

**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.

**STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission make the following allegations:

I. THE RESPONDENT

1. TD-Waterhouse Canada Inc. (TDW) is a registrant and is registered in the category of Investment Dealer under the *Securities Act*, R.S.O. 1990, c. S5, as amended (the *Act*).

II. BACKGROUND

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

3. 1464210 Ontario Ltd. (1464210) is a company incorporated pursuant to the laws of Ontario.

TDW facilitates transactions in 1464210

4. 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.

5. 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.

6. 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 direct conversations with the investors so the issue of loans associated with the investments was never discussed with them. Had TDW been aware of the loans, it would not have proceeded with the transaction.

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

8. 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.
9. The registered representative sent various documents to the clients including a New Client Application Form (NCAF).
10. 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.
11. The registered representative opened RRSP accounts with TDW on behalf of the clients.
12. The registered representative arranged to have the clients collapse their locked in funds at other institutions and transfer the proceeds to accounts at TDW.
13. When the funds arrived, the registered representative notified Ochnik. Ochnik then picked up the funds and provided the registered representative 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.
14. 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.
15. TDW received \$105,560 from 1464210 as its commission.
16. TDW did not disclose to its clients the 7% commission paid to TDW.

Allegations

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

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

(b) that TDW failed to comply with its obligation to deal with its 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.

and thereby acted contrary to the public interest.

DATED at Toronto this 19th day of September, 2005