

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

ON BEHALF OF THE

INVESTMENT DEALERS ASSOCIATION OF CANADA

IN THE MATTER OF:

**THE BY-LAWS OF THE
INVESTMENT DEALERS ASSOCIATION OF CANADA**

AND

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

AND

DAVID GUY SCHAYES

NOTICE OF HEARING

TAKE NOTICE that pursuant to Part 10 of Dealer Member Rule 20 and Section 1.9 of Schedule C.1 to Transition Rule No.1 of the Investment Industry Regulatory Organization of Canada (“IIROC”), a hearing will be held before a hearing panel of IIROC (“Hearing Panel”) on May 28, 2013, at The Sutton Place Hotel, 10235 – 101 Street, Edmonton, AB, 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

TAKE FURTHER NOTICE that on June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada and Market Regulation Services Inc. Pursuant to the Administrative and Regulatory Services Agreement between IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions.

THE PURPOSE OF THE HEARING is to determine whether David Guy Schayes (“the Respondent”) has committed the following contraventions that are alleged by the Staff of IROC (“Staff”):

Failure to Cooperate

- i. Since August of 2011, the Respondent has failed to cooperate with an IROC investigation, contrary to Dealer Member Rule 19.5;

Accounts of H.G.D.

- ii. In September of 2006 and February of 2007, the Respondent made unsuitable recommendations for the account of H.G.D., contrary to IDA by-law 1300.1(q);
- iii. In September of 2006 and February of 2007, the Respondent made thirteen unauthorized trades in the account of H.G.D., contrary to IDA by-law Rule 29.1;

Accounts of L.M.

- iv. Between June of 2006 and September of 2008, the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to L.M., contrary to Dealer Member Rule 1300.1(a) (Investment Dealer Association bylaw 1300.1(a) prior to June 1, 2008);
- v. Between June of 2006 and September of 2008, the Respondent made unsuitable recommendations for the account of L.M., contrary to Dealer Member Rule 1300.1(q) (Investment Dealer Association by-law 1300.1 (q) prior to June 1, 2008);
- vi. Between June of 2006 and September of 2008, the Respondent made approximately eighty-nine unauthorized trades in the account of L.M., contrary to Dealer Member Rule 29.1 (Investment Dealer Association by-law 29.1 prior to June 1, 2008).

PARTICULARS

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

Overview

1. This matter arises from the Respondent's handling of client accounts belonging to H.G.D. and L.M., and the Respondent's failure to cooperate with IIROC's investigation into the treatment of those accounts.

Registration History

2. The Respondent joined CIBC World Markets Inc. ("CIBC WM") as a Registered Representative ("RR") in June of 2002, where he remained until October of 2010. Previous to that, the he worked as a RR at TD Waterhouse (March 2003 to June 2006). The Respondent has not worked in a registered capacity since leaving CIBC WM.

Failure to Cooperate

3. On April 13, 2011 the Respondent signed for a Canada Post registered letter (dated April 4, 2011) sent by IIROC staff. The letter advised the Respondent that he was the subject of an IIROC investigation. It provided details of the nature of the investigation, and contained the name and phone number of the investigator dealing with the matter.
4. In furtherance of their investigation, IIROC staff attempted to contact the Respondent in order to arrange an interview. Numerous attempts were made to communicate with the Respondent using the phone number and address found in the National Registration Database. Between August 2, 2011 and February 16, 2012, IIROC Staff made six separate attempts to contact the Respondent. Ultimately, they were unable to contact the Respondent.
5. The inability to contact the Respondent frustrated IIROC's attempt to investigate an allegation of a fraudulent, and unauthorized, withdrawal from the RRSP account of H.G.D.

Account of H.G.D.

6. In September of 2006, H.G.D. deposited \$110,000.00 with CIBC WM and directed the Respondent to invest it in a money market fund. She intended to use the funds to purchase a new home in the near future.
7. In September of 2006, the Respondent opened a margin account for H.G.D. and invested the \$110,000.00 in the following income trusts and mutual funds:

- a. Epcor Power;
- b. Golf Town Income Fund;
- c. Liquor Barn Income Fund;
- d. Penn West Energy Trust;
- e. Bissett Dividend Income Fund;
- f. BMO Guardian Monthly High Income Fund II;
- g. TD Real Return Bond Fund;
- h. TD Dividend Income Fund;
- i. Renaissance Money Market Premium Class Fund.

H.G.D. did not authorize these purchases.

8. In February of 2007, the Respondent made the following further transactions totaling \$31,134.00:
 - a. Sold: TD Real Return Bond;
 - b. Sold: Golf Town Income Fund;
 - c. Purchase: Excel India Fund;
 - d. Purchase: Renaissance China Plus Fund.

H.G.D. did not authorize these transactions.

9. The total value of all unauthorized trades in H.G.D.'s account is approximately \$141,134.00. This is comprised of \$121,070.00 of unauthorized purchases and \$20,064.00 of unauthorized sales.
10. In April of 2007, H.G.D. directed the Respondent to liquidate her margin account so she could put the money towards the purchase of a new home. Given that H.G.D. had instructed the Respondent to invest the money market, she was unaware that she was invested in equities, and as a result her account value had dropped by approximately \$5,500.00.
11. H.G.D. contends that the Respondent, rather than explain how her account value had fallen, surreptitiously withdrew \$5,500.00 from her previously existing RRSP account to make up for the loss. H.G.D. claims to have not become aware of the withdrawal until after seeing it listed on her 2007 tax assessment.
12. Over the next three years H.G.D. continued to question the Respondent about the RRSP withdrawal. After not receiving a satisfactory resolution to the matter, H.G.D. finally registered a complaint with CIBC WM in November of 2010.
13. The Respondent's lack of cooperation has hindered IIROC's ability to investigate the withdrawal from H.G.D.'s RRSP account.

Account of L.M.

14. L.M. had been the Respondent's client since March of 2004, when the Respondent was a RR at TD Waterhouse. L.M. followed the Respondent to CIBC WM in June of 2006, and remained a client until September of 2008. She filed a complaint with IIROC in regards to the Respondent in September of 2011.
15. The Respondent failed to understand L.M.'s risk factors. In 2005, the Respondent advised L.M., then a 55 year old teacher, that she could retire and withdraw \$5,000.00 a month while preserving her capital. At the time, she had approximately \$939,225.13 in holdings.
16. When L.M. transferred her liquid assets to CIBC WM a year later, her holdings were valued at approximately \$890,000.00. This now represented her only source of income. At this time, the Respondent again advised L.M. that she could withdraw \$5,000.00 a month without drawing down the principal.
17. In order to achieve that goal, L.M.'s account would have to produce approximately 6.7% of income annually. Such a return would require a level of risk not appropriate for L.M.'s circumstances.
18. At the time of their opening, the risk factors for L.M.'s CIBC WM accounts were:
 - a. 60% medium risk;
 - b. 40% high risk.
19. While the risk level of the securities held in the account was less than the risk tolerance indicated in the NCAF (actual holdings approximately 75% medium risk and 25% low risk), they were still unsuitable. The accounts failed to include sufficient low risk or income generating securities. Almost 75% of her holdings were in equities and there was a significant use of margin.
20. Through the life of the account, the margin debt fluctuated between \$33,280.00 and \$189,915.00. Furthermore, L.M. did not understand how a margin account worked. In November of 2007, after noticing a debit balance in her account, she had to call the Respondent for an explanation.
21. During the life of the CIBC WM accounts, the Respondent made 89 trades. However, L.M. was never contacted about the trades in advance. She was not aware that the Respondent was required to obtain her consent for trades. Despite this, L.M. did direct the Respondent to contact her before making large purchases. However, the Respondent continued making trades without L.M.'s authorization.

22. Over a 26 month period, L.M.'s account's holdings declined in value approximately \$86,000.00, or 12% of her average capital invested. This is in addition to the \$125,000.00 worth of withdrawals. During that same period the S & P TSX Composite Index rose 3%.

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 Vancouver, British Columbia, this 8 day of April, 2013.

“Warren Funt”

WARREN FUNT
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