

THE SECURITIES ACT) **Order No. 3386**
)
Sections 19(5), 20(1), 148(1)) **June 20, 2001**

Datek Online Brokerage Services LLC

WHEREAS:

(A) On June 18, 2001, The Manitoba Securities Commission (the "Commission") issued a Notice of Hearing (the "Notice") giving notice of its intention to hold a hearing (the "Hearing") to consider:

1. whether or not it is in the public interest to order, pursuant to subsection 148(1) of The Securities Act (the "Act"), that all trading in securities by Datek Online Brokerage Services LLC ("Datek") shall cease;
2. whether or not it is in the public interest to order, pursuant to subsection 19(5) of the Act, that:
 - (a) subsections 19(1) and 19(3) of the Act do not, with respect to such of the trades referred to in those sections, apply to Datek;
 - (b) subsection 19(2) of the Act does not, with respect to such of the securities referred to in that section, apply to Respondent;
3. such further and other matters and the making of such further and other orders as the Commission may deem appropriate.

(B) Staff of the British Columbia Securities Commission and Datek, with the consent and agreement of Staff of the Commission, entered into a Settlement Agreement (a copy of which is attached as Schedule "A") dated June 18, 2001 (the "Settlement Agreement"), which proposed settlement of the proceedings initiated by the Notice, subject to the approval of the Commission;

(C) Datek has consented to the issuance of this Order and has waived its respective rights to a full hearing;

(D) The Commission has reviewed the Settlement Agreement and is of the opinion that it is in the public interest to make this Order.

IT IS ORDERED:

1. THAT, pursuant to section 19(5) of the Act, the Settlement Agreement, Schedule "A", be and the same is hereby approved.

2. **THAT**, pursuant to section 20(1) of the Act, Datek or any relevant affiliate of Datek will be exempted from the registration requirements set out in section 6 of the Act, in respect of existing clients only, until September 30, 2001, upon condition that Datek, or an affiliate of Datek, becomes registered as required by the Act, prior to the expiry of the exemption.

BY ORDER OF THE COMMISSION

Director, Legal and Enforcement

**IN THE MATTER OF THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA,
ONTARIO, QUEBEC, NOVA SCOTIA, NEW BRUNSWICK, PRINCE
EDWARD ISLAND, NEWFOUNDLAND, NORTHWEST TERRITORIES
AND YUKON**

AND

IN THE MATTER OF DATEK ONLINE BROKERAGE SERVICES LLC.

Settlement Agreement

1. In this Settlement Agreement, capitalized terms not otherwise defined shall have meanings ascribed to them in National Instrument 14-101 ("NI14-101"). The Staffs (the "Staffs" and individually, the "Staff") of the Securities Regulatory Authorities (collectively, the "Authorities" and individually, an "Authority") in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Nova Scotia, New Brunswick, Newfoundland, Prince Edward Island, Northwest Territories and Yukon (collectively, the "Jurisdictions") and Datek Online Brokerage Services LLC or any relevant affiliate ("Datek") wish to enter into an agreement to settle certain issues outstanding between the Jurisdictions and Datek.
2. The staff of the British Columbia Securities Commission has acted throughout on behalf of the Staff of each Authority with their knowledge and approval.
3. The Staffs of the Authorities agree to recommend the terms set out in this Settlement Agreement for approval pursuant to the required procedure in each Jurisdiction.

Agreed Statement of Facts

4. Datek acknowledges the following facts as correct:

4.1 Datek is a limited liability company organized under the laws of New York and is registered as a broker-dealer with the United States Securities and Exchange Commission and in all of the states of the United States. It operates a

web-based Internet securities trading service from its offices in New Jersey in the United States. It is not registered in any capacity in any of the Jurisdictions.

4.2 Datek's website is accessible to residents of the Jurisdictions over the Internet. Residents in the Jurisdictions could log onto the website and, until precluded from doing so by Datek, could open an account (the "Account" or "Accounts") with Datek to execute trades online of securities listed or traded in the United States.

4.3 Datek agrees that it executed trades for securities in the United States on behalf of residents in the Jurisdictions without being registered in the Jurisdictions, since at least January, 1999. The Securities Legislation requires a securities firm trading with residents of the Jurisdictions to be registered as a dealer in those Jurisdictions.

4.4 Datek did not turn its attention to the fact that the Jurisdictions would construe as trading in the Jurisdictions the execution of trades on behalf of Canadian residents in US securities on US markets.

Mitigating Factors

5. The Staffs of the Authorities are not aware of any complaints made by Datek's customers resident in the Jurisdictions concerning the Accounts or their trading in the Accounts.

6. Datek represents that it had stopped opening Accounts in December, 1999, as a result of regulatory inquiries, and it continues to preclude the opening of Accounts by residents in the Jurisdictions pending resolution of this matter.

Undertaking

7. Datek undertakes and agrees as follows:

7.1 Datek represents that it has sought registration under the Securities Legislation in the Jurisdictions to trade in the Jurisdictions.

7.2 Datek agrees to pay to the Jurisdictions in accordance with the attached Protocol the sum of eight hundred thousand dollars (\$800,000.00).

7.3 Datek Canada Brokerage Services Inc. ("Datek Canada") will comply with the Securities Legislation in the Jurisdictions after it is registered in the Jurisdictions or any of them, and subject to the registration exemption with respect to its existing clients, Datek will comply before it is registered with all other requirements of the Securities Legislation, as though it were registered in the Jurisdictions or any of them.

7.4 Datek Canada will seek registration in the Jurisdictions or in those Jurisdictions in which it has clients. Provided Datek Canada has assiduously been

seeking registration in the Jurisdictions in which it has clients, then the Staffs of those Authorities will not oppose a request from Datek to extend the exemption referred to in this Settlement Agreement until the registration process is complete.

7.5 During the term of any registration exemption, Datek will provide information and will cooperate fully with each Jurisdiction in which application for registration has been made, in a manner equivalent to that required of a registrant in the Jurisdiction.

Order

8. Datek consents to an order by British Columbia in the form attached as Schedule "A", or to a no action letter in the form attached as Schedule "B", to this Settlement Agreement and to the issuance of substantially equivalent orders, or substantially equivalent no action letters, by the other Authorities that:

8.1 Datek will be granted an exemption until September 30, 2001, from the registration requirements of the Jurisdictions or any of them, in respect of its existing clients only, to permit it, or any relevant affiliate of Datek, to become registered as required under the Securities Legislation.

Waiver

Upon approval of the Settlement Agreement, Datek waives any right it may have, under the Securities Legislation of the Jurisdictions, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to this agreement.

Approval Process of Settlement Agreement

Staff Commitment

10. If this Settlement Agreement is approved by an Authority, Staff of that Authority will not initiate any complaint to the Authority or request the Authority to hold a hearing or issue any order in respect of any conduct or alleged conduct of Datek or any of its affiliates or subsidiaries, their officers, directors, employees or agents, in relation to the facts set out in this Settlement Agreement.

Procedure for Approval of Settlement

11. If this Settlement Agreement is required to be approved by a public hearing before an Authority, then Staff of each Authority agrees that this Agreement will constitute the entirety of the evidence to be submitted respecting this matter.

12. If this Settlement Agreement is approved by the Authority, whether through hearing or otherwise, the parties to this Settlement Agreement will not make any statement that is inconsistent with this Settlement Agreement.

13. If this Settlement Agreement is not approved by the Authority, or an order substantially equivalent to the form attached as Schedule "A" is not made by the Authority or where appropriate, a no action letter substantially in the form Schedule "B" is not issued, then:

13.1 this Settlement Agreement, including all discussions and negotiations leading up to its presentation at a hearing or to the Authority, and all negotiations between Staff and counsel for Datek concerning the terms of settlement proposed for Datek, shall be without prejudice to Staff and to Datek. Staff and Datek will be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing unaffected by this Agreement or the settlement negotiations;

13.2 the terms of this Settlement Agreement will not be referred to in any subsequent proceeding or disclosed to any person, except with the written consent of Staff and Datek or as may be required by law; and

13.3 Datek agrees that it will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiations or process of approval of this Agreement as the basis for any attack on any Authority's jurisdiction, alleged bias, appearance of bias, alleged unfairness or remedies or challenges that may otherwise be available.

Disclosure of Settlement Agreement

14. Counsel for Staff or for Datek may refer to any part or all of the Settlement Agreement in the course of any hearing convened to consider this Settlement Agreement before any Authority. Otherwise, the Settlement Agreement and its terms will be treated as confidential by all parties to the Settlement Agreement until approved by the Authorities, and, forever, if, for any reason whatsoever, this Settlement Agreement is not approved by the Authorities.

15. Any obligation as to confidentiality shall terminate upon approval of this Settlement Agreement by the Authorities.

Execution of Settlement Agreement

16. This Settlement Agreement may be signed in one or more counterparts, which together, shall constitute a binding agreement and a facsimile copy of any signature shall be as effective as an original signature.

SIGNED at , , on June , 2001.

"John Grifonetti"
Authorized Signatory for Datek

"Stuart Sindall")
Witness Signature)

Stuart L. Sindall)
Witness Name (please print))
)
c/o Datek Online Holdings Corp.)
)
58 Broad St. N.Y., N.Y. 10004)
Address)
)
General Counsel)
Occupation)

SIGNED at Vancouver, British Columbia, on June 18, 2001.

"S. Wilson"
Steve Wilson
Executive Director
British Columbia Securities Commission

SIGNED at Toronto, Ontario, on June 18, 2001.

"M.J. Watson"
Michael Watson
Director, Enforcement
Ontario Securities Commission

SIGNED at Calgary, Alberta, on June 15, 2001.

"Wayne Alford"
Wayne Alford
Director, Enforcement
Alberta Securities Commission

SIGNED at Montreal, Québec, on June 15, 2001.

"Jean Lorrain"
Jean Lorrain
Direction de la Conformité et de l'application
Commission des valeurs mobilières du Québec

SIGNED at Halifax, Nova Scotia, on June 18, 2001.

"N. Pittas"
Nicholas A. Pittas
Director of Securities
Nova Scotia Securities Commission

