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**CIRCULAR  
December 17, 2004**

**DISCIPLINARY DECISION  
TD SECURITIES INC.**

On March 12, 2004, following an investigation conducted by its Market Surveillance Department, the Regulatory Division of Bourse de Montréal Inc. (the “Bourse”) lodged a complaint against TD Securities Inc. (“TDSI”), an approved participant of the Bourse.

By way of an offer of settlement presented and approved by the Special Committee – Regulatory Division, TDSI, has agreed to the following disciplinary penalties:

- The payment of a fine of \$ 175,000;
- The review and establishment by TDSI of policies and procedures of supervision acceptable to the Bourse related in particular to:
  - Record-keeping and audit trail requirements applicable to the supervision of derivative instruments trading activity;
  - Periodic reviews by a Designated or Alternate Registered Futures Contracts and Futures Options Principal of trading activities in derivative products;
  - Sufficient and adequate documentation of such periodic reviews and proper maintenance and retention of such documentation;
  - Registration requirements and procedures of registration of SAM Authorized Persons, persons authorized to carry on activities on the Montreal Automated System called SAM.
- The submission of these policies and procedures of supervision within a delay of two months for review and approval by the Bourse;
- The reimbursement of the costs in the amount of \$ 64,187.50

TDSI recognized that it contravened to article 7011 of Rule Seven of the Bourse, to Policy C-4 of the Bourse “Establishing and Maintaining Adequate Internal Controls” and to article 4101 of Rule Four of the Bourse.

Article 7011 provides that every approved participant must establish and maintain adequate internal controls in accordance with Policy C-4.

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Policy C-4 of the Bourse provides some guidance to approved participants on compliance with the requirement in article 7011. Policy C-4 states, among other things, that internal control consists of the policies and procedures established and maintained by management to assist in achieving its objectives of ensuring, as far as practical, the orderly and efficient conduct of the entity's business.

Article 4101 prohibits approved participants from engaging in any act, conduct, practice or proceeding unbecoming of an approved participant of the Bourse, inconsistent with just and equitable principles of trade, or detrimental to the reputation of the Bourse or to the interest or the welfare of the public or of the Bourse.

Between the months of September 2000 to February 2002, TDSI failed to establish and/or maintain adequate internal controls of its futures contracts business trading activities in violation of Article 7011 and of Policy C-4.

Between the months of September 2000 to February 2002, TDSI engaged in a conduct inconsistent with just and equitable principles of trade and/or detrimental to the interests of the public by failing to ensure appropriate supervision of the trading activities of its employee John Patrick O'Malley.

On February 27, 2002, representatives of TDSI and Friedberg Mercantile Group Ltd. ("Friedberg") met with the Bourse in order to discuss their concerns about a former employee of TDSI, John Patrick O'Malley. On February 28, 2002, they also met with the Investment Dealers Association of Canada (the "IDA").

A representative of Friedberg had informed TDSI of the unusual profitability of two clients' accounts. It had been discovered that the account holders were using John Patrick O'Malley at TDSI to execute trades on the Bourse, which trades would subsequently be given up to the client accounts at Friedberg for settlement. As noted in a Notice of Hearing of the IDA dated July 14, 2003 concerning John Patrick O'Malley, TDSI investigated John Patrick O'Malley's trading activities and, after an extensive review, concluded that there was strong evidence suggesting that John Patrick O'Malley was giving preferential treatment to clients A.S and R.R. in terms of the allocation of trades. Specifically, it appeared that John Patrick O'Malley would execute a series of futures trades at a variety of prices and then allocate the most favorable trades to the client accounts. This was done even though some of the trades should have been allocated to other clients.

Representatives at TDSI conducted two interviews with John Patrick O'Malley for the purpose of obtaining explanations regarding the profitability and allocation of trades to the client accounts. According to TDSI, John Patrick O'Malley failed to provide reasonable or adequate reasons for his trading activities. John Patrick O'Malley tendered his resignation on February 21, 2002, following the second interview.

The substantive issues arising from this case became the subject of a joint investigation between the Bourse and the IDA. As noted in the Notice of Hearing of the IDA dated July 14, 2003 concerning John Patrick O'Malley, in March 2002, the IDA commenced an investigation into the John Patrick O'Malley trading activities in the client accounts of A.S. and R.R. The joint investigation of the Bourse and the IDA was divided by jurisdictional responsibilities where the IDA was responsible to investigate John Patrick O'Malley's trading activities and the Bourse was responsible to investigate the supervision by TDSI of the said trading activities of John Patrick O'Malley.

As mentioned in the bulletin # 3313 of the IDA dated July 23, 2004, on July 19, 2004, the Ontario District Council of the IDA imposed a permanent prohibition on John Patrick O'Malley's ability to seek registration approval with the IDA in any capacity for having contravened an order of the District Council to pay a \$ 10,000 fine for having failed to cooperate with the IDA.

Following the review by the Bourse of TDSI's internal Policies and Procedures Manual, it has been highlighted that TDSI did not follow its own policies and procedures related to, among others:

- Procedures for Proper Registration of Branches, Supervisors and Registered Futures Representatives;
- Account Activity and Transaction Review;
  - Daily Review
  - Monthly Review
  - Interdepartmental Supervision (Accounting and Operations Personnel)
- Order Procedures;
  - Record of Orders.

Due to an error of TDSI, John Patrick O'Malley's approval as a floor trader was terminated on January 26, 2001 following the receipt of a termination notice by the Bourse. After this date, he was given access by TDSI to the trading platform of the Bourse from the Toronto offices of TDSI without being approved by the Bourse and subsequently not being detected internally by TDSI.

In parallel with the Bourse's investigation, TDSI reinforced its internal policies and procedures by prohibiting the use of cell phones in trading rooms and by appointing a Designated Registered Futures Contracts and Futures Options Principal in order to review futures contracts trading activities.

Determination was made by TDSI of clients' losses and forensic auditors were retained by TDSI in order to evaluate the methodology used to estimate the losses suffered by the clients. Financial damages were incurred by eight clients, which included TD Bank, and the amount of losses for the eight affected clients was established by TDSI at a total of \$ 1,146,109.95. Notification was made by TDSI to the affected clients and subsequent offers were made to the clients to compensate them for the losses that were incurred by them.

TDSI cooperated in an ongoing manner with the Bourse during the investigation and does not have any prior disciplinary record with the Bourse.

For further information, please contact Catherine Lefebvre, Director, Registration and Disciplinary Affairs, Regulatory Division, at (514) 871-4949, extension 497, or by e-mail at [clefebvre@m-x.ca](mailto:clefebvre@m-x.ca).

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