

# INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

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

**AND**

**JEFFREY EDWARD GEBERT**

## 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 to set a date will be held before a hearing panel of IIROC (“Hearing Panel”) on Friday August 19, 2016 at the offices of IIROC, 121 King Street West, Suite 2000, Toronto, Ontario, in the British Columbia Room, at 10:00 am, 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 Jeffrey Edward Gebert (“Gebert” or “the Respondent”) has committed the following contraventions that are alleged by the Staff of IIROC (“Staff”):

**Count 1:** From March 2010 to January 2012 the Respondent engaged in conduct unbecoming or detrimental to the public interest in that he entered into personal financial dealings with his client by obtaining a loan from his client without the knowledge or consent of his Dealer Member firm, contrary to IIROC Dealer Member Rule 29.1.

**Count 2:** From December 2012 to February 2015 the Respondent engaged in conduct unbecoming or detrimental to the public interest in that he obtained and submitted blank and/or pre-signed investment related forms in respect of several of his clients, contrary to his Dealer Member firm's internal policies, and IIROC Dealer Member Rule 29.1.

**Count 3:** In May 2016 the Respondent failed to co-operate with an IIROC investigation by failing to attend a compelled interview, contrary to IIROC Dealer Member 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 borrowed in excess of \$524,000 from his 93 year old client and recommended that his client liquidate certain investments held with the Respondent in order to facilitate the loan. The Respondent did so without the knowledge or consent of his Dealer Member firm.
2. In the case of at least 12 clients, the Respondent obtained blank and/or pre-signed investment related forms. In some cases he subsequently submitted the forms to his Dealer Member firm which were then utilized for their intended purpose. The use of blank and/or pre-signed forms was contrary to his Dealer Member firm's internal policies.
3. On May 4, 2016 the Respondent failed to attend a compelled interview with IIROC.

### **B. Registration History**

4. The Respondent was a Registered Representative ("RR") with BMO Nesbitt Burns Inc. ("BMO") from July 2005 to October 2012; and with Manulife Securities Incorporated ("Manulife") from November 2012 to January 2016. He is currently not registered with an IIROC regulated firm.

### **C. Client JT**

5. The Respondent's client JT, who is his wife's grandfather, was originally a client of the Respondent's wife ("MB") while at a non IIROC investment firm ("MB Firm") from about December 1997.
6. In 2005 MB Firm ceased operations and the firm's book of business was sold to BMO. Starting in July 2005 the Respondent was employed with BMO as an RR and he serviced several of the clients transferred to BMO from MB Firm.

7. In October 2006 the Respondent formally opened two joint accounts for JT and JT's wife.
8. In November 2010, the Respondent collapsed the original two joint accounts and opened two individual accounts for JT who had by that point in time become widowed.
9. The client information for the individual accounts indicated that that JT was born in 1917 and had:
  - income of \$40,000
  - liquid assets of \$650,000
  - fixed assets of \$500,000
  - a net worth of \$1.15M
  - limited/average investment knowledge; and
  - an investment objective of "savings."
10. The client information for the individual accounts did not record a risk tolerance level for JT.

**D. Undisclosed Loan from Client**

11. In March 2010 the Respondent obtained a loan of approximately \$102,000 from JT, who was at that time approximately 93 years of age, at an annual interest rate of 4%.
12. JT agreed to the arrangement as it was his understanding that the loan was for the purposes of funding the education of the Respondent and MB's child. JT was not aware at that time that the funds would also be used to pay down the Respondent and MB's joint high interest mortgage.
13. Over the course of March 2010 to January 2012 the Respondent continued to borrow additional amounts from JT and ultimately borrowed in excess of \$524,000 from his client. Approximately \$353,000 of the total amount borrowed was funded as result of the Respondent's recommendations to JT to liquidate investments in his BMO accounts.
14. JT wrote a series of cheques in order to advance portions of the loan. Cheques totaling approximately \$257,000 were made payable to the Respondent personally. These cheques were deposited into the Respondent's bank account.
15. The terms of the loan were not set out in writing; however the Respondent provided JT with a repayment schedule to track the amount loaned and the repayments to be made.
16. The repayment scheduled reflected regular repayments of principal and interest of 4%, which varied between approximately \$2,800 and \$5,600 per month. Starting in April 2010 the Respondent commenced making payments to JT from a joint bank account held in the names of Gebert and MB.

17. The amounts liquidated from JT's BMO accounts, the cheques payable to and cashed by the Respondent, and the amounts recorded as borrowed on the repayment schedule are summarized in Appendix A to this Notice of Hearing.
18. As of January 2012 the Respondent had repaid JT approximately \$98,000. However he then defaulted on several subsequent payments. As JT had liquidated his BMO investments in order to fund the loan, he was relying on the Respondent's repayments to fund his living expenses.
19. The Respondent's defaults ultimately resulted in JT depleting his savings, and forcing him to rent out his house and move in with his daughter, who is MB's mother.
20. Subsequently, the Respondent resumed repayments and as at December 2015 in accordance with the repayment schedule, had repaid JT an additional \$83,000 for a total of \$281,000.
21. The Respondent did not disclose the fact that he had borrowed from his client JT to other family members; however in June 2013 MB's mother inadvertently came across an NSF cheque made payable to the Respondent which ultimately led to a complaint to IIROC.
22. The Respondent did not disclose to BMO that he had borrowed funds from his client JT.

**E. Obtaining & Submitting Blank and/or Pre-Signed Client Forms**

23. From December 2012 to February 2015 while at Manulife the Respondent obtained several blank and/or pre-signed investment-related forms in respect of at least 12 of his clients as detailed below.

<b>Client</b>	<b>Number / Type of Form</b>	<b>Date of Form(s)</b>
DD & VM	Subsequent Account Application	December 7, 2012
EM	2 Transfer Authorizations	February 16, 2013
EA	Corporate and Non-Individual Identity Disclosure	April 20, 2013
CT	New Account Application Transfer Authorization	November 8, 2013 November 8, 2013
GT	New Account Application Transfer Authorization	November 8, 2013 November 8, 2013
AP	2 Pre-Authorized Credit 2 Transfer Authorizations	November 24, 2013 November 24, 2013
GC	Premier Investment Program Application Transfer Authorization	March 25, 2014 March 25, 2014
AB	Add/Change Banking Information	November 20, 2014
JK	Pre-Authorized Credit	February 20, 2015

J	RESP Transfer	February 20, 2015
PK	Systemic Withdrawal Plan	Undated

24. In the case of six of the 12 clients, the Respondent submitted the blank and/or pre-signed forms to Manulife which were then utilized for their intended purpose.
25. In January 2016 the Respondent's employment with Manulife was terminated and the blank and/or pre-signed forms were found among his client documents.
26. The use of blank and/or pre-signed forms was not permitted by Manulife and was contrary to the firm's internal policies.

**F. Respondent's Failure to Co-operate with IIROC**

27. The Respondent originally attended an IIROC interview on January 18, 2016 in relation to the investigation of the complaint filed by JT and was represented by legal counsel ("Counsel").
28. In February 2016 Staff became aware of new information in relation to the blank and/or pre signed investment related forms as described above.
29. By letter dated March 8, 2016 sent to Counsel, Staff requested a written statement in response to a series of questions regarding this new information.
30. By email dated April 8, 2016, and as the Respondent had not provided a response to the request for a written statement, Staff advised Counsel that an extension of time would be granted to April 12, 2016.
31. The email of April 8, 2016 also advised that in the absence of a written statement by the extension deadline the Respondent would be compelled to attend a further interview.
32. No response was received by the April 12, 2016 extension deadline.
33. By letter dated April 22, 2016 Staff wrote to Counsel compelling the Respondent to attend an IIROC interview on May 4, 2016.
34. The letter advised that should the Respondent fail to attend that he may ultimately be charged with failing to co-operate pursuant to IIROC Dealer Member Rule 19.5.
35. By email dated May 2, 2016, Counsel advised Staff the he did not anticipate that the Respondent would attend the May 4, 2016 interview.

36. By email dated May 3, 2016, Counsel confirmed that he had sent the Respondent copies of all correspondence received from IIROC.
37. On May 4, 2016 the Respondent failed to co-operate with the IIROC investigation by failing to attend the compelled interview.

### **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 7<sup>th</sup> day of June, 2016.

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



Appendix A to Notice of Hearing for Jeffrey Edward Gebert

<b>Date</b>	<b>\$ Amount Liquidated from JT Investment Accounts</b>	<b>\$ Amount in Cheques cashed by Gebert</b>	<b>Transaction Details</b>	<b>\$ Amounts Indicated as Borrowed per Gebert Repayment Schedule</b>
<b>2010</b>				
March 29	100,000		EFT from JT Investment Account to JT bank account	102,000
May 17			Cheque written to Gebert from JT bank account for \$50,000	
May 28	50,000		Withdrawal from JT Investment Account, deposited to JT bank account	
May 31		50,000	Cheque cashed from JT bank account deposited to Gebert's bank account	
June				50,443
July 29	50,000		EFT from JT Investment Account to JT bank account	
August 1			Cheque written to Gebert from JT bank account for \$50,000	
August 3		50,000	Cheque cashed from JT bank account deposited to Gebert's bank account	
August				51,723
<b>2011</b>				
January				157,113
March 26			Cheque written to Gebert from JT bank account for \$2000	
March 28		2,000	Cheque cashed from JT bank account	
July 26			Cheque written to Gebert from JT bank account for \$5000	
July 27		5,000	Cheque cashed from JT bank account	
July				10,000
<b>2012</b>				
January 5	153,850		Withdrawal from JT Investment Account, deposited to JT bank account	
January 6			Cheque written to Gebert from JT bank account for \$150,000	
January 6		150,000	Cheque cashed from JT bank account	
January				153,267
<b>Total</b>	<b>353,850</b>	<b>257,000</b>		<b>524,546</b>