

# INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

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

**AND**

**ROBERT ADRIAN CRANDALL**

## 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 a date to be fixed by the Hearing Panel on May 22, 2015 via conference call, at 9:30 a.m.

**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 Standard Track

The Complex Track

**THE PURPOSE OF THE HEARING** is to determine whether Robert Adrian Crandall (the “Respondent”) has committed the following contraventions that are alleged by the Staff of IIROC (“Staff”):

### **Count 1**

Between July 2006 and June 2012, the Respondent engaged in excessive trading in the accounts of D.R. which was not within the bounds of good business practices and was unsuitable for D.R., contrary to IIROC Dealer Member Rules 1300.1(o) and (q) (IDA Regulations 1300.1 (o) and (q) prior to June 1, 2008);

### **Count 2**

Between July 2006 and June 2012, the Respondent engaged in unauthorized discretionary trading in the accounts of D.R., without the accounts first having been approved as discretionary accounts, contrary to Dealer Member Rule 1300.4 (IDA by-law 1300.4 prior to June 1, 2008); and

### **Count 3**

Between July 2007 and October 2010, the Respondent made unsuitable recommendations for the accounts of D.R., contrary to Dealer Member Rule 1300.1(q) (IDA by-law 1300.1(q) 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. The allegations stem from the Respondent's handling of the accounts of D.R., a widowed, elderly investor. They involve: (a) unsuitable and improper sales practices; (b) unauthorized discretionary trading; and (c) unsuitable trading.
2. In summary, over a period of 5 years and 11 months, the Respondent engaged in a pattern of excessive trading which resulted in all of the profits achieved in D.R.'s accounts being stripped out by way of commissions. The Respondent did not seek or obtain D.R.'s approval for the vast majority of these trades, despite the fact that the accounts were not designated as discretionary accounts. Many of these trades, in fact, took place during periods when D.R. was out of the country. In addition, for a period of over 3 years, the investments in D.R.'s personal account were unsuitable given her stated risk tolerance and investment objectives. This was largely as a result of positions held in leveraged and inverse exchange traded funds, which are high risk securities.

### **Registration History**

3. The Respondent has been approved and worked as an Investment Advisor or Registered Representative ("RR") with various Dealer Member firms since 1983.
4. In July 2006, the Respondent moved from Union Securities Ltd. ("Union") to Wellington West Capital Inc. ("WWCI"). Effective July 15, 2011, WWCI was acquired by National Bank Financial ("NBF").

5. The Respondent worked with NBF until June 2012, when he moved to Jones, Gable & Company Ltd. The Respondent's employment was terminated by Jones, Gable & Company in February of 2015 and he is not currently employed by a Dealer Member firm.
6. The Respondent is presently an ex-officio member of IIROC's New Brunswick District Council, having completed a 10 year term in May of 2014.

### **Accounts of D.R.**

7. D.R. was born in 1920 and has been the owner of a theatrical supplies store for over 60 years. D.R. met the Respondent through her late husband and became a client of the Respondent in or about 1992.
8. The Respondent was D.R.'s sole investment advisor from 1992 until June 2012, when the Respondent left NBF.
9. In 2006, when D.R. was 86 years of age, the Respondent moved from Union to WWCI and D.R. followed him. D.R. opened two accounts at WWCI: (a) a personal account (the "Personal Account"); and (b) an account in the name of her holding company (the "Holdco Account").
10. On July 31, 2006, the combined market value of the Personal Account and the Holdco Account (collectively, the "Accounts") was \$685,728. On June 30, 2012 when the Respondent ceased acting as D.R.'s advisor, the combined market value of the Accounts was \$119,298.80.
11. The market value of the Personal Account was \$486,431 on July 31, 2006. On June 30, 2012, the market value of the Personal Account was \$119,200. The period between July 31, 2006 and June 30, 2012 will be referred to as the "Relevant Period". During the Relevant Period, D.R. withdrew \$223,600 from the Personal Account and the Personal Account was charged commissions of \$240,292. Accordingly, while profits in the amount of \$96,661 were achieved in the Personal Account during the Relevant Period, all such profits were stripped out of the Personal Account in the form of commissions.
12. The market value of the Holdco Account was \$199,297 as at July 31, 2006. As at June 30, 2012, the market value of the Holdco Account was \$89.80. During the Relevant Period, D.R. withdrew \$144,785 from the Holdco Account and the Holdco Account was charged commissions of \$45,200. Accordingly, the reduction in the market value of the Holdco Account during the Relevant Period was attributable to withdrawals, commissions and trading losses in the amount of \$9,319.

### **Excessive Trading**

13. During the Relevant Period (which lasted 5 years and 11 months), the Respondent conducted 777 transactions (i.e. filled buy or sell orders) in the Accounts (the "Transactions") in respect of approximately 719 different orders. Over 95% of these Transactions were marked as

solicited. The commission rate charged for the majority of these Transactions ranged from 1%-3%, resulting in gross commissions of \$285,492 being charged to the Accounts for the Transactions.

14. Further, during the Relevant Period, the Respondent made \$7,220,047 worth of purchases in the Accounts and \$7,390,543 worth of sales from the Accounts. As set out above, the Accounts had a combined market value of \$685,728 as at July 31, 2006.
15. By way of example, in respect of 75 securities held in the Accounts a gross profit of \$116,005 was realized in 541 transactions. However, commissions in the amount of \$194,857 were charged for these transactions, the result being that the Accounts suffered a net loss of \$78,852.
16. Further, \$172,767 (or 88%) of the total \$194,857 in commissions charged related to transactions that offered little or no economic benefit to the Accounts. On an individual transaction basis:
  - (i) the commissions charged for transactions for 23 of the 75 securities were over 50% of gross profit;
  - (ii) the commissions charged for transactions for 18 of the 75 securities were over 100% of gross profit; and
  - (iii) the commissions charged for transactions for 19 of the 75 securities exaggerated losses.
17. In total, net of commissions charged, the Accounts realized a combined loss of \$198,150 in the Relevant Period as a result of the Transactions as follows:

Year	Number of Fills	Change in account value (Net of withdrawals)	Commission
2006	41	\$6,790.78	\$19,525.38
2007	130	-\$34,625.02	\$66,726.06
2008	227	-\$150,180.81	\$104,415.68
2009	186	\$6,506.48	\$57,812.11
2010	103	-\$6,457.77	\$19,746.02
2011	63	-\$17,990.59	\$12,001.27
2012	27	-\$2,193.26	\$5,266.22
<b>Grand Total</b>	<b>777</b>	<b>-\$198,150.19</b>	<b>\$285,492.74</b>

18. The Respondent had the discretion to charge a reduced commission for some or all of the Transactions. He did not do so and, as a result, all of the profits achieved in the Accounts were stripped out in the form of commissions, leaving the Accounts in a net loss position during the Relevant Period.

19. By engaging in this pattern of trading, the Respondent engaged in unsuitable and improper sales practices, preferring his own interests to those of his client.

### **Discretionary Trading**

20. The Accounts were not designated as discretionary accounts. Notwithstanding this fact, the Respondent did not obtain D.R.'s consent for the vast majority of the transactions conducted in the Accounts during the Relevant Period.

21. By way of example only, from January 23 to April 24, 2009, while D.R. was in Cuba, the Respondent conducted 46 transactions in the Accounts on approximately 27 different trading days, with all but one of these orders being marked as solicited. D.R. and the Respondent did not communicate with each other on any of these trading days.

### **Unsuitable Trades**

22. The Respondent did not review the New Client Application Form (the "2006 NCAF") with D.R. when the Accounts were transferred from Union to WWCI in July 2006. In particular, he did not discuss the "Investment Objective and Risk Tolerance" section of the form with D.R. or explain it to her.

23. The 2006 NCAF for D.R.'s Personal Account identified D.R.'s "risk tolerance and investment objectives" to be as follows:

lower risk, income-producing securities:	10%
moderate to higher risk, income-producing securities:	30%
moderate risk, growth-oriented securities:	30%
higher risk, speculative securities and trading strategies:	30%

24. At the instigation of the Respondent, the NCAF for the Personal Account was updated in July 2008 (the "2008 NCAF"). Among other changes, the 2008 NCAF identified a significantly higher tolerance for "higher-risk, speculative securities and trading strategies" than had been identified on the 2006 NCAF

25. Specifically, the "risk tolerance and investment objectives" identified on the 2008 NCAF for the Personal Account were as follows:

low:	10%
medium:	40%
high:	50%

26. The Respondent did not review the updated NCAF with D.R. prior to asking D.R. to sign the 2008 NCAF. In particular, the Respondent did not discuss the proposed changes to the "Investment Objective and Risk Tolerance" section of the form with D.R. and did not explain them to her.

27. There is nothing to indicate that D.R.'s circumstances changed over the period from 2006 to 2008 such that any change to her risk tolerance was warranted.
28. For the vast majority of time between July 2007 and October 2010, the investments in the Personal Account exceeded D.R.'s stated risk tolerance on the 2006 NCAF, largely as a result of positions held in leveraged and inverse exchange traded funds, which are high risk securities. These investments were therefore unsuitable for D.R.

### **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 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 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 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 "23rd" day of April, 2015.

**"ELSA RENZELLA"**  
**VICE-PRESIDENT, ENFORCEMENT**  
**INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA**  
**SUITE 2000, 121 KING STREET WEST**  
**TORONTO, ONTARIO M5H 3T9**