

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

ON BEHALF OF

INVESTMENT DEALERS ASSOCIATION OF CANADA

IN THE MATTER OF:

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

AND

MARK ANDREW WILTSHIRE

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 (“the Hearing Panel”) on a date to be fixed by the Hearing Panel on October 19, 2012, at Reportes Agencies Ltd., 925 West Georgia Street, Suite 1010, Vancouver, BC 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 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 Mark Andrew Wiltshire (“Wiltshire”) committed the following contraventions alleged by IIROC Staff (“Staff”):

Between February 23, 2009 and August 14, 2009 (the “Relevant Period”), Wiltshire as a Registered Representative (“RR”), director, senior executive and Ultimate Designated Person (“UDP”) (for part of the Relevant Period) at First Canada Capital Partners Inc. (“FCCP”) acted contrary to Dealer Member Rule 29.1 in that he established a scheme to evade compliance with British Columbia Interpretation Note 33-705, made under the *Securities Act* (“33-705”).

PARTICULARS

TAKE FURTHER NOTICE that the following is a summary of the facts alleged and to be relied upon by the Staff at the hearing:

OVERVIEW

1. On June 13, 2008, the British Columbia Securities Commission, through 33-705, imposed conditions of registration for all BC investment dealers that traded in securities of Over The Counter Bulletin Board (“OTCBB”) issuers through an office in BC. It required, *inter alia*, registrants who receive orders in BC to sell OTCBB securities (“Orders”) deposited into an account at their firm to make reasonable efforts to determine the beneficial owner of those securities and the beneficial owner’s relationship with the issuer.
2. Wiltshire was the majority owner (62%), president, director and UDP of FCCP until April 2009 after which he was not UDP again until January 25, 2010. He was also an RR with a book of business which included off-shore institutional clients which traded in OTCBB securities. During the Relevant Period David Hoang (“Hoang”) and Carolyn Leonarden (“Leonarden”) were employed by FCCP as RRs and served on Wiltshire’s team as registered assistants and at all material times worked in FCCP’s office in either Vancouver or Cloverdale, BC.
3. The implementation of 33-705 impacted Wiltshire’s business. Accordingly, Wiltshire established a scheme in order to avoid compliance therewith. Wiltshire set up a FCCP office in Calgary, Alberta and subsequently another in Leamington, Ontario and hired registered assistants to work in those offices. The Calgary office was initially established for this primary purpose and the Leamington office was solely for this purpose. Notwithstanding these arrangements, at Wiltshire’s direction, Hoang continued to accept Orders from Wiltshire’s clients without making any effort to determine the beneficial owner of those securities. In order to appear compliant with 33-705, Hoang contacted the registrants in either the Calgary or Leamington office to have them write up and time stamp the trade tickets for the Orders he had accepted, thereby misrepresenting where the Order had actually been accepted.

THE RESPONDENT

4. Wiltshire became employed in the securities industry in 1986. In December 2006, he along with two other individuals purchased 100% of the outstanding shares of StoxTrade Investments Inc. At that time the name of the firm was changed to FCCP. Wiltshire was the majority owner (62%) of FCCP. Between May 2, 2008 to April 9, 2009, his registration categories were Officer and Director (trading),

shareholder, Director (Industry), Industry Investor, Officer - President (Trading), Registered Representative (Retail) and UDP. From April 2009 to September 28, 2009, he was no longer UDP, but rather the Alternate Designated Person. He became UDP again on January 25, 2010. Wiltshire is not currently employed in a registered capacity in the securities industry.

5. Wiltshire was previously disciplined in April 2009 as set out in [2009] IIROC No. 19. He and FCCP entered into a settlement agreement with IIROC in which it was admitted that between May 2007 and March 2008 FCCP's CCO was permitted to work from home two days a week, thereby failing to adhere to a condition regarding the implementation of a supervisory structure at FCCP which was mandated by the Pacific District Council when it approved a change of ownership at FCCP. FCCP agreed to pay a \$40,000 fine jointly on behalf of FCCP and Wiltshire.

33-705

6. 33-705 became effective on June 13, 2008. It imposed conditions of registration for all British Columbia investment dealers that trade in securities of OTCBB issuers through an office in British Columbia. Reasonable and reliable methods were required to be used to determine beneficial ownership and the relationship between the beneficial owner and the OTCBB issuer.
7. Wiltshire was aware of the requirements of 33-705. Prior to its implementation he made inquiries of and attended British Columbia Securities Commission ("BCSC") meetings about the issue. His understanding was that 33-705 did not apply to orders accepted outside BC.
8. The CCO issued an internal FCCP notice dated June 4, 2008 which outlined the requirements of 33-705.
9. Staff conducted a Business Conduct Compliance ("BCC") examination of FCCP and issued a report dated February 9, 2009 addressed to Wiltshire, the CCO and the UDP. A significant item in the report addressed the requirement to obtain written verification of the beneficial ownership of OTCBB positions deposited by offshore/non-Canadian resident accounts. It also noted a direct contravention of the FCCP internal notice referred to in paragraph 8 herein.
10. BCC referred the matter to Enforcement Staff and on May 13, 2009 Staff advised Wiltshire that it had commenced an investigation into his conduct in respect of client account activity and trading in OTCBB securities.

Wiltshire's Business

11. The emphasis of Wiltshire's business was on transactions related to OTCBB companies. A large portion of his commission revenue was derived therefrom. Accordingly, the implementation of 33-705 had an impact on his business.
12. Wiltshire was the broker of record for the following six off-shore institutional accounts (collectively "Off-Shore Accounts"):
 - BSO;
 - CB;
 - BS;
 - DGM;
 - VPB; and
 - BSI.
13. During the Relevant Period, there were 282 electronic receipts of OTBCC shares into the Off-Shore Accounts and there were approximately 107 Orders received.
14. In approximately September 2008, Hoang, who was new to the securities industry, began to work as a licensed assistant to Wiltshire and Leonarden. Leonarden trained Hoang.
15. Fifty percent of Hoang's remuneration was paid personally by Wiltshire and Leonarden and the remaining 50% came from FCCP.

FCCP Calgary Office

16. Wiltshire established a FCCP office in Calgary primarily to facilitate his business that could not be transacted in BC as a result of 33-705 without first making beneficial ownership determinations. On June 3, 2008 Wiltshire temporarily moved to Calgary. His Calgary apartment served as FCCP's office. Wiltshire worked primarily in Calgary until February 2009 when he hired two RRs, MP ("MP") and CS ("CS") to work in the Calgary office. MP and CS worked as a team and shared commissions with each other. Wiltshire did not provide any training to MP or CS. MP was also supposed to "handle" the Orders from Wiltshire's clients.
17. During the Relevant Period, Hoang worked primarily in FCCP's Cloverdale, BC office except in February 2009 when he went to the Calgary office for one or two weeks to help set up computers and to deal with other administrative matters.
18. Notwithstanding the implementation of 33-705, during the Relevant Period, Hoang continued to receive Orders from the Off-Shore Accounts. However he contacted MP through BlackBerry Instant Messages ("IMs") and gave him the information to write up and/or time stamp trade tickets for the Orders that he had

received in British Columbia. These trade tickets also recorded Wiltshire's Alberta broker code.

19. Hoang advised Staff that he did not determine the beneficial owner of the OTCBB securities in respect of the Orders.
20. The BlackBerry on which MP received the IMs was provided to him and paid for by FCCP.
21. FCCP's Business Conduct & Practices Manual expressly forbade the conduct of critical business functions via email or IMs.

MP Interview with Staff

22. MP advised Staff that Hoang would ask him to write out the trade tickets in order to give the appearance that the Order had been accepted in Alberta. He confirmed that he had not received the Orders for which Hoang asked him to complete the trade tickets nor did he place Orders with the US market makers. He stated that everyone knew that it was not permitted to accept the Orders in BC unless the requirements of 33-705 were met.
23. MP advised Staff that he told Wiltshire and Hoang that he disagreed with the foregoing process. In March or April 2009 he advised Hoang that he no longer wanted to participate in this process.
24. MP confirmed that Wiltshire offered and he received a \$50 fee for each ticket that he wrote up for Wiltshire's Off-Shore Accounts. This was not a commission but rather a fee paid to him for his help.
25. MP further advised Staff that, to the best of his knowledge, Wiltshire, Hoang and Leonarden were all aware that he was writing up trade tickets for Orders he did not receive.
26. Upon being contacted by Staff to be interviewed, MP contacted Wiltshire and told him that Staff had a copy of the IMs. Wiltshire said that he would arrange for MP to have legal counsel.
27. Wiltshire acknowledged in his interview with Staff that MP "was no longer handling the Orders" shortly after the Leamington, Ontario FCCP office opened (as described below).

FCCP Leamington, Ontario Office

28. In or about March 2009, Wiltshire established a FCCP sub-branch office in Leamington, Ontario. Over the telephone, he hired KD ("KD"), who was the sister of a long-time friend, to work in that office, which was run out of KD's

residence. KD was the sole employee at that office and worked as Wiltshire's registered assistant with the sole purpose of facilitating the Orders.

29. KD was not previously registered and had no experience with trading on the OTCBB market. Wiltshire did not ask where she had previously worked or if she was familiar with the OTCBB market, although he believed she had some experience in commodities trading. She completed the required securities courses in order to complete the registration requirements prior to working for Wiltshire. Wiltshire did not provide KD with any training nor did he introduce her to any of the Off-Shore Accounts. Rather, KD's training was left up to Hoang and Leonarden.
30. Wiltshire attended the Leamington office once just after he hired KD. He provided her with a lap top computer and a pre-paid cell phone. While in Leamington, he arranged for and provided KD with a BlackBerry.
31. Wiltshire had very little contact with KD after his visit to Leamington. He did not conduct any audits or make any inquiries to ensure that KD was in fact receiving the Orders.
32. Wiltshire paid KD from his commissions.
33. IMs between Hoang and KD during the Relevant Period indicate Hoang asking KD to time stamp and write up trade tickets. The IMs also reveal KD's inexperience in the industry and her lack of training.
34. One example of a trade ticket written up in this manner by KD is that on July 17, 2009 FCCP placed an order to sell shares of OTCBB issuer Manas Petroleum with a US market maker BTIG on behalf of one of the Off-Shore Account holders. FCCP's Leamington trade ticket for this transaction had the initials "KD" thereon. BTIG's records for this transaction indicate that the order was placed by "David" from FCCP.

July 9, 2009 FCCP Partners and Directors Meeting

35. Wiltshire attended a FCCP Partners and Directors meeting on July 9, 2009. At that meeting, Staff's BCC report and investigation were discussed. In particular, Wiltshire was specifically asked if the Orders were being accepted outside BC in circumvention of 33-705. Wiltshire assured the board that FCCP was compliant with the conditions of 33-705. Wiltshire had no concerns about non-compliance.
36. Subsequent to that meeting, Wiltshire did not follow up or ask any questions of anyone to ensure that his assurance to the partners and directors was valid.

Leamington Audit

37. On August 4, 2009, the CCO attended FCCP's Leamington office to conduct a routine audit. While there, she observed that KD received an IM from Hoang after which KD time stamped sell trade tickets and entered Wiltshire's broker code thereon. KD advised that Hoang would contact her later with the information needed to complete the tickets, after which the tickets would be forwarded to FCCP's BC office. KD did not receive Orders from the Off-Shore Accounts nor did she place the orders with the US market makers.
38. The CCO had no idea that this had been taking place. She instructed KD to cease writing up the trade tickets as she had been doing. KD had no idea that what she had been doing was in breach of securities regulatory requirements.
39. The CCO reviewed the July 2009 Leamington office trade tickets and observed that there were a number of trade tickets that had been time stamped at the same time.
40. While still in Leamington, the CCO phoned Wiltshire and told him what she had discovered. He advised her that he knew nothing about it and was unaware of what Hoang and Leonarden were doing. He told the CCO that if she had any concerns, to put them in writing.
41. Wiltshire did not make any efforts to contact KD to ask questions or verify the veracity of what the CCO had reported to him. Wiltshire was aware that the CCO had also spoken to two FCCP directors about this matter.
42. The CCO also contacted Leonarden upon her return from Leamington to discuss her findings, after which Leonarden contacted Wiltshire.
43. The CCO sent an e-mail dated August 15, 2009 to Leonard Gareau, a FCCP board member, outlining her Leamington findings and her conclusion that 33-705 had been violated.
44. The CCO advised Staff that while her August 15, 2009 e-mail was not sent or addressed to Wiltshire, she discussed the contents thereof with him.
45. The CCO advised Staff that in her conversations with Wiltshire about this matter, she felt "guilted" by him into not reporting her findings to the regulators.
46. Wiltshire was contacted by Lynn Reston ("Reston"), FCCP's UDP and CFO to discuss the Leamington issue. Wiltshire advised Reston that it was a training issue but she disagreed and recommended that the Leamington office be closed.
47. On August 17, 2008, the CCO sent an e-mail to Wiltshire and Reston recommending the closure of the Leamington office for two reasons: KD was

unable to dedicate the time warranted toward filling her role as an Investment Advisor and because she (CCO) was unable to effectively supervise the branch.

48. On August 18, 2009, Reston sent an e-mail to Wiltshire and 2 other FCCP directors with a board resolution that stated on the CCO's recommendation, the board determined that the Leamington office was too costly and difficult to supervise from a compliance perspective, so that business would be transitioned to the Calgary office.
49. The Leamington sub-branch office was closed on August 14, 2009.

Staff Queries Regarding the Lap Top Computer and Pre-Paid Cell Phone

50. After the closure of the Leamington office, Wiltshire obtained the lap top computer used by KD for what he believed was business purposes. After having it "wiped clean" he sold the lap top to a student.
51. In September 2010, Staff requested that Wiltshire provide copies of the records of the pre-paid cell phone, including records of the long distance calls made thereon. He advised Staff that he had no such records and could not recall the name of the cell phone service provider.

Commissions

52. The gross commissions earned resulting from the Orders accepted in contravention of 33-705 during the Relevant Period was \$19,027 from the Calgary office and \$70,808 from the Leamington office.

CONCLUSION

53. Wiltshire, as an RR and UDP (for part of the Relevant Period) had an obligation to ensure that his client accounts were being operated in compliance with 33-705. He was aware of the requirements of 33-705 and the effect it would have on his business. Accordingly, he established a scheme to avoid compliance with 33-705. Not even the CCO was aware of this until she went to the Leamington office. Components of this scheme included:
 - Establishing the Calgary office;
 - Hiring MP to work in the Calgary office and paying him \$50 per trade ticket notwithstanding that Hoang continued to accept Orders in BC and be paid by Wiltshire;
 - Providing MP with a Blackberry when the use of IMs was, pursuant to FCCP's compliance manual, forbidden, thereby preventing the creation of an audit trail and detection by FCCP's compliance procedures;
 - When MP no longer wanted to participate in the scheme, Wiltshire needed another willing participant, so he established the Leamington office and

hired KD, who was inexperienced in the securities industry to work from her residence. Her role was the same as MP's, which was to write up and time stamp trade tickets to make it appear as though the Orders in the case of MP were received in Alberta and in the case of KD in Ontario;

- Wiltshire provided KD with a pre-paid cellular phone and BlackBerry, again enabling communications outside FCCP's official records and preventing discovery by the compliance department;
- After the closure of the Leamington office, at a time when Wiltshire was aware that he was under investigation, he had the lap-top used by KD "wiped clean" and claimed he disposed of same by selling it to a student;
- He provided an assurance to the FCCP Board that his accounts were being operated in compliance with 33-705.

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.

TAKE FURTHER NOTICE that on June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the IDA and Market Regulation Services Inc. Pursuant to the *Administrative and Regulatory Services Agreement* between the IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for the Association to carry out its regulatory functions with respect to the conduct of IDA Members and registrants occurring before June 1, 2008.

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 the 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 Member firm:

- (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 Member by reason of the contravention;
- (c) suspension of the rights and privileges of the Member (and such suspension may include a direction to the 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 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 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 Vancouver, this 7th day of September, 2012.

“Warren Funt”

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