

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

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

AND

THOMAS WILLIAM DUNN

AND

GORDON JOSEPH WIMBLE

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 April 20 – 24, 2015, at the Delta Winnipeg, 350 St. Mary Avenue, Winnipeg, MB, Westminster Room, 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

THE PURPOSE OF THE HEARING is to determine whether the Respondents Thomas William Dunn and Gordon Joseph Wimble have committed the following contraventions that are alleged by the Staff of IIROC (“Staff”):

Thomas Dunn

Count 1

Between April 2009 and December 2010, Thomas Dunn failed to use due diligence to learn and remain informed of the essential facts relative to his client BC, contrary to Dealer Member Rule 1300.1(a);

Count 2

Between April 2009 and December 2010, Thomas Dunn made unsuitable recommendations in the accounts of his client BC, contrary Dealer Member Rule 1300.1(q);

Count 3

Between April 2009 and December 2010, Thomas Dunn failed to use due diligence to learn and remain informed of the essential facts relative to his client TA, contrary to Dealer Member Rule 1300.1(a);

Count 4

Between April 2009 and December 2010, Thomas Dunn made unsuitable recommendations in the accounts of his client TA, contrary Dealer Member Rule 1300.1(q); and

Gordon Wimble

Count 5

Between June 2009 and December 2010, Gordon Wimble failed to properly supervise Registered Representative Thomas Dunn in the handling of the accounts of clients BC and TA, contrary to IIROC Dealer Member Rules 38.4 (a) and 2500.

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 Thomas Dunn's handling of the accounts of two of his clients, BC and TA, and the related supervision of Dunn by CIBC Wood Gundy Branch Manager Gordon Wimble. Originally both clients had been dealing with Dunn through a third party who had trading authority over their accounts. This third party became ill and BC and TA began dealing with Dunn directly. Dunn then began recommending trades for both clients that were inconsistent with their personal and financial circumstances.

Registration History of Thomas Dunn

2. Dunn is currently working in a registered capacity at CIBC World Markets Inc. ("CIBC") in Winnipeg. Below is a summary of his registration history.

From	To	Firm	Registration Category
CIBC World Markets Inc.	April 1994	Present	Registered Representative (Securities) (Options) (Retail) Officer (Trading) (Securities) Portfolio Management

Background

3. BC and TA were clients of Dunn while he was a Registered Representative with a CIBC Wood Gundy branch in Winnipeg, Manitoba. Both BC and TA became Dunn's clients in 1996 after their previous financial advisor retired.

4. In 1996, TA was 37 years old, married and worked as a nurse. She had limited experience with financial investments. She also relied on BK (who is her father) to help manage her financial investments.
5. In 1996, BC was a 64 year old widow with limited financial knowledge. She was last employed in the 1950s as a secretary. Previously, she had relied on her husband to handle all of her finances. When he passed away in 1981 their friend BK began helping BC to manage her financial investments.
6. BK had been provided with trading authority over the accounts of both BC and TA, and he had been dealing with Dunn directly on their behalf since 1996 (in the case of BC) and 2000 (in the case of TA). In 2008 BK became too ill to continue assisting BC and TA, and both made the decision to continue dealing with Dunn directly. By then, BC was 76 years old and TA was 49 years old.

Failure to Know Clients

7. When BC and TA began dealing with Dunn directly in 2008:
 - a. Dunn had been BC's and TA's financial advisor of record for approximately 12 years, but had never met either client;
 - b. BC's New Client Account Form ("NCAF") had not been updated for approximately 6 years (since 2003); and
 - c. TA's NCAF had not been updated for approximately 11 years (since 1997).
8. Dunn finally met with both clients for the first time in two separate meetings held in April of 2009. However, Dunn did not take this opportunity to interactively update either BC's or TA's NCAF. Nor did Dunn discuss risk tolerances or financial objectives at either client's meeting.
9. Both BC and TA would later receive pre-filled NCAFs in the mail for their signatures.
10. BC did not receive an updated NCAF until approximately one year after her April 2009 meeting with Dunn (approximately 7 years after her previous update).
11. TA received pre-filled NCAFs in the mail on two occasions after her April 2009 meeting. The first came in November 2009, and the second came in March 2010. In both instances the pre-filled forms increased her risk tolerance. However, these changes were not discussed with TA, and were not specifically brought to her attention.

12. Dunn failed in his due diligence obligations and failed to know the essential facts relative to each of these clients. In particular:
 - a. Dunn failed to ascertain that BC:
 - i. had a low tolerance for risk;
 - ii. did not want a more aggressive investment strategy in order to receive greater returns;
 - iii. was an unsophisticated investor with little investment experience; and
 - iv. wanted to continue the previous investment strategy established by BK, which involved infrequent trading.
 - b. Dunn failed to ascertain that TA:
 - i. did not wish to increase the level of risk in her account holdings;
 - ii. was an unsophisticated investor with little investment experience, and
 - iii. wanted to continue the previous investment strategy established by BK, which involved infrequent trading.

Suitability

13. After their respective meetings with Dunn in April of 2009, both BC's and TA's expectation was that Dunn would pursue an investment strategy similar to the one that had been established when BK had been exercising his trading authority over their accounts. This strategy involved minimal trading and commissions.
14. Instead, Dunn engaged in a trading strategy that employed frequent trading and which generated a large increase in revenue for CIBC Wood Gundy from the accounts of BC and TA.
15. Both BC and TA had placed their trust and confidence in Dunn, and were reliant on his advice. Dunn recommended all of the trades, and both clients routinely followed Dunn's trade recommendations.

BC's Account

16. BC's combined account balance between June 2009 and December 2010 ranged from approximately \$600,167.00 to \$711, 251.00. In this 18 month period:
 - a. Dunn conducted 386 trades;
 - b. Dunn generated approximately \$128,755.77 in revenue for CIBC Wood Gundy;
 - c. Dunn received compensation of approximately \$58,221.97 (of the \$128,755.77) from the trades conducted in BC's account; and
 - d. BC paid approximately \$60,611.00 in commission fees directly, with the balance of the revenue (\$68,144.77) coming from new issue fees.
17. This averages out to approximately 257 trades and \$85,837.00 in revenue, annually. In contrast, when BK was assisting BC (2002 to 2008), her account averaged 32 trades and generated an approximate average of \$4,892.00 in revenue, annually.
18. This represents a 714% increase in trades and a 1,640% increase in revenue from her accounts.

TA's Account

19. TA's combined account balance between April 2009 and November 2010 ranged from approximately \$398,231.00 to \$518,042.00. In this 18 month period:
 - a. Mr. Dunn conducted 262 trades;
 - b. Dunn generated approximately \$66,819.70 in revenue for CIBC Wood Gundy;
 - c. Dunn received compensation of approximately \$29,885.20 (of the \$66,819.70) from the trades conducted in TA's account; and
 - d. TA paid approximately \$34,399.00 in commission fees directly, with the balance of the revenue (\$32,420.70) coming from new issue fees.
20. This averages out to approximately 174 trades and \$45,187.00 in revenue, annually. In contrast, when BK was assisting TA (2001 to 2008), her account averaged 25 trades and generated an approximate average of \$2,832.00 in revenue annually.
21. This represents a 600% increase in trades and 1,496% increase in revenue from her accounts.

Unsuitable Use of Margin

22. BC's account also saw a marked increase in the use of margin. In the 14 month period between September 2009 and November 2010, the margin balance in BC's account increased from \$40,304.00 to \$500,210.00. In November 2010, when the margin balance was at its height, BC's client account form indicated that her net worth was \$500,000.00, with an annual income of \$30,000.00 (from pensions and Old Age Security).
23. Dunn did not take steps to reduce this margin balance until being directed to do so by his Branch Manager, Wimble (who was in turn directed to deal with BC's margin balance by compliance staff at CIBC Wood Gundy's head office). In order to reduce the margin balance Dunn sold off 11 different securities in the account, for a combined loss for this transaction of approximately \$8,626.00.

Losses

24. BC and TA did not suffer any net losses as a result of Dunn's trading.

Failure to Supervise

25. Gordon Wimble was a Branch Manager and Supervisor at CIBC Wood Gundy in Winnipeg, since at least 2003. He was responsible for supervising Dunn when BC and TA were Dunn's clients. Wimble is currently retired.
26. As Branch Manager, Wimble's responsibilities included:
 - a. reviewing daily trading;
 - b. reviewing account opening documents and account update documents (NCAFs); and
 - c. reviewing accounts which produced commissions over \$1,500.00 on a monthly basis.
27. Wimble failed to adequately supervise Dunn's activities in regard to BC's and TA's accounts. This despite:
 - a. BC's and TA's accounts appeared on the monthly commissions over \$1,500.00 report a combined 18 times between August 2009 and November 2010, after never having appeared on it before;

- b. BC's and TA's client account forms had not been updated in approximately 6 (BC) and 11 (TA) years;
- c. there was a large increase in short term trading in both BC's and TA's accounts and the revenue generated from the accounts increased significantly;
- d. there was an inappropriate use of margin in BC's account, for which Wimble only took corrective action after having the matter brought to his attention by CIBC Wood Gundy head office compliance department, on November 22, 2010; and
- e. TA's client account updates (November 2009 and March 2010) increased her stated risk tolerance to 50% high risk allocation. This occurred despite her being in her fifties and previously having a 0% high risk objective.

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 Calgary, Alberta, this 12th day of December, 2014.

WARREN FUNT
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