

**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**

**DALE RICHARD WELLS**

**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 September 2, 2010, at the Calgary TELUS Convention Centre, Room TELUS 104, 120 – 9 Avenue SE, Calgary, Alberta, 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 (“IDA”) 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 Dale Wells (“the Respondent”) has committed the following contraventions that are alleged by the Staff of IIROC (“Staff”):

1. During the period February 2006 to July 2008, the Respondent acted as an advisor, within the meaning of the Alberta *Securities Act*, without being registered as such, 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:

### **I. The Respondent**

1. The Respondent has been registered with the IIROC (or its predecessor the IDA) since 2001.
2. On June 1, 2008, the Respondent became a regulated person of IIROC.
3. During the material time, the Respondent was and continues to be employed with First Financial Securities Inc. in its Alberta office.
4. The Respondent’s registration history is as follows:

<b>Firm</b>	<b>From/To</b>	<b>Registration</b>
Assante Capital Management Ltd.	June 2001 to September 2004	RR and Branch Manager
First Financial Securities Inc.	September 2004 to present	RR (retail)

5. The Respondent has also operated 1301955 Alberta Ltd. as DRW Consulting since April 2007. The Respondent’s employment activities with this company are described on the National Registration Database (NRD) as a “Consulting business that sells Buy and Sell signals for Mutual Funds to third parties”.

### **II. Peer Financial**

6. Peer Financial Ltd. (“Peer Financial”) is a financial services company which provides, amongst other things, the following services:
  - (i) Tax planning;

- (ii) Estate planning;
- (iii) Segregated funds;
- (iv) Insurance products; and
- (v) Permanent tax structures.

7. Peer Financial is not registered with the Alberta Securities Commission or IIROC.

### **III. Relationship between Wells and Peer Financial**

8. Prior to being registered with IIROC/IDA, Wells was employed with Peer Financial from 1992 to 1995 as a life insurance salesperson.
9. Beginning in February 2006, Wells entered into an arrangement with Peer Financial to supply information to Peer Financial which Wells obtained through a computer generated trading strategy. The information consisted of buy and sell signals with respect to mutual funds. Wells was paid \$5,000 per month by Peer Financial for this information.
10. On April 1, 2007, Wells, through DRW Consulting, entered into a written agreement with Peer Financial (the "April Agreement") with respect to their arrangement.
11. The April Agreement stated that:
- (i) Wells' 'trading strategy' analyzed over 5,000 Canadian mutual funds on a daily basis and issued suggested buy/sell signals on said mutual funds;
  - (ii) The signals would be emailed to Peer Financial after the close of business each day; and
  - (iii) Peer Financial agreed to lease this service for \$5,000 per month, payable to DRW Consulting.
12. The April Agreement was signed by the Respondent on behalf of DRW Consulting, and by Ralph Burgess on behalf of Peer Financial.
13. Throughout the material time, Peer Financial used the signals to effect transactions in its Actively Managed Portfolio fund ("AMP fund"). Peer Financial advertised its AMP fund as follows:
- The Actively Managed Portfolio is a computerized, trend-following system for managing low risk mutual fund portfolios. Purchases are made based on a mathematical momentum formula showing which mutual funds were increasing in value the fastest and they are sold once the fund drops 7% from its highest point...*
14. Between February 2006 and July 2008, the Respondent and Peer Financial followed this procedure (although not every day in this period):

- (i) Wells would run his computerized trading program each evening after market close;
  - (ii) Wells would send Peer Financial an email that same evening which indicated one or more “SELL” signals or “BUY” signals, with reference to one or more specific mutual funds; and
  - (iii) That same evening Wells would also send Peer Financial a spreadsheet which listed the “Current Holdings” of the AMP Fund, showing unrealized profits or losses expressed in percentage terms.
15. The spreadsheets demonstrated that Buy or Sell signals were always implemented by Peer Financial. Where a “Sell” signal was sent for a particular mutual fund, indicating that all of the holdings in that fund should be sold, on the following day, the spreadsheet would show “0%” holdings in that same fund, and thereafter, the fund would not appear on the spreadsheet.
16. Furthermore, during the same period, Peer Financial published a monthly newsletter titled, “Peer Perspectives”. Each month, the newsletter would discuss the performance of the AMP fund and detail the buy and sell signals which were received and acted upon during the previous month.
17. The details in the monthly newsletter corresponded to the emailed signals sent that month by Wells to Peer Financial.
18. Wells issued an invoice to Peer Financial on a monthly basis for \$5,000, requiring that cheques be payable to “Dale Wells”. These invoices were all paid by Peer Financial.
19. Wells’ provision of the Buy/Sell signals to Peer Financial constituted ‘advising’ within the meaning of the Alberta *Securities Act*.

### **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 \_\_\_\_, this \_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2010.

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WARREN FUNT  
VICE-PRESIDENT, WESTERN CANADA  
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