

INVESTMENT INDUSTRY REGULATORY ORGANIZATION 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

BRIAN ANDREW MALLEY

AND

CHRISTINE MARIE MALLEY

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 February 10 – 14, 2014 at the Sutton Place Hotel, Northcote Room, 10235 101 Street, Edmonton, 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

THE PURPOSE OF THE HEARING is to determine whether the Respondent, Brian Andrew Malley and the Respondent, Christine Marie Malley committed the following contraventions that are alleged by the Staff of IIROC (“Staff”):

Brian Andrew Malley (“Malley”)

1. Since November, 2012, Malley has failed to cooperate with an IIROC investigation, contrary to Dealer Member Rule 19.5;

2. Between approximately 2005 and 2012, Malley failed to use due diligence to learn and remain informed of the essential facts relative to twelve (12) clients, contrary to IIROC Rule 1300.1(a) [IDA Regulation 1300.1(a) prior to June 1, 2008];
3. Between approximately 2008 and 2012, Malley made investment recommendations that were unsuitable for ten (10) clients, contrary to IIROC Rule 1300.1(q) [IDA Regulation 1300.1(q) prior to June 1, 2008)];
4. Between approximately 2009 and 2012, Malley made discretionary trades in the accounts of seven (7) clients without first having the accounts approved and accepted as discretionary accounts, contrary to IIROC Dealer Member Rule 1300.4.

Christine Marie Malley (“Christine Malley”)

5. Since November, 2012, Christine Malley has failed to cooperate with an IIROC investigation, contrary to Dealer Member Rule 19.5;
6. Between approximately 2005 and 2012, while the Branch Manager at Assante Capital Management Inc., Christine Malley failed to exercise her supervisory responsibilities with respect to the accounts of twelve (12) clients, contrary to IIROC Dealer Member Rules 38.4(a) and 2500 [IDA Regulation 1300.2 and Policy No. 2 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. Brian Andrew Malley (“Malley”) was a Registered Representative (“RR”) in a sub-branch office of Assante Capital Management Inc. (“Assante”) in Red Deer, Alberta.
2. In May, 2012, Malley was arrested by the RCMP and charged with first degree murder in relation to the death of his client, VS. Thereafter, 54 clients came forward and complained about Malley’s handling of their accounts. Staff focused its investigation on 12 of the complainant clients (“Clients”).
3. Malley failed to know his Clients, many of whom were retired or approaching retirement, and had very little investment knowledge.
4. Malley failed to ensure that his recommendations were suitable for ten (10) of the Clients as he recommended that Clients hold highly concentrated positions in speculative securities such as junior issuers and commodity based leveraged ETFs. In

- many cases, he recommended that the Clients borrow on margin or against their home equity in order to purchase securities.
5. In addition, he engaged in discretionary trading in the accounts of seven (7) of the Clients, without first having the accounts approved and accepted as discretionary accounts.
 6. Many of the Clients suffered substantial losses in their accounts.
 7. Christine Malley, who was Malley's spouse, was the Branch Manager of the sub-branch and Malley's supervisor. She approved client accounts with inappropriate investment and risk parameters, failed to take the necessary action to prevent Malley from engaging in highly aggressive trading strategies, and failed to undertake any meaningful supervision of Malley with respect to the activities in the Clients' accounts.
 8. Both Malley and Christine Malley refused to attend individually scheduled interviews with Staff, and thus failed to cooperate with a Staff investigation.

Registration History

9. Malley had been a Registered Representative with Assante since November, 2000. He did not have the authority to conduct discretionary trades.
10. Christine Malley had been a Registered Representative with Assante since November, 2000 and a Branch Manager since July, 2001.

Employment Termination

11. On or about May 25, 2012, Assante terminated the employment of Malley. On or about May 28, 2012, Assante terminated the employment of Christine Malley.
12. Neither has worked in a registered capacity for a Member firm since that time.

Complainants

13. Staff reviewed the accounts of VS, which sustained substantial investment losses, and were subject to material withdrawals. However, due to limited information and Staff's inability to interview VS, the allegations herein do not relate to the handling of the accounts of VS and are focused on a sample of complaints received from a number of other clients.
14. IIROC received complaints, directly and indirectly from approximately 54 clients of Malley concerning the management of their accounts.

15. The allegations herein relate to the handling of the accounts of the following 12 complainants (together the “Clients”):
 - a. CP
 - b. DL
 - c. CA
 - d. CH
 - e. SJ/RJ
 - f. WS/KL
 - g. RL
 - h. JK/AK
 - i. DA

A. Allegation - Failure to Cooperate

16. By letters dated May 30 and 31, 2012, Staff advised Malley by written correspondence that he was the subject of an investigation into his conduct as an RR, including but not necessarily limited to, his handling of the accounts of VS.
17. By letters dated May 30 and 31, 2012, Staff advised Christine Malley by written correspondence that she was the subject of an investigation into her supervision of Malley as Branch Manager, including but not necessarily limited to the accounts of VS.
18. On or about October 23, 2012, Staff contacted Malley’s legal counsel concerning the scheduling of separate interviews of both Malley and Christine Malley in Edmonton. Both Malley and Christine Malley were represented by the same legal counsel.
19. On or about November 9, 2012, the Malley’s legal counsel confirmed by email that both Malley and Christine Malley would attend for interviews on November 28 at 9:00 a.m. and 1:00 p.m. respectively at a specific location in Edmonton.
20. On November 28, 2012, at 9:00 a.m., Staff attended in Edmonton, but Malley failed to appear. Instead, the Malley’s legal counsel appeared to advise that neither Malley nor Christine Malley would be appearing. She advised that they would be requesting a stay of any IIROC disciplinary proceedings against them pending the conclusion of criminal proceedings against Brian Malley.
21. On November 30, 2012, legal counsel to the Malleys wrote to Staff to “formally request that the investigation into the conduct of Brian Malley be stayed pending the conclusion of his criminal proceedings.”
22. On December 11, 2012, Staff advised legal counsel that it was their view that a stay of administrative proceedings would not be available at the investigative stage, and that it was compelling both Malley and Christine Malley to attend interviews on a

date to be determined. It is Staff's position that a stay is not warranted in the circumstances of this case.

23. On January 15, 2013, Staff advised the Malley's legal counsel by written correspondence that it intended to proceed with the interviews of Malley and Christine Malley, on February 7, 2013 at 9:00 a.m. (Brian Malley) and 1:00 p.m. (Christine Malley) in Edmonton.
24. On February 7, 2013, Staff attended at the stated time and place in Edmonton but again both Malley and Christine Malley failed to appear.
25. Malley's refusal to attend an interview was an attempt to frustrate the investigation by Staff into the matters alleged. As such, his actions constitute a failure to cooperate with an investigation and is contrary to IIROC Dealer Member Rule 19.5.
26. Christine Malley's refusal to attend an interview was an attempt to frustrate the investigation by Staff into the matters alleged. As such, her actions constitute a failure to cooperate with an investigation and is contrary to IIROC Dealer Member Rule 19.5.

B. Allegations against Brian Andrew Malley

Client - CP

(i) Failure to Know Your Client

27. CP was born in 1950. She has a high school education, and has completed a secretarial arts program. She worked in administrative roles at various corrections facilities for a number of years until she retired in 2006.
28. A single parent, she was not in a position to lose money. She had little investment knowledge and relied on Malley for his investment advice and direction. Approximately 85% of her life savings were invested with Malley.
29. She first opened an account with Malley in 2001. During the course of her dealings with Malley, she held a total of four accounts – a margin account; a cash account; an RRSP account and a TFSA account.
30. A July, 2008 NCAF states that she was then 57 years old, had an income of \$15,000 per year, liquid assets of \$490,000, and fixed assets of \$200,000. Her investment knowledge is listed as "good". Her stated investment objectives were 30% "capital gains – medium term", and 70% "capital gains – short term". Her stated risk tolerance parameters were 40% medium and 70% high.

31. By February, 2010, CP was 59 and had fully retired. An NCAF update states that she had an annual income of \$15,000 per year, liquid assets of \$490,000 and a net worth of \$690,000. Her stated investment objectives were 100% “capital gains - short term”, and her stated risk tolerance parameters were 100% high. Her stated investment knowledge remained as “good”.
32. In May, 2012, updates to accounts were made and three additional NCAF’s were signed by CP. They state that her income was now \$21,000, her liquid assets were \$300,000 and her net worth was stated to be \$500,000. The investment objective and risk tolerance parameters in all three forms are left blank. Her stated investment knowledge remained as “good”.
33. Despite her age and her 2006 retirement, between 2001, and the final NCAF update in May, 2012, each NCAF update completed for her accounts increased the degree of risk in her accounts.
34. From the period of July, 2008 onward, the stated investment objectives and risk tolerance parameters were far too aggressive for a retired client with limited investment knowledge and income who was looking for safety and security in her investments.
35. As such, the stated investment objectives and risk tolerance parameters were inconsistent with the client’s true financial situation, investment knowledge, investment objectives and risk tolerance.

(ii) Suitability

36. Malley recommended that CP purchase a large number of high risk TSX Venture listed issuers, and the holdings in her account were largely comprised of these issuers. In later years, her account also held natural gas leveraged exchange traded funds.
37. In addition, Malley also recommended that CP borrow on margin to finance trades. Between January, 2009 and December, 2011, her margin balance grew from an average of \$7,000 to \$25,000, reaching a high of \$37,000 in June, 2011.
38. Despite the use of margin, CP did not understand that she was borrowing to invest.
39. Between January, 2009 and December, 2011, the actual holdings in CP’s accounts were comprised of securities having risk tolerances of approximately 13% low, 46% medium, and 41% high.
40. During this period of review of January, 2009 to December, 2011, CP’s accounts achieved a combined increase in value of 17.4%. During the same period, the TSX Composite Index gained 31.2%.

41. These holdings were highly concentrated in speculative holdings and reflected an extremely high degree of risk. As such, these recommendations were not at all suitable for CP in light of her age, employment status, investment knowledge and experience. In addition, the recommended use of margin for CP was not suitable for her circumstances.

(iii) Discretionary Trading

42. During the material time, Malley executed many trades in CP's accounts without confirming the details of all trades with CP prior to their execution.
43. Malley would discuss the performance of certain securities with CP after the fact during occasional in person meetings at this office.
44. During the period of January, 2009 to April, 2012, Malley made 89 trades in CP's accounts. His Maximizer notes do not contain references and/or notations in order to document that he contacted CP to confirm trade details prior to execution of all trades.
45. At no point did Malley obtain CP's written authorization for discretionary trading. CP's accounts were not designated as discretionary by Assante.

Client – DL

(i) Failure to Know Your Client

46. DL was born in 1965 and works as a manager in the oil and gas sector. His formal education was as a forestry technician.
47. In February, 2009, he completed a NCAF which states that his income was \$100,000 per year, with net liquid assets of \$150,000 and fixed assets of \$450,000. His stated investment knowledge is "good". His stated investment objectives were 100% "capital gains – medium term" and his stated risk tolerance was 100% medium.
48. In February, 2011, an updated NCAF increased his stated investment objectives to 100% "growth – short term" and his risk tolerance was increased to 100% high. The annual income, fixed assets, and investment knowledge entries on the form were not completed.
49. DL had limited investment experience and was relying on Malley for investment advice and direction. Approximately 75% of DL's life savings were held in his accounts with Malley.

50. The stated investment objectives and risk tolerance parameters were far too aggressive and were inconsistent with DL's true financial situation, investment knowledge, investment objectives and risk tolerance.

(ii) Suitability

51. The holdings recommended by Malley for DL's accounts were largely comprised of high risk securities, specifically junior resource issuers and natural gas leveraged exchange traded funds.
52. Between January, 2009 and January, 2012, the actual holdings in DL's accounts were comprised of securities having risk tolerances of approximately 13% low, 2% medium, and 85% high.
53. In the 40 month period ending May 31, 2012, DL experienced a combined loss of \$36,401 in his four accounts. This reflected a loss of 54% of his average invested capital. During the same period, the TSX Composite Index gained approximately 32%.
54. These holdings were highly concentrated in speculative holdings and reflected an extremely high degree of risk. As such, these recommendations were not suitable for DL, an individual in his 40's with limited investment experience who was saving for retirement.

Client - CA

(i) Failure to Know Your Client

55. CA was born in 1947 and works as a cook in an oilfield camp. She had a high school education, and considered her risk tolerance to be low. She believed that an investment in stocks would result in a guaranteed return of between 6% to 10% per year.
56. In April, 2005, at age 58, she completed a NCAF in which her stated income was \$46,000 per year, with net liquid assets of \$35,000 and no fixed assets. The NCAF indicates that she had "good" investment knowledge, with investment objectives of 100% "capital gains – short term" and risk tolerance of 100% high in her margin account. Her RRSP account states that she has investment objectives of 50% "capital gains – medium term", and 50% "capital gains – short term". Her stated risk tolerance parameters were 50% medium and 50% high.
57. There is no record of any NCAF update after the initial form in April, 2005.
58. The funds that CA provided to Malley to invest reflected her entire life savings, and CA was relying on Malley for investment advice and direction.

59. For the period of April, 2005 onward, the stated investment objectives and risk tolerance parameters were far too aggressive for a vulnerable client seeking safe and secure investments. As such, they were inconsistent with the client's true financial situation, investment knowledge, investment objectives and risk tolerance.

(ii) Suitability

60. The holdings recommended by Malley for CA's accounts were largely comprised of high risk securities, specifically junior resource issuers and natural gas leveraged exchange traded funds.
61. Between January, 2009 and January, 2012, the actual holdings in CA's accounts were comprised of securities having risk tolerances of approximately 4% low risk, 38% medium risk, and 58% high risk.
62. In the 40 month period ending May 31, 2012, CA experienced a combined loss of \$15,842 in her two accounts. This reflected a loss of 27% of her average invested capital. During the same period, the TSX Composite Index gained approximately 32%.
63. These holdings were highly concentrated in medium and high risk securities and in addition to the use of leverage, reflected a high degree of risk. As such, these recommendations were not at all suitable for CA, a vulnerable client in her late 50's and early 60's.

(iii) Discretionary Trading

64. During the material time, Malley executed many trades in CA's accounts without confirming the details of all trades with CA prior to their execution.
65. CA would only learn of trades after the fact.
66. During the period of January, 2011 to April, 2012, Malley made 20 short term trades (primarily in commodity leveraged ETF's) in her accounts. His Maximizer notes during this time period do not contain references and/or notations in order to document that he contacted CA to confirm trade details prior to execution of all trades.
67. At no point did Malley obtain CA's written authorization for discretionary trading. CA's accounts were not designated as discretionary by Assante.

Client – CH

(i) Failure to Know Your Client

68. CH was a 60 year old retired farmer when she opened a TFSA account with Malley in 2009. She had a high school education, and was working part time as a bus driver.
69. She did not require income from her investments to fund her living expenses, but she wanted the funds in her account for her daughter after CH died.
70. A July, 2009 NCAF for the TFSA account states that she had an annual income of \$25,000, fixed assets of \$350,000 and liquid assets of \$25,000. Her stated investment knowledge was “average/fair”. Her stated investment objectives were “capital gains – short term 100%”, and her risk tolerance parameters were 100% high.
71. A January, 2010 NCAF for a cash account included the same information as the earlier TFSA NCAF. However, the new account permitted her to borrow on margin.
72. For the period of July, 2009 onward, the stated investment objectives and risk tolerance parameters were far too aggressive for a semi-retired client in her 60’s, and as such they were inconsistent with the client’s true financial situation, investment knowledge, investment objectives and risk tolerance.

(ii) Suitability

73. Upon Malley’s recommendation, in January, 2010, CH borrowed \$80,000 pursuant to a secured line of credit against his home, and used the loan proceeds to purchase \$75,355 worth of units in a natural gas leveraged exchange traded fund.
74. The holdings recommended by Malley were largely comprised of high risk securities, specifically junior resource issuers and natural gas leveraged exchange traded funds.
75. In the 34 months that Malley managed her accounts, CH suffered a total loss of \$37,342 in her two accounts. This reflected a loss of 49% of her average invested capital. During the same period, the TSX Composite Index gained approximately 5.3%.
76. These holdings were highly concentrated in high risk securities and, in addition to the use of leverage, reflected an extremely high degree of risk. As such, these recommendations were not at all suitable for CH, an unsophisticated 60 year old investor.

(iii) Discretionary Trading

77. During the material time, Malley executed many trades in CH's accounts without confirming the details of all trades with CH prior to their execution.
78. CH would only learn of trades after the fact.
79. During the period of August, 2009 to September, 2011, Malley made 30 short term trades (primarily in commodity leveraged ETF's). His Maximizer notes during this time period contain just five possible references to trades. The notes do not contain references and/or notations in order to document that he contacted CH to confirm trade details prior to execution of all trades.
80. At no point did Malley obtain CH's written authorization for discretionary trading. CH's accounts were not designated as discretionary by Assante.

Clients - SJ/RJ

(i) Failure to Know Your Client

81. SJ and RJ are a married couple who were both employed as teachers until they retired in 2009 and 2004 respectively. They first opened an Assante account with Malley in 2003.
82. Their most recent NCAF is dated December 2, 2008. At that time, RJ was 60 and had fully retired and SJ was 63 and nearing retirement.
83. The NCAF states that they held liquid assets of \$750,000, fixed assets of \$400,000 and good investment knowledge. Their investment objectives were "capital gains – medium term – 80%" and "capital gains – short term 20%", and their risk parameters were 80% medium and 20% high.
84. The funds held in the accounts with Malley comprised approximately 60-70% of their savings.
85. Neither SJ nor RJ had ever taken any investment courses, and were not experienced investors. They did not require income from their investment accounts to fund living expenses, but they wanted their investments to grow over time and therefore they were willing to take on some degree of risk with certain portions of their accounts.
86. For the period of December, 2008 onward, the stated investment objectives and risk tolerance parameters were too aggressive for a retired couple with little investment experience, and as such were inconsistent with the clients' true financial situation, investment knowledge, investment objectives and risk tolerance.

(ii) Suitability

87. SJ/RJ held both a cash account and a margin account.
88. The holdings recommended by Malley for their accounts were largely comprised of some low to medium risk securities, as well as numerous higher risk junior resource issuers.
89. Between January, 2009 and January, 2011, the holdings in the accounts were comprised of securities having risk tolerances of approximately 15% low risk, 59% medium risk, and 26% high risk.
90. In the final 28 months that Malley managed the accounts, SJ/RJ experienced a combined gain of \$465,000, an increase of 75%. During the same period, the TSX Composite Index gained approximately 59%. The increase reflected the market gains and beneficial timing in transferring out of the accounts.
91. In addition, the margin balance averaged approximately \$67,000 during the relevant period.
92. These holdings were highly concentrated in medium and high risk securities and, combined with the use of leverage, reflected a high degree of risk. As such, these recommendations were not suitable for SJ/RJ, a retired couple with limited investment experience.

Clients – WS/KL

(i) Failure to Know Your Client

93. WS and KL are a married couple who were born in 1949 and 1950 respectively. WS was self-employed in the construction industry and KL worked for the government.
94. WS had a high school diploma, had not taken any investment courses and had little investment knowledge. WS was interested in high risk investments although he wanted to set any profits aside so that only his initial investment was at risk.
95. KL had a college diploma and had little investment knowledge. Despite the stated objectives, she was seeking low to medium risk investments.
96. They first opened Assante accounts with Malley in 2005.
97. A July, 2005 NCAF for WS, then aged 55, states that he had liquid assets of \$6,000, fixed assets of \$98,000 and net worth of \$104,000. His income was \$23,000 per year. His stated investment objectives were 100% “capital gains – short term”, and his stated risk tolerance was 100% high. His investment knowledge was listed as “average/fair”.

98. The July, 2005 NCAF is the only KYC form for WS.
99. A July, 2005 NCAF for KL, then aged 55, states that she had liquid assets of \$5,000, fixed assets of \$90,000 and net worth of \$95,000. Her income was \$67,000 per year. Her stated investment objectives were also 100% “capital gains – short term”, and stated risk tolerance was 100% high. Her investment knowledge was listed as “poor”.
100. NCAF updates for KL’s account occurred in 2006, reducing the investment objectives to 50% “capital gains – medium term”, 50% “capital gains – short term”. However, in August, 2007, the NCAF was changed back to 100% “capital gains – short term”, and risk tolerance of 100% high. KL’s investment knowledge was also changed to “good”. There are no further NCAF updates for KL’s account after August, 2007.
101. For the period of July, 2005 onward, the stated investment objectives and risk tolerance parameters for both WS and KL were far too aggressive for clients nearing retirement age with limited assets and investment knowledge, and as such were inconsistent with their true financial situation, investment knowledge, investment objectives and risk tolerance.

(ii) Suitability

102. The combined value of WS and KL’s accounts was \$72,151 on January 31, 2009. In October, 2010, KL closed her account and moved it to another firm. WS did not move his account as it remained with Malley.
103. Between January, 2009 and June, 2010 (when KL’s account was still with Malley), the number of high risk securities in the accounts comprised at least 66% of the total holdings. After KL closed her account, the number of high risk securities in WS’ account comprised approximately 98% of the total holdings.
104. After accounting for deposits and withdrawals, between January 30, 2009 and May 25, 2012, the value of WS’ account increased by \$4,196, a gain of 13.6%. During the same period, the S&P/TSX index increased by 34.2%.
105. After accounting for deposits and withdrawals, between January 30, 2009 and September 3, 2010, the value of KL’s account decreased by \$12,404, a loss of 30.1%. During the same period, the TSX Composite Index increased by 40.8%.
106. The holdings recommended by Malley for WS and KL’s accounts were largely comprised of high risk securities, specifically junior resource issuers traded on the TSX Venture Exchange.
107. In addition, during the period of review, the margin debt in the accounts ranged from between approximately \$1600 to \$6,000.

108. These holdings were highly concentrated in high risk securities and, in addition to the use of leverage, reflected an extremely high degree of risk. As such, these holdings were not at all suitable for WS and KL, two unsophisticated investors with limited assets and nearing retirement.

Client – RL

(i) Failure to Know Your Client

109. RL was 67 years old and retired when he first opened an account with Malley in 2009. RL had worked as a camp manager for an oilfield services company for many years prior to retirement. He had a high school education and did not have investment experience.
110. As he was retired, RL relied on his accounts for income. The holdings with Malley reflected nearly his entire life savings.
111. The April, 2009 NCAF for the cash account stated that he had liquid assets of \$300,000, net worth of \$600,000 and an annual income of \$50,000. His stated investment objectives were 80% “capital gains – medium term”, 20% “capital gains – short term”, and his risk tolerance parameters were 80% medium and 20% high risk. His stated investment knowledge was “average/fair”.
112. In January, 2010, the cash account NCAF was updated with the risk tolerance parameters changed to 50% medium and 50% high. All other information remained the same.
113. In September, 2011, the cash account NCAF was again updated with the liquid assets increased to \$425,000 and net worth to \$725,000. The investment objective and risk tolerance portions of the NCAF were left blank.
114. For the period of April, 2009 onward, the stated investment objectives and risk tolerance parameters were too aggressive for a retired client without investment experience, and as such were inconsistent with the client’s true financial situation, investment knowledge, investment objectives and risk tolerance.

(ii) Suitability

115. Upon opening the accounts, RL initially transferred \$269,000 to Assante in May, 2009.
116. On Malley’s recommendation, RL borrowed \$125,000 pursuant to a secured line of credit against his home, with the intention of using these funds to invest in securities.

117. On June 25, 2009, RL deposited \$96,140 from the loan proceeds into his cash account and purchased an equivalent number of units in Enervest Diversified Income Trust ("Enervest").
118. Between June 30, 2009 and December 31, 2011, the average risk level in the accounts was 3% low risk, 71% medium risk and 26% high risk.
119. During the 35 months that RL held his accounts with Malley, the value of RL's accounts increased by \$55,121, a gain of 17.8%. During the same period of time, the TSX Composite Index increased 18.5%.
120. The holdings recommended by Malley for RL's accounts were, apart from the Enervest position, largely comprised of high risk securities, specifically junior resource issuers and crude oil/natural gas leveraged exchange traded funds.
121. These holdings were highly concentrated in medium and high risk securities and, in addition to the use of leverage, reflected an extremely high degree of risk. As such, these recommendations were not at all suitable for RL; an unsophisticated investor in his late 60's who was retired and dependent on his holdings for income.

(iii) Discretionary Trading

122. During the material time, Malley executed many trades in RL's accounts without confirming the details of all trades with RL prior to their execution.
123. RL would only learn of trades after the fact.
124. During the period of June, 2009 to December, 2011, Malley made 165 short term trades (primarily in commodity leveraged ETF's). His Maximizer notes during this time period contain 30 possible references to trades. However, the notes do not contain references and/or notations in order to document that he contacted CH to confirm trade details prior to execution of all trades.
125. At no point did Malley obtain RL's written authorization for discretionary trading. RL's accounts were not designated as discretionary by Assante.

Clients - JK/AK

(i) Failure to Know Your Client

126. JK and AK are a married couple who were born in 1947 and 1948 respectively. JK was a local small business owner and had completed 2 years of university. AK worked part time as a nurse.
127. They first opened Assante accounts with Malley in 1996.

128. A December, 2007 NCAF for the couple for the joint cash account states that they had liquid assets of \$1,500,000 and fixed assets of \$3,000,000. Their stated annual income is \$75,000, and they had good investment knowledge. At that time, their investment objectives were 50% “capital gains – medium term”, and 50% “capital gains – short term”. Their risk tolerance parameters were 50% medium and 50% high.
129. In an April, 2009 NCAF for the joint cash account, all information remained the same as the previous NCAF with the exception of the liquid assets, which had decreased from \$1,500,000 to \$1,200,000.
130. In a May, 2011 NCAF, the couple’s stated liquid assets are \$1,300,000, with fixed assets of \$3,600,000. Their stated annual income is now \$100,000. The investment objectives and risk tolerance parameter information is left blank, and their occupation is listed as “retired”.
131. Despite the investment objectives and risk tolerance parameters, the amount of high risk securities during the 40 month period of review did not exceed 20% of the total value of the accounts. In addition, the account value did increase in concert with a 56% increase in the TSX Composite Index in 2009 and 2010.
132. Despite the actual holdings reflecting acceptable levels of risk for these clients, the stated investment objectives and risk tolerance parameters included investment objectives of 50% “capital gains – medium term” and a risk tolerance objective of 50% high risk. Such parameters were too aggressive for a retired couple, and as such were inconsistent with the clients’ true financial situation, investment knowledge, investment objectives and risk tolerance.

(ii) Discretionary Trading

133. During the material time, Malley executed many trades in JK/AK’s accounts without confirming the details of all trades with either JK or AK (as applicable) prior to their execution.
134. They would only learn of trades after the fact.
135. In the 41 month period of review ending May 31, 2012, Malley conducted 143 trades in their accounts.
136. The Maximizer notes maintained by Malley contain 19 possible references to trades. 12 of the notes simply state “client wants to hedge ETF transaction”. They do not contain references and/or notations in order to document that he contacted JK or AK to confirm trade details prior to execution of all trades.
137. At no point did Malley obtain written authorization from either JK or AK for discretionary trading. The accounts were not designated as discretionary by Assante.

Client – DA

(i) Failure to Know Your Client

138. DA was born in 1957 and was employed as a building facilities manager. DA had a high school education, and had very limited investment knowledge.
139. When she opened the accounts in 2005, she advised Malley that she was not a risk taker, and her objective was to save for her expected retirement in 10 to 15 years.
140. A January, 2005 NCAF for a margin account and a registered account states that she had income of \$60,000 per year, liquid assets of \$75,000 and fixed assets of \$230,000.
141. For the margin account, her stated investment objectives were 50% “capital gains – medium term” and 50% “capital gains – short term”. Her risk tolerance parameters were 50% medium and 50% high.
142. Although she had a margin account, she did not understand that margin involved borrowing money.
143. For the registered account, her stated investment objectives were 70% “capital gains – medium term” and 30% “capital gains – short term”. Her risk tolerance parameters were 70% medium and 30% high.
144. In a January, 2012 NCAF, the form contains a client signature and net worth information. However, all other client information has been left blank.
145. For the period from January, 2005 onward, the stated investment objectives and risk tolerance parameters were too aggressive for a client with limited assets and investment experience seeking to save for retirement and as such was inconsistent with the client’s true financial situation, investment knowledge, investment objectives and risk tolerance.

(ii) Suitability

146. Between January 1, 2009 and December 31, 2011, the actual holdings in her accounts (RRSP and margin accounts) were comprised of securities having risk tolerances of 13% low, 50% medium and 37% high risk.
147. The margin debt over period reviewed averaged \$37,481.
148. The higher risk holdings recommended by Malley for DA’s accounts were largely comprised of junior resource issuers and natural gas leveraged exchange traded funds.

149. During the period of review by Staff, the value of DA's accounts decreased by \$33,398, a loss of 23.8%. During the same period of time, the TSX Composite Index increased 31.2%.
150. These holdings were highly concentrated in medium and high risk securities and, in addition to the use of leverage, reflected an extremely high degree of risk. As such, these recommendations were not at all suitable for DA, an unsophisticated investor who was risk averse and wanting to save for her retirement.

(iii) Discretionary Trading

151. During the material time, Malley executed many trades in DA's accounts without confirming the details of all trades with her prior to their execution.
152. She would only learn of trades after the fact.
153. During the 41 month period of review of the three accounts by Staff, Malley made 94 trades in the accounts.
154. The Maximizer notes maintained by Malley contain just five possible references to trades. They do not contain references and/or notations in order to document that he contacted DA to confirm trade details prior to execution of all trades.
155. At no point did Malley obtain written authorization from DA for discretionary trading. The accounts were not designated as discretionary by Assante.

C. Allegations against Christine Malley (Supervision)

156. As particularized above, Malley failed to know his Clients, and he failed to ensure that his recommendations were suitable for many of the Clients. In addition, he engaged in discretionary trading in the accounts of many of the Clients without first having the accounts approved and accepted as discretionary accounts.
157. While the circumstances of each complainant vary, in general most of the Clients:
 - (a) were unsophisticated investors;
 - (b) were retired or approaching retirement;
 - (c) had investment objectives and risk tolerance parameters that were inconsistent with their true parameters;
 - (d) held substantial portions of their holdings in high risk securities of small resource issuers and commodity based leveraged exchanged traded funds;

- (e) were subject to Malley's use of his own discretion in the management of their accounts;
 - (f) had all or substantially all of their liquid assets invested with Malley;
 - (g) often used leverage and were unaware of the risks associated with borrowing to invest;
 - (h) suffered substantial losses in their accounts.
158. Malley was the lead RR in a small sub-branch consisting of himself, Christine Malley, and an administrative assistant. He was supervised at the Tier 1 level by Christine Malley.
159. As Branch Manager, her duties would have included the review and approval of NCAF's and client account updates, the review of daily and monthly trading summary reports as well as the supervision of account activity.
160. Despite these responsibilities, and although she was the Branch Manager and Malley's direct supervisor, she functioned more as an office manager with responsibility for administrative and operations functions than as a supervisor.
161. In addition to approving NCAF's and updates with investment objectives and risk tolerance parameters when it was plain and obvious that they were inconsistent with the Clients' true circumstances, she participated in entering trades on a volume basis when it was apparent that Malley was trading securities in client accounts with discretion.
162. In reviewing daily and monthly trading summary reports, it would have been apparent that Malley was engaging in aggressive trading strategies which were not suitable.
163. In effect, Christine Malley did not conduct any meaningful supervision of Malley in relation to his handling of the Clients' accounts. In particular, her supervisory failures included the following:
- (a) Approved NCAF's and NCAF updates for the Clients when it was apparent that the stated investment objectives and risk tolerance parameters would have been inconsistent with the Clients' true financial situation, investment knowledge, investment objectives and risk tolerances;
 - (b) Allowed and didn't question trading activity in the Clients' accounts which was clearly unsuitable as it frequently included purchases of high risk securities of small resource issuers and commodity based leveraged exchanged traded funds;

- (c) Allowed and didn't question the use of leverage in the accounts of many of the Clients who were retired or approaching retirement;
 - (d) Allowed and didn't question his pursuit of a highly aggressive trading strategy which ultimately resulted in substantial losses in most cases;
 - (e) Allowed and didn't question his use of discretionary trading when she knew that the accounts were not approved and accepted as discretionary accounts;
 - (f) Actively participated with Malley in the processing of large volumes of trades when it was apparent that he was acting on a discretionary basis;
 - (g) Failed to maintain documentation to establish that she was conducting daily or monthly reviews; and
 - (h) Failed to maintain documentation to establish that she had the necessary supervisory procedures in place.
164. Christine Malley's participation in the actions of Malley, and her failure to take the necessary action to prevent him from engaging in highly aggressive trading strategies, amounted to a complete failure to supervise.

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 each 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 a 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 a 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 a 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 a 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 a 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 a 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, B.C., this “6th” day of “November”, 2013.

“Warren Funt”

Warren Funt
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