

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

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

AND

DOUGLAS JOHN ELEY

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 October 2nd, 2014 at, the IIROC British Columbia Room, 121 King Street West, Suite 2000 in Toronto, 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 Douglas John Eley (“the Respondent” or “Eley”) has committed the following contraventions that are alleged by the Staff of IIROC (“Staff”):

Count 1: From or about August 2011 to April 2013 the Respondent engaged in conduct unbecoming a registrant or detrimental to the public interest, in that he made misrepresentations to his firm's compliance staff by inflating certain clients’ net worth, contrary to IIROC Dealer Member Rule 29.1

Count 2: From or about August 2011 to April 2013, the Respondent engaged in conduct unbecoming a registrant or detrimental to the public interest, in that he

falsely endorsed the signatures of several clients on certain client account documentation and other forms, contrary to IIROC Dealer Member Rule 29.1.

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 offered certain clients a leveraged investment strategy. In order to ensure that the clients would meet internal thresholds to qualify for the strategy, he misrepresented their net worth to his member firm by altering and inflating certain amounts on account documentation. He did so in order to get past the firm's suitability requirements which were, in his view, too stringent.
2. In addition, he also falsely endorsed the signatures of several clients on account documentation and other forms during the same period of time.

B. Registration History

3. Eley has been a Registered Representative ("RR") with IIROC Dealer Members since 2004, initially at Berkshire Securities Inc. In late 2006 he moved to Blackmont Capital Inc., which was acquired by the Macquarie Group in 2010; the firm changed its name to Macquarie Private Wealth Inc. ("MPW") in February 2010.
4. In April 2013, Eley was terminated for cause by MPW as a result of the matters addressed herein. From approximately May 2013 to the present Eley has been working in an unregistered capacity at Chippingham Financial Group, another IIROC Dealer Member.
5. Between August 2011 and April 2013 ("the relevant time") while at MPW the Respondent worked with Julian Robert Ricci ("Ricci"), who was at that time also an IIROC registrant. Ricci and Eley shared a book of business and a joint RR code.

C. Leveraged Investment Strategy

6. During the relevant time, Ricci and Eley's book of business consisted of approximately 500 households with assets under management of approximately \$225M. A significant portion of their book of business involved a leveraged investment strategy.
7. The leveraged investment strategy worked such that Eley assisted clients with obtaining loans used to purchase mutual funds. The clients were able to borrow up to three times the amount of their respective net worth. In most cases, the loans were obtained from one of two institutional lenders. The mutual funds were held as collateral by the lenders as against the loans. In some cases, certain clients took out more than one loan.
8. The intent of the strategy was that the return on the mutual funds would be sufficient to pay the interest on the loan and also provide additional income to the clients. The additional income was intended to be used by clients to pay off their mortgage, and/or other debts. Once these debts were paid off, the ongoing income would be directed to repaying the principal and the interest on the loan.

D. Misrepresentations to MPW

9. MPW had in place internal thresholds with respect to offering this leveraged investment strategy. In order for a MPW client to qualify to engage in the leveraged investment strategy, MPW required Eley to complete a leveraged investment strategy spreadsheet for each client. The information contained in the spreadsheet included client net worth, assets and liabilities.
10. This information was used by the firm to ascertain whether it considered that this strategy was suitable for the client. If the leveraged investment strategy was found to be acceptable for the client by MPW, the client was approved internally by MPW and Eley would then submit the necessary documentation for the client to obtain the loan from one of the institutional lenders. If the loan was granted, he would then implement the leveraged investment strategy for the client.
11. Eley admitted to IIROC Staff that he inflated and thereby misrepresented the net worth of certain clients, as reflected on the spreadsheets, to MPW in order to get past the firm's suitability requirements. In his view, these requirements were too stringent. Eley therefore deliberately circumvented the firm's compliance protocols. These protocols

were in place in order to assess the clients' suitability to participate in the leveraged investment strategy.

12. By increasing the client assets under his management through the use of leverage, Eley obtained a direct economic benefit in the form of additional trailer fees earned on the mutual funds purchased as part of the leveraged investment strategy; for example trailer fees increased from one half to one per cent on the annual ten per cent free redemption portions of the mutual funds.
13. In particular, Eley made the following admissions:

- a) Inflation of Net Worth

The clients for whom Eley implemented the leveraged investment strategy held assets that represented in excess of 60% of his assets under management (of approximately \$225M). In approximately 5% of the clients in the leveraged investment strategy, Eley inflated their respective net worth by approximately 10-25% on their NCAFs and on their leveraged investment strategy spreadsheet. He did not advise the clients that he had done so.

- b) Use of Pre-Signed Forms

- (i) In approximately 20% of client files, Eley utilized pre-signed blank New Client Application Forms that he subsequently completed and presented to MPW in order to open accounts for clients.
- (ii) In some cases, Eley utilized pre-signed blank loan application documents that he subsequently completed and presented to the institutional lenders to assist with executing the leveraged investment strategy for clients.
- (iii) The mutual funds used in the leveraged investment strategy were purchased on a deferred sales charge basis. Every year a client was able to transfer out 10% of the value of the mutual fund at no cost. In order to effect the transfer, a Switch Ticket would have to be completed.
- (iv) Rather than have a client complete a new Switch Ticket each year, Eley would simply re-use Switch Tickets from previous years for the relevant client. In some

cases changes were made to the fund codes. Eley submitted approximately 30 Switch Tickets over the relevant time.

E. False Endorsement

14. Eley further admitted to IIROC Staff that during the relevant time, he also falsely endorsed the signatures of clients on client account related documentation on approximately 5-10 occasions while at employed at MPW.
15. In particular, in one instance he falsely endorsed the name of a client in order to enable the client to obtain funds out of a RIF.
16. In another instance a client had missed one of several required signatures on a loan application and Eley falsely endorsed the client's signature in order to complete the loan documentation and enable the client to participate in the leveraged investment strategy.
17. Eley admitted that he intentionally concealed this conduct and there is no evidence that MPW was aware of Eley's conduct until April of 2013. Once MPW learned of this conduct they terminated Eley's employment.

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 25th day of July, 2014.

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