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BROKERS' REPORT

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THE COURTS

On Friday, July 15, 2004, Justice Ramez Khawly delivered his decision in the insider trading and tipping prosecution of Andrew Rankin ("Rankin"). The Ontario Securities Commission ("OSC") prosecuted the Rankin case under s. 122 of the *Securities Act* (Ontario). Rankin, the former managing director of mergers and acquisitions at RBC Dominion Securities, was convicted on ten counts of tipping his childhood friend, Daniel Duic ("Duic"), of pending mergers and deals.

Evidence presented at trial indicated that Duic made approximately \$4.5 million in profits as a result of trades based on Rankin's information. Approximately \$1.9 million of Duic's profits were surrendered to the OSC pursuant to a settlement agreement. As part of a settlement reached with staff of the OSC, Duic agreed to assist the OSC in its investigation and prosecution of Rankin. The settlement agreement has been heavily criticized in the media.

In delivering his oral reasons, the Judge commented that neither Rankin nor Duic were particularly credible witnesses. As such, Khawly J. based his decision on numerous documents that provided "undeniable evidence" Rankin had passed along information that was not publicly disclosed. In other words, the outcome turned almost entirely on the circumstantial evidence adduced by the prosecution. The Judge also noted: "In fairness to Rankin, I don't believe he saw it coming."

Rankin faces a two-year prison sentence and a maximum \$1 million fine in connection with each count. Justice Khawly is scheduled to hear submissions on sentencing on September 9, 2005.

COMPLIANCE

The MFDA recently announced a lifetime ban and a \$350,000 fine imposed on Arnold Tonnies ("Tonnies"). Following a hearing, the Hearing Panel found that in July 2002 Tonnies, a Saskatchewan mutual funds salesman for TWC Financial Corporation ("TWC"), borrowed \$250,000 from two elderly clients for Tonnies' personal use. Neither of the two loans were disclosed to TWC. Tonnies used the proceeds of the loans to repay an outstanding debt to the Bank of Montreal and later declared bankruptcy in 2003. The clients have not been able to recover their funds.

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The Hearing Panel found that Tonnies was in a clear conflict of interest contrary to MFDA Rule 2.1.4. Furthermore, Tonnies failed to exercise responsible business judgment influenced only by the best interests of his clients contrary to MFDA Rule 2.1.1(b). The Hearing Panel concluded that Tonnies preyed on his clients' vulnerability, their age, and lack of investment knowledge and sophistication. They noted that approved persons are required to exercise reasonable precautions to ensure that any transaction performed on behalf of a client is to the benefit of and in the best interests of the client.

Finally, the Hearing Panel noted that Tonnies' failure to provide appropriate documentation for inspection amounted to serious misconduct since the MFDA's responsibility to regulate mutual funds can only be carried out if the MFDA has the authority to obtain relevant documents from members and approved persons.

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