

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

**THE RULES OF THE INVESTMENT INDUSTRY REGULATORY
ORGANIZATION OF CANADA**

AND

AFAM ELUE

NOTICE OF HEARING

TAKE NOTICE that pursuant to Part 10 of Dealer Member Rule 20 of the Investment Industry Regulatory Organization of Canada (“IIROC”), a hearing will be held before a hearing panel of IIROC (“Hearing Panel”) on December 18, 2013 at 121 King Street West, Toronto, Ontario, Suite 2000 (British Columbia Room), at 10:00 a.m., or as soon thereafter as the hearing can be heard.

TAKE FURTHER NOTICE that pursuant to Rule 6.2 of IIROC’s Dealer Member Rules of Practice and Procedure (“Rules of Practice and Procedure”), that the hearing shall be designated on the:

The Standard Track

The Complex Track

THE PURPOSE OF THE HEARING is to determine whether Afam Elue (“Elue” or “the Respondent”) has committed the following contraventions that are alleged by the Staff of IIROC (“Staff”):

Count 1 From or about March to September 2011 the Respondent failed to use due diligence to ensure that recommendations were suitable for his client, contrary to IIROC Dealer Member Rule 1300.1(q).

Count 2 In October 2013 the Respondent failed to co-operate with IIROC in that he failed to attend at an IIROC interview, contrary to IIROC Rule 19.5.

PARTICULARS

TAKE FURTHER NOTICE that the following is a summary of the facts alleged and to be relied upon by Staff at the hearing:

A. Overview

1. The Respondent purchased mutual funds on a deferred sales charge (“DSC”) basis for his client’s RESP account, notwithstanding that the beneficiary of the account was nearly 16 years old at the time and would need to access the funds in approximately two years from the date of purchase.
2. Further, the Respondent failed to co-operate with an IIROC investigation in that he declined to attend an investigative interview.

B. Registration History

3. Elue started work at Edward Jones (“EJ”), an IIROC member firm, in September 2008. In March 2009 he became licensed as a Registered Representative and remained at EJ until November 2012 when he was terminated by the firm for matters unrelated to the issues herein.

C. Unsuitable Investments

4. On or about March 31, 2011 EJ received an in-cash transfer of approximately \$20,000 from AA’s previous RESP account held at a bank. Elue recommended and purchased two DSC mutual funds, each with a seven year redemption period, in the RESP account for a value of approximately \$10,000 each. There was a second transfer of residual cash of just over \$50.00 on or about July 7, 2011 that was split between the two funds.
5. These mutual funds are described in the prospectuses as having average or below average risk and medium- to long-term time horizons. The majority of the investments in these mutual funds were equities with a lesser portion in fixed income and money market instruments.
6. Elue also established a monthly pre-authorized chequing (“PAC”) plan of \$120 for the RESP account. Elue selected the DSC purchase option for the PAC with the result that each additional monthly investment initiated a new seven year redemption schedule.
7. The monthly PAC deposits resulted in the receipt of the usual government grant in the RESP account, which was invested in only one of the funds. There was otherwise no other activity in the RESP account until after AA filed a complaint some five months later in September 2011.

8. After filing the complaint AA changed investment advisors at EJ. On or about September 12, 2011, AA's new advisor switched the two mutual funds in the RESP account to a different DSC fund with a lower risk basket of securities including equities and bonds. Further, the PAC was switched to the front-end version of this new fund.
9. The dollar amount switched was \$18,045.37, which represented a loss of \$3,239.54 (or 15.2 percent) from the net investment of \$21,284.91, which in turn consisted of the amount transferred in (\$20,420.91), the PAC purchases (\$720), and the government grant received (\$144).
10. Accordingly, given the age of AA's son, the purpose of the RESP account and the fact that the funds would be required within approximately two years of account opening, the recommendation and purchase of DSC mutual funds with seven year redemption periods was unsuitable.

D. Failure to Co-operate

11. IIROC opened an investigation into the complaint of AA and Staff had the following series of communications with Elue and or his counsel:

Date	Communication
August 23, 2012	IIROC delivers an opening letter to Elue via registered mail.
September 26, 2013	Counsel for Elue advises Staff that Elue does not want to attend an IIROC interview. Staff sends Elue, via courier, a compel letter requiring his attendance for an interview on October 22, 2013.
October 18, 2013	Counsel for Elue delivers a letter via fax confirming with Staff that Elue will not attend the interview on October 22, 2013. The letter acknowledges that Elue is aware of the consequences of not co-operating with an IIROC investigation.
October 22, 2013	Staff attends at the appointed time and location for the interview and waits for an hour. Elue does not attend for the interview. Staff sends an e-mail to counsel for Elue to confirm that neither he nor Elue attended the interview scheduled for that day

12. Accordingly, Elue has failed to co-operate with an IIROC investigation.

GENERAL PROCEDURAL MATTERS

TAKE FURTHER NOTICE that the hearing and related proceedings shall be subject to the Rules of Practice and Procedure.

TAKE FURTHER NOTICE that pursuant to Rule 13.1 of the Rules of Practice and Procedure, the Respondent is entitled to attend and be heard, be represented by counsel or an agent, call, examine and cross-examine witnesses, and make submissions to the Hearing Panel at the hearing.

RESPONSE TO NOTICE OF HEARING

TAKE FURTHER NOTICE that the Respondent must serve upon the Staff of IIROC a Response to the Notice of Hearing in accordance with Rule 7 of the Rules of Practice and Procedure within twenty (20) days (for a Standard Track disciplinary proceeding) or within thirty (30) days (for a Complex Track disciplinary proceeding) from the effective date of service of the Notice of Hearing.

FAILURE TO RESPOND OR ATTEND HEARING

TAKE FURTHER NOTICE that if the Respondent fails to serve a Response or attend the hearing, the Hearing Panel may, pursuant to Rules 7.2 and 13.5 of the Rules of Practice and Procedure:

- (a) proceed with the hearing as set out in the Notice of Hearing, without further notice to the Respondent;
- (b) accept as proven the facts and contraventions alleged by Staff in the Notice of Hearing; and
- (c) order penalties and costs against the Respondent pursuant to Dealer Member Rules 20.33, 20.34 and 20.49.

PENALTIES & COSTS

TAKE FURTHER NOTICE that if the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by Staff in the Notice of Hearing, the Hearing Panel may, pursuant to Dealer Member Rules 20.33 and 20.34, impose any one or more of the following penalties:

Where the Respondent is/was an Approved Person:

- (a) a reprimand;

- (b) a fine not exceeding the greater of:
 - (i) \$1,000,000 per contravention; and
 - (ii) an amount equal to three times the profit made or loss avoided by such Approved Person by reason of the contravention.
- (c) suspension of approval for any period of time and upon any conditions or terms;
- (d) terms and conditions of continued approval;
- (e) prohibition of approval in any capacity for any period of time;
- (f) termination of the rights and privileges of approval;
- (g) revocation of approval;
- (h) a permanent bar from approval with the IIROC; or
- (i) any other fit remedy or penalty.

Where the Respondent is/was a Dealer Member:

- (a) a reprimand;
- (b) a fine not exceeding the greater of:
 - (i) \$5,000,000 per contravention; and
 - (ii) an amount equal to three times the profit made or loss avoided by the Dealer Member by reason of the contravention;
- (c) suspension of the rights and privileges of the Dealer Member (and such suspension may include a direction to the Dealer Member to cease dealing with the public) for any period of time and upon any conditions or terms;
- (d) terms and conditions of continued Membership;
- (e) termination of the rights and privileges of Membership;
- (f) expulsion of the Dealer Member from membership in the IIROC; or
- (g) any other fit remedy or penalty.

TAKE FURTHER NOTICE that if the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by the Staff in the Notice of Hearing, the Hearing Panel may pursuant to Dealer Member Rule 20.49 assess and order any investigation and prosecution costs determined to be appropriate and reasonable in the circumstances.

DATED at Toronto, this 18th day of November, 2013.

ELSA RENZELLA
VICE-PRESIDENT, ENFORCEMENT
INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA
Suite 2000, 121 King Street West
Toronto, Ontario M5H 3T9