INVESTMENT DEALERS ASSOCIATION OF CANADA

bulletin

ASSOCIATION CANADIENNE DES COURTIERS EN VALEURS MOBILIÈRES

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For distribution to relevant parties within your firm

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Discipline
Discipline Penalties Imposed on Kenneth Richard Miller; Violations of By-law 29.1 and Regulation 1300.4.

Person Disciplined

A Hearing Panel of the Investment Dealers Association of Canada (the "Association") appointed pursuant to Association By-law 20 has imposed discipline penalties on Kenneth Richard Miller, at all material times a Registered Representative ("RR") working at the Vancouver Head Office of Canaccord Capital Corporation. ("Canaccord"), a member of the Association.

By-laws, Regulations, Policies Violated

On January 24, 2005 in Vancouver, British Columbia, a Hearing Panel considered, reviewed, and accepted a Settlement Agreement negotiated between Mr. Miller and Staff of the Enforcement Department of the Association. Pursuant to the Settlement Agreement, Mr. Miller admitted that between January 2000 and May 31, 2002 he acted contrary to Association By-law 29.1, in that he:

a) effected 7 unauthorized transactions in the accounts of 3 separate clients, without prior authorization from those clients;

b) continually failed to contact a client, to advise him that there were margin calls in his account and that he was required to deposit money to his account;

c) engaged in personal financial dealings with a client of his without advising his firm;

d) maintained accounts and processed transactions for clients who resided in Alberta when he was not registered in Alberta;

e) failed to inform compliance or supervisory personnel at his firm of the complaint of a client;

f) attempted to personally settle the complaint of a client without the approval of his firm; and

g) made a false statement to a compliance officer at his firm who made a trade related inquiry regarding transactions in the account of a client.

Mr. Miller also admitted that he acted contrary to By-law 29.1 and Regulation 1300.4 in that he:

h) effected 34 discretionary transactions in the accounts of 3 separate clients without the prior written authorization of his clients.

Penalty Assessed

The penalties assessed against Mr. Miller are:

a) a permanent prohibition from approval to act in any registered capacity with any Member of the Association; and

b) a global fine in the amount of $80,000 (eighty thousand dollars).

Mr. Miller is also required to pay $20,000.00 towards the Association's costs of this matter.

Summary of Facts

Mr. Miller first entered the securities industry in 1998 as a RR at the head office of Canaccord in Vancouver. He was an RR at Canaccord until May 31, 2002 and has not been employed by any Member firm, since that time.

DM

In the second half of the year 2000 DM authorized the purchase of 150 shares of Intel Corp. ("Intel") and 100 shares of Nortel Networks Corp. ("Nortel") in his account. DM wished to hold these positions.

On three separate occasions in 2001 the price of shares of both Intel and Nortel declined significantly which resulted in DM's margin account being under margined. As a result Canaccord made margin calls on DM's margin account. Mr. Miller, however, failed to notify DM that he was required to deposit cash into the account to bring the account back to a sufficient margin position. As a result, no money was deposited to the account and on three separate occasions Canaccord sold out DM's shares to make up for the account being under margined.

Mr. Miller also failed to contact DM in a timely manner to discuss transactions in DM's RRSP account. On March 23, 2001, Mr. Miller purchased 3,500 shares of Gallery Resources Ltd. for a total purchase price of $640.00. Mr. Miller did not speak with DM prior to initiating the transaction and did not have DM's authorization to initiate the transaction.

HM

HM, a client of Mr. Miller, worked for thirty years as a carpenter. HM had difficulties reading mail, statements and bills because he was dyslexic. HM's financial philosophy was that he should never owe anybody money. HM believed that debts should be paid right away and he "could not sleep at night" if he owed somebody money.

On two separate occasions in September and October 2000 Mr. Miller, without authorization from HM, initiated purchases of securities in HM's Cash Account in an attempt to make a profit. Mr. Miller was hoping to be able to surprise HM with good news of a trading profit. Contrary to Mr. Miller's plan, however, the share price of the securities purchased declined significantly and the positions, which were never paid for, were sold out by Canaccord.

As a result of the unauthorized transactions HM incurred a loss of $1,620.00.

DN

DN, a client of Mr. Miller worked for approximately 14 years as a "financial planner" who sold life insurance products.

In the spring of 2000, when DN was a client of Mr. Miller, Mr. Miller purchased a $1,000,000.00 universal life insurance policy from DN. Mr. Miller soon found it difficult making the monthly payments to maintain the policy. Rather than allowing the policy to lapse which would force DN to pay back his commission on the policy sale, and jeopardize DN's "top producer" trip to Florida, DN offered to make the payments on Mr. Miller's behalf and did so, with the understanding that Mr. Miller would reimburse him. DN made four payments on behalf of Mr. Miller totaling almost $2,700.00 and loaned Mr. Miller an additional $300.00 for a total of $3,000.00. On a separate unrelated occasion on April 3, 2001 DN loaned Mr. Miller $950.00 for unspecified reasons.

All of the personal financial dealings between Mr. Miller and DN occurred when DN was a client of Mr. Miller at Canaccord and without the knowledge or approval of Canaccord.

BC and TH

BC and TH were both clients of Mr. Miller. BC was Mr. Miller's cousin and worked as an oil and gas contractor at a company of which TH was the President. BC and TH were both residents of Alberta.

Notwithstanding that neither account was specifically approved and accepted as a discretionary account, Mr. Miller operated BC's and TH's accounts as though they were discretionary accounts and initiated and processed transactions in each client's account without consulting with his clients. Mr. Miller did not discuss trades in each of the accounts with his clients until after the trades were made. Mr. Miller believed he had a "loose understanding" with both BC and TH that their accounts would be operated in this manner.

As a result of 9 discretionary transactions BC incurred losses of approximately $29,362.97. As a result of 3 discretionary transactions, TH incurred a loss of $1,415.00.

At no time during the Relevant Period was Mr. Miller registered in any capacity in the province of Alberta. The Alberta *Securities Act* requires all individuals who trade in securities in Alberta be registered with the Alberta Securities Commission.

JF

JF, a client of Mr. Miller, resided in London England.

Although JF's accounts were not specifically approved and accepted as discretionary accounts, Mr. Miller operated the accounts as though they were discretionary accounts and initiated and processed transactions in the accounts without consulting JF. Mr. Miller did not discuss trades in each of the accounts with his clients prior to the transactions being made. Mr. Miller believed he had a verbal agreement with JF to have full trading authority over his accounts.

As a result of 22 discretionary transactions, JF incurred a loss of $22,736.26.

In April 2002 JF complained to Mr. Miller about the trading activity in his account. Rather than forward JF's complaint to Canaccord, Mr. Miller, on April 10, 2002 drafted and sent a reply by Email to JF asking JF to "help me come up with a solution that satisfies you without involving the above" (referencing Canaccord).

Sometime between April 10 and April 18, 2002, Mr. Miller, without notifying Canaccord, attempted to settle JF's complaint by offering to personally pay him $27,000 to compensate him for the losses in his accounts.

SN

On two separate occasions in November and December 2001 Mr. Miller initiated and processed a total of 4 transactions in SN's accounts without prior authorization from SN. Mr. Miller did not speak with DM prior to initiating the transactions.

After he learned about the transactions after reviewing his monthly statements, SN, on February 26, 2002, sent Mr. Miller an Email questioning the trading activity in his accounts. Mr. Miller drafted and sent a reply Email to SN advising that he would "have things straightened out immediately."

On March 25, 2002, a compliance officer at Canaccord became aware of the Email exchange between Mr. Miller and SN and asked Mr. Miller for an explanation. Mr. Miller advised the compliance officer by Email that the problem was not with the purchase of the stock, but rather involved the sell. Mr. Miller explained that he had talked to the client about selling the stock to cover a debt but had sold the wrong one when, in fact, he knew the transactions were unauthorized.

Reasons

Written reasons for the acceptance of the Settlement Agreement by the Hearing Panel will be posted on the Association's website in due course.

Kenneth A. Nason
Association Secretary