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**
>
> **GRANT PATRICK MATTHEWS**

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 Canada (IIROC), a set-date hearing will be held by conference call before a hearing panel of IIROC ("Hearing Panel") on March 12, 2014 at IIROC Calgary, Suite 800, 255 – 5th Avenue SW, Calgary, Alberta, or as soon thereafter as the hearing can be heard.

TAKE FURTHER NOTICE that pursuant to Rule 6.2 of the Dealer Member 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 the IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for the IDA to carry out its regulatory functions.

THE PURPOSE OF THE HEARING is to determine whether the Respondent, Grant Patrick Matthews, has committed the following contraventions that are alleged by IIROC:

1. Between approximately March 2004 and May 2012, the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to four (4) clients contrary to Dealer Member Rule 1300.1(a) [IDA Regulation 1300.1(a) prior to June 1, 2008];

2. Between approximately January 2009 and May 2012, the Respondent failed to use due diligence to ensure that recommendations were suitable for four (4) clients, based on factors including the client's financial situation, investment knowledge, investment objectives and risk tolerance contrary to IIROC Dealer Member Rule 1300.1(q);

3. Between approximately June 2009 and May 2012, the Respondent engaged in discretionary trading with respect to the accounts of three (3) clients, without being authorized and approved as having discretionary authority contrary to Dealer Member Rule 1300.4;

4. From January 2009 and March 2011, the Respondent engaged in improper practices by excessively trading in (churning) the accounts of three (3) clients, for the sole purpose of generating additional commissions contrary to Dealer Member Rules 1300.1(o) and 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:

Overview

1. The Respondent Grant Patrick Matthews ("Matthews") was a Registered Representative ("RR") responsible for the accounts of four clients ("Clients").

2. Matthews failed to know the Clients, who were retired or approaching retirement, and had very little investment knowledge.

3. Matthews failed to use due diligence to ensure that recommendations were suitable for the Clients when he pursued an aggressive trading strategy which involved frequent trades in medium and high risk securities including leveraged exchange-traded funds.

4. Matthews engaged in discretionary trading in the accounts of three of the Clients, without first having the accounts approved and accepted as discretionary accounts.

5. In addition, Matthews traded excessively in the accounts of three of the Clients, with the sole purpose of generating additional commissions and without benefit to the clients.

6. The Clients all sustained varying degrees of losses in their accounts, ranging from 8% to 28% during the relevant time periods.

Registration History

7. Matthews has been a Registered Representative since 1997, and has been employed with Leede Financial Markets Inc. ("Leede") in Calgary since 1999. At all material times, he did not have the authority to conduct discretionary trades in any client accounts.

Client - EF

(i) <u>Failure to Know Your Client</u>

8. EF is a 69 year old retired widow. She has a high school education, and was a homemaker for much of her working life. She also worked at one time as a franchisee operator of a lottery booth.

9. Her late husband, RF, worked as a custodian at a local high school before he retired. Prior to that, he managed a gas station.

10. EF and RF first opened an account with Matthews in 2001. RF followed financial news and markets, and communicated with Matthews regularly. EF generally left the household financial affairs and investment decisions to her husband.

11. A March 2004 New Client Account Form ("NCAF") for EF's RRSP account stated that EF earned $40,000 per year from the lottery booth, and RF earned $32,000 per year as a custodian. Their stated liquid assets were $100,000, and their fixed assets were listed as $300,000. The stated investment objectives were 50% long term growth, 50% short term speculative, and their stated risk tolerance parameters were 50% medium and 50% high. At the time, EF was 60 years old and her investment knowledge was listed as "fair".

12. RF died in May 2010. Following her husband's death, in June 2010, EF, met with Matthews to sign estate documentation and discuss his future handling of her accounts. She was then 67 years old.

13. She completed an NCAF to open her TFSA account, which stated that EF was retired, with an income of $32,000 per year. The investment objectives were 25% income/50% long term growth/25% short term speculative, and the risk tolerance parameters were changed to 33% low/33% medium/33% high. The stated assets remained the same, as did the description of her investment knowledge as "fair".

14. Following her husband's death, EF completed an NCAF for the TFSA, but not for her other accounts. There are no account updates between June, 2010, and EF's transfer of her accounts to another firm in May, 2012.

15. For the period of June 2010 onward, the stated investment objectives and risk tolerance parameters were too aggressive for EF, who was then a retired and recently widowed senior, with limited assets and income.

16. Matthews failed to learn and remain informed of the essential facts relative to EF as the stated investment objectives and risk tolerance parameters in her accounts were inconsistent with her true financial situation, investment knowledge, investment objectives and risk tolerance.

(ii) Suitability

17. EF relied upon and followed Matthews' recommendations for the investments in her accounts. This was particularly evident during the time period of June 2010 onward, following her husband's death.

18. In general, the nature of the trading in the RRSP account was focused on frequent trades in medium to high risk securities. The medium risk securities were primarily resource issuers trading on the TSX, and the high risk securities were primarily commodity-based leveraged exchanged traded funds ("LETF").

19. All of the securities traded in the account were medium or high risk securities, with no low risk holdings. In general, profitable positions in these securities were held for short time periods while unprofitable positions were held for longer periods of time.

20. From May 2010 to April 2012, the average hold period for all securities was approximately 5 months. The average hold period was just 38 days for positions in which gains or losses were actually realized.

21. In addition, although there were some purchases made in the accounts of dividend-paying securities, in many cases the securities were not held long enough to be eligible to receive dividends.

22. Between January 2009 and October 2010, there were 66 LETF transactions, which resulted in losses of $14,999 (including $7,805 in commissions).

23. The majority of the LETF positions were held for short time periods, on average 2.74 days. However, there were 5 LETF trades which were held for a much longer period, an average of 178 days, and resulted in losses of $17,485.

24. Between June 2010 and May 2012, the total value of EF's accounts declined from $115,478 to $106,159, reflecting a loss of 8%. This included the payment of commissions of $13,378. During the same time period, the S&P TSX Composite Index increased by 5.29%.

25. During this time period, the performance of her holdings was very volatile in comparison to the overall market performance. The total value of her accounts ranged between approximately $160,000 to $100,000.

26. Through Matthews own research, investment ideas and trading activity, he pursued an aggressive trading strategy which involved a high degree of risk.

27. The holdings in EF's account were speculative, and in combination with the nature of the trading in these securities, presented a degree of risk which was contrary to both the stated investment objectives and risk tolerance parameters, and the client's true circumstances. As such, these recommendations were not suitable for this client in light of her age, employment status, investment knowledge, and experience.

(iii) Discretionary Trading

28. During the period from June 2010 (after her husband's death) to May 2012, Matthews made 113 trades in EF's accounts.

29. EF says that she instructed Matthews to "take care of her", and that she "left everything up to him". She wanted him to continue the type of trading activity that he had carried out with RF, as she had limited investment knowledge.

30. Many of the trades in the accounts involved an aggressive trading strategy of frequent trades in medium risk issuers, and LETFs.

31. During the material time, Matthews executed many trades in EF's accounts without confirming the details of the trades with EF prior to their execution.

32. Matthews did not obtain EF's written authorization for discretionary trading. EF's accounts were not designated as discretionary by Leede.

Client - LZ

(i) Failure to Know Your Client

33. LZ first opened an account with Matthews in 2003, after accepting early retirement from his job as an oilfield operator. He was then 52 years old, and earning $75,000 per year, and planned to fully retire by age 60. He knew little about investing and was relying on Matthews for his expertise.

34. A January 2003 NCAF for an RRSP account stated that he had "fair" investment knowledge, with investment objectives of 15% income, 30% long term growth, 25% short term speculative and 30% venture speculative. The risk tolerance parameters were 50% medium, and 50% high. The assets and income portions of the form were left blank.

35. As part of the early retirement package received from his employer, he transferred pension monies of approximately $80,000 into a LIRA account.

36. In November 2003, an NCAF for the LIRA account states that LZ had liquid assets of $250,000, fixed assets of $175,000 and "fair" investment knowledge. His annual income was $30,000 per year as he was then working as a self-employed oilfield consultant, and his wife was earning $30,000 per year as a bookkeeper. His investment objectives were 50% income and 50% long term growth with 0% short term speculative. His risk tolerance parameters were indicated as "low", but no percentage allocations were provided.

37. In August 2006, an NCAF update for the RRSP account stated that he had liquid assets of $300,000, and fixed assets of $200,000. The stated income levels for LZ and his wife remained the same. His investment objectives were now 20% income, 10% long term growth, and 70% short term speculative. His risk tolerance parameters were 20% low, 50% medium, and 30% high. His investment knowledge is now listed as "good".

38. There are no other account updates, until August 2010, when LZ's accounts were transferred to another RR at Leede.

39. For the period of August 2006 onward, the stated investment objectives and risk tolerance parameters were too aggressive for LZ, who was then 55 years old, self-employed, had limited investment knowledge and was approaching retirement.

40. Matthews failed to learn and remain informed of the essential facts relative to LZ as the stated investment objectives and risk tolerance parameters in his accounts were inconsistent with his true financial situation, investment knowledge, investment objectives and risk tolerance.

(ii) Suitability

41. LZ relied upon and followed Matthews' recommendations relating to the investments in his accounts.

42. In general, the nature of the trading in the accounts was focused on frequent trades in medium to high risk securities. The medium risk securities were primarily resource issuers trading on the TSX, and the high risk securities were primarily commodity-based leveraged ETFs.

43. Although the LIRA account had a stated investment objective of 50% income and a risk tolerance of "low", it contained virtually no low risk holdings (other than a small cash position). Nearly all of the securities traded in the account were medium or high risk securities. In general, profitable positions in these securities were held for short time periods while unprofitable positions were held for longer time periods.

44. In addition, although there were some trades made in the account in dividend paying securities, in many cases the securities were not held long enough to be eligible to receive dividends.

45. Between January 2009 and May 2010, there were 212 LETF transactions in LZ's accounts, which resulted in losses of $45,671 (including $26,953 in commissions).

46. The average LETF hold period was approximately 7 days. There were 5 LETF trades which were held for a longer term, an average of 70 days, and resulted in losses of $25,627.

47. Between January 2009 and July 2010, the total value of LZ's accounts declined by $81,762 (a 27.75% loss). During the same time period, the S&P TSX Composite Index increased by 47%.

48. Through Matthews own research, investment ideas and trading activity, he pursued an aggressive trading strategy which involved a high degree of risk.

49. The holdings in LZ's accounts were speculative, and in combination with the nature of the trading in these securities, reflected a degree of risk which was contrary to the client's true circumstances. As such, these recommendations were not suitable for this client in light of his age, employment status, investment knowledge, and financial circumstances.

(iii) Churning

50. Between January 2009 and July 2010, Matthews executed 519 trades in LZ's accounts.

51. During this time period, trades in the accounts had a total purchase value of $6,010,860, while the average value of assets in the client's accounts totaled just $257,522. This annual turnover rate of 14.74 (total purchases/average account value) reflects an extremely high volume of trading.

52. Between January 2009 and July 2010, the total value of LZ's accounts declined by $81,762 (a 27.75% loss). This decline includes commissions of $67,384, which includes $26,951 in commissions relating to LETF trades.

53. The commission to equity ratio of 16.56% also reflects a very high volume of trading.

54. Between January 2009 and July 2010, LZ's accounts comprised approximately 5% of the total assets managed by Matthews. However, the commissions charged to LZ comprised approximately 43% of his total gross commissions for all of his client accounts.

55. Profitable trades were closed quickly, at an average of 9 days. Unprofitable trades were held for much longer, an average of 20 days. Commissions charged on profitable trades represented an average of 52.9% of the profit earned on the trade.

56. Matthews knowingly executed an excessive number of trades in order to increase commissions without conferring a tangible net benefit to the client.

Clients – JS/DS

(i) <u>Failure to Know Your Client</u>

57. In 2004, DS, a 50 year old municipal employee, took early retirement. His wife, JS, aged 49, was a homemaker and generally left management of the family's financial affairs to her husband.

58. DS and JS met with Matthews to discuss their financial affairs, and in particular their intention to rely on their investments for income. DS had been injured many years before in a workplace accident, and received $1,000 per month in disability benefits. In addition to the disability benefit, they required an additional $2,000 per month withdrawal from their investments for living expenses, and they didn't intend to draw CPP benefits until age 65.

59. Matthews advised them that it was reasonable to make the $2,000 monthly withdrawal from their investments.

60. In order to achieve the $2,000 monthly investment return necessary, DS/JS borrowed $100,000 pursuant to a home equity line of credit against the equity in their unencumbered home and provided $90,000 to Matthews to invest. Matthews was aware that these funds were borrowed.

61. An August 3, 2004 NCAF for the joint account states that DS had "good" investment knowledge. Investment objectives are stated as 25% low income; 50% long term growth; and 25% short term speculative. The risk tolerance parameters are 25% low, 50% medium and 25% high risk. DS is listed as "retired", with a stated income of $36,000 per year. JS has no stated income and her occupation is listed as "homemaker". Their stated assets are $300,000 in liquid assets and $250,000 in fixed assets.

62. Shortly thereafter, on August, 30, 2004, there was an NCAF update for the joint account. In addition, there are NCAFs for three other accounts completed on this date - an RRSP, a LIRA, and a RRIF. All four of these documents contain identical information.

63. All state the clients' investment knowledge is "good". Investment objectives are stated as 75% income, 15% long term growth; and 10% short term speculative. The risk tolerance parameters are 50% low, 30% medium and 20% high risk. Their assets are now stated to be $450,000 liquid assets, and $300,000 in fixed assets. The stated annual income/employment of the client remains at $36,000 and retired.

64. An NCAF dated February 21, 2005, to convert the LIRA to a LIF states that DS has "good" investment knowledge. The stated investment objectives are 50% income, 35% long term growth and 15% short term speculative. The stated risk tolerance parameters

are 50% low, 40% medium, and 10% high. The stated assets are $300,000 liquid, and $250,000 fixed. The income/employment information for DS remains at $36,000 (retired), and is now at $25,000 for JS.

65. An additional NCAF for the RRSP account dated February 21, 2005 was completed for JS. It states that she has “fair” investment knowledge. The stated investment objectives are 50% income, 35% long term growth, and 15% speculative. The stated risk tolerance parameters are 50% low and 50% medium. The stated assets and income information are $300,000 liquid, and $250,000 fixed. The income/employment information for DS remains at $36,000 (retired), and is $25,000 for JS.

66. In December 2008 DS suffered serious health problems and spent more than a month in hospital. As a result, he sustained permanent brain and organ damage which has resulted in lasting cognitive impairment.

67. In late 2009, JS/DS received a Canada Revenue Agency “hardship” form in the mail from Matthews concerning withdrawals from the DS’ LIF account. Matthews advised JS that it was necessary to permit additional trading in the accounts. The form was completed and returned.

68. In late 2010, JS/DS received a second “hardship” form in the mail. She telephoned Matthews, who explained that it was necessary in order to permit continued monthly $2,000 withdrawals from their accounts. The form was completed and and returned.

69. JS became concerned with the nature of the hardship withdrawals and the accounts’ performance, and brought her son to a meeting with Matthews to express her unhappiness. Shortly thereafter, JS transferred her accounts out of the firm.

70. For the period of August 2004 onward, the stated investment objectives and risk tolerance parameters were too aggressive for DS/JS, a retired and vulnerable couple who were relying on their investments for income.

71. Matthews failed to learn and remain informed of the essential facts relative to JS/DS as the stated investment objectives and risk tolerance parameters in their accounts were inconsistent with their true financial situation, investment knowledge, investment objectives and risk tolerance.

(ii) Suitability

72. JS/DS relied upon and followed Matthews’ recommendations for the investments in their accounts.

73. Despite limited speculative investment objectives and risk tolerance parameters in the NCAFs, Matthews employed an aggressive trading strategy of frequent trades in and out of medium to high risk securities with a short term time horizon.

74. Although the accounts had a 75% allocation to income, the accounts did not actually hold any income-paying securities. The accounts held shares in medium to higher risk issuers, as well as LETFs, and in combination with the high frequency nature of the trading in these securities, presented a very high degree of risk.

75. Although there were some trades made in the accounts in dividend-paying securities, in many cases the securities were not held for long enough to be eligible to receive dividends.

76. Between January 2009 and April 2011, Matthews executed 593 trades in the accounts of JS/DS. Many of these trades were purchases of LETFs.

77. The average LETF hold period was approximately 9 days. Six LETF trades which were in negative positions were held longer, an average of 89 days, and resulted in losses of $36,326.

78. Between January 2009 and April 2011, the total value of the JS/DS accounts declined by $78,622 (or 28.11%). During the same time period, the S&P TSX Composite Index increased by 71.6%.

79. Through Matthews own research, investment ideas and trading activity, he followed an aggressive trading strategy which involved a high degree of risk.

80. The degree of risk was apparent in light of the hardship withdrawals, and was compounded by the use of leverage from their home equity to invest. As such, the recommendations were not at all suitable for these clients in light of their age, employment status, investment knowledge, and experience.

(iii) Discretionary Trading

81. While DS was in the hospital as a result of his December 2008 health problems, JS learned that DS had been calling Matthews and speaking incoherently. JS informed Matthews of DS's condition, and told Matthews to only deal with her.

82. After leaving the hospital, DS was incapacitated while he recovered at home. During this time, JS spoke with Matthews on only a few occasions, telling him to do what he thought was advisable.

83. Although JS had very limited interaction with Matthews and DS was incapacitated after his hospitalization, during the period from January 2009 to March 2011, Matthews executed 593 trades in JS/DS's accounts.

84. Many of the trades in the accounts involved an aggressive trading strategy of frequent trades in medium risk issuers, and high risk LETFs.

85. During the period from January, 2009 onward, Matthews executed many trades in JS/DS' accounts without confirming the details of the trades prior to their execution. In addition, Matthews knew, or ought to have known, that DS was not capable of giving trading instructions because of his ongoing health problems.

86. Matthews did not obtain written authorization from JS/DS for discretionary trading. JS/DS' accounts were not designated as discretionary by Leede.

(iv) Churning

87. Between January 2009 and April 2011, Matthews executed 593 trades in the accounts of JS/DS.

88. During this time period, the trades in their accounts had a total purchase value of $6,183,218, while the average value of assets in the clients' accounts totaled $176,685. This annual turnover rate of 15 (total purchases/average account value) reflects an extremely high volume of trading.

89. During this time period, the value of their holdings decreased by $78,622 (including commissions paid of $71,931), reflecting a loss of 28.11%. The S&P TSX Index increased by 71.6% during the same time period.

90. The commission to equity ratio of 18% also reflects a very high volume of trading.

91. Although the JS/DS accounts comprised just 4% of the total assets managed by Matthews, the commissions charged to these clients comprised between 37-56% of his total gross commissions, depending on time frame.

92. Profitable trades were closed quickly, at an average of 12.18 days. Unprofitable trades were held for much longer, an average of 33.77 days. Commissions charged on the profitable trades represented an average of 53.9% of the profit earned on the trade.

93. Matthews knowingly executed an excessive number of trades in order to increase commissions without conferring a tangible net benefit to the clients.

GENERAL PROCEDURAL MATTERS

TAKE FURTHER NOTICE that the hearing and related proceedings shall be subject to the Association's Rules of Practice and Procedure.

TAKE FURTHER NOTICE that pursuant to Rule 13.1, 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 Association a Response to the Notice of Hearing in accordance with Rule 7 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:

(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 the Association in the Notice of Hearing; and

(c) order penalties and costs against the Respondent pursuant to By-law 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 Association in the Notice of Hearing, the Hearing Panel may, pursuant to By-law 20.33 and By-law 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 Association; 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 the Association; 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 Association in the Notice of Hearing, the Hearing Panel may pursuant to By-law 20.49 assess and order any investigation and prosecution costs determined to be appropriate and reasonable in the circumstances.

DATED at Vancouver, British Columbia, this "27" day of "February", 2014.

"Warren Funt"
WARREN FUNT
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