to the Ontario Securities Commission in respect of the costs of Staff's investigation and the hearing of this matter.

Dated at Toronto, Ontario, this day of September, 2005.