INVESTMENT DEALERS ASSOCIATION OF CANADA

bulletin

ASSOCIATION CANADIENNE DES COURTIERS EN VALEURS MOBILIÈRES

Contact: *For distribution to relevant parties within your firm*

Sylvie Poirier
Enforcement Counsel
(514) 878-2854
spoirier@ida.ca

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Discipline

Discipline Penalties Imposed on Christian Guilbault – Violations of By-Law 29 and of Regulation 1300

Person Disciplined

A Hearing Panel appointed pursuant to By-law 20 of the Investment Dealers Association of Canada ("the Association") has imposed discipline penalties on Christian Guilbault, who at all material times was a Registered Representative Options in the employ of Scotia Capital Inc., at its Laval branch.

By-laws, Regulations, Policies Violated

Mr. Guilbault has withdrawn the motion previously filed for a stay of the discipline proceedings and formally recognized that he is subject to the Association's jurisdiction in disciplinary matters and that the Hearing Panel has the power to rule on the acceptance of a Settlement Agreement despite his deregistration as a Registered Representative and termination of his approval in this capacity by the Association.

Following a Settlement Hearing held on June 16, 2006, in Montréal, Québec, a Hearing Panel reviewed and accepted a Settlement Agreement negotiated between Staff of the Enforcement Department of the Association and Mr. Guilbault.

Pursuant to the terms of the Settlement Agreement, Mr. Guilbault has admitted committing, between April 2002 and January 2004, the following violations of Regulation 1300:

- Failing to use due diligence to learn and remain informed of the essential facts relative to every client and every account accepted, when opening accounts for seven clients, contrary to Regulation 1300. 1(a);
- Recommending and implementing, in the accounts of eight clients, speculative spreading strategies which were unsuitable

for these clients, contrary to Regulation 1300.1 (c) and (d);

- Failing on two occasions to ensure that transactions that had been made for six clients were really in the interest of these clients, causing each of them additional losses, contrary to Regulation 1300.1 (b), (c) and (d);

- Effecting discretionary trades in the accounts seven clients, contrary to Regulation 1300.4 and Regulation 1300.5;

He further admitted to the following violations of Association By-law 29.1:

- Circumventing verification of the compliance and suitability of the approval of options accounts for seven clients, by listing the same speculative investment goals and the same risk tolerance for each of these clients, without regard for the true financial position of each client;

- Effecting unauthorized trades in the accounts of two clients;

- Failing to obtain the prior approval of the designated officers, in accordance with the member firm's compliance policies, before carrying out options trades involving more than 99 contracts in the accounts of two clients.

Finally, he admitted to the following violations of By-law 29.1 and 29.7:

- Having on numerous occasions produced his own reports and submitted them to several clients, to illustrate the results of the options strategies effected in their accounts, but without including the open positions, thus providing an incomplete representation of the transactions that had been made, as to the results achieved by these strategies;

- Failing to obtain the prior authorization of a designated officer before producing these unofficial reports for his clients.

Penalties Assessed

The following penalties have been imposed on Mr. Guilbault:

- A permanent ban on approval in any capacity with a Member of the Association.

- A fine of $35,000.00

Mr. Guilbault shall also pay the Association's costs in this matter, in the amount of $5,000.

Summary of Facts

Account of A

A had had an account open with Mr. Guilbault since December 1998, with rather conservative goals.

In June 2003, at Mr. Guilbault's suggestion, the client agreed to trade options. He was elderly and retired by this time and had never traded options before. On the new options account form, the client's investment goals were listed as much more speculative, his risk tolerance as much higher, and his knowledge of options as moderate.

On Mr. Guilbault's recommendation, the client authorized the latter to apply a spreading strategy to 50 contracts. Mr. Guilbault effected a first spreading strategy and, without discussing the details with the client, repeated the spreading strategy in the client's account in the months that followed.

The client asked the Respondent to give him a report or example that would help him understand the trade confirmations and statements he was receiving regarding his account. Without obtaining Scotia's prior authorization, Mr. Guilbault gave him a report which he had personally prepared for him, and which showed that his strategy had been profitable. The report provided an incomplete picture of the transactions that had been made, and showed a total gain rather than a total loss.

Beginning in November 2003, Mr. Guilbault significantly increased the number of contracts opened as part of his strategies in this client's account, without obtaining the client's specific consent. What's more, by closing a position barely two days before the expiry date, rather than allowing the options to expire, he caused the client a greater loss than the maximum loss to which the strategy had exposed him. On one occasion, he did not cover the position until the next day, thus exposing the client to unlimited losses on his short position.

In January 2004, when the client realized that the Respondent was trading options on 250 contracts rather than 50, and seeing the size of the amounts involved in these transactions, he expressed his concerns to Mr. Guilbault who, to reassure him, produced a new report on the profits, without obtaining Scotia's prior authorization. As with the first report, this report provided an incomplete picture of the transactions that had been made, and gave the impression that a cumulative net gain had resulted from the options trading effected in the client's account, whereas it should have shown a cumulative loss.

The options traded in the client's account entailed substantial trading losses.

Accounts of B and Gestion B

B had had a cash account at Scotia since 1999. In April 2002, following his retirement, the client now had approximately $238,000 to invest, a sum received in return for part of his shares in the company where he had worked. He deposited this sum with Scotia and, at Mr. Guilbault's suggestion, agreed to open an options account. The client had never used spreading strategies before.

The permission to effect spreading strategies required the prior authorization of the Compliance Department at Scotia, which was refused due to the client’s age and lack of income. The following month, Mr. Guilbault nevertheless effected spreading strategies in the client's account.

In February 2003, in an effort to have more aggressive strategies approved for this client's account, an account information change form was filled out to modify the client profile initially indicated on the new account information form. His investment goals had become much more speculative and his risk tolerance much higher. The client's knowledge of options was also listed as high. In March 2003, a second options account was opened in the name of Gestion B, to reallocate B's assets. The client profile was the same as for the account of B.

Mr. Guilbault did not obtain the client's specific authorization before each transaction, or for any subsequent reiteration of strategies in his accounts. In July 2003, worried about the frequency of the transactions, the client called Mr. Guilbault and asked him to stop everything in his options accounts. The latter reassured him, telling him that everything was going well and, without the Scotia's authorization, produced a report showing a profit resulting from the options trading, rather than a loss.

In August 2003, by closing a position shortly before the expiry date, rather than allowing it to expire, Mr. Guilbault caused the client a greater loss than the maximum loss to which he was exposed as a result of the strategy employed.

Between September and December 2003, the client was busy building a new house. During this period, Mr. Guilbault did not always communicate with the client before carrying out trades in his options account. Beginning in November 2003, he even increased to 250 the number of contracts traded using his strategies. In December 2003, he again caused the client a greater loss by closing a position just before the options expired.

The options traded in the accounts of B and Gestion B entailed substantial losses.

Accounts of C and D

In January 2003, on the recommendation of Mr. Guilbault, the client agreed to trade options, and options accounts were opened in the client's name and that of a company of which he was the sole proprietor. He had never traded options before. His investment knowledge of options was nonetheless listed as moderate. The goals and risk tolerance indicated for this client were the same as for the other clients for whom a Mr. Guilbault had opened options accounts during the same period.

In February and March 2003, Mr. Guilbault began effecting spreading strategies in both of C’s accounts. In the months that followed, he reiterated the strategy with the same stock, and then with other stock, always on 50 contracts, without obtaining the client’s authorization prior to each transaction. In November 2003, he increased to 150 the number of contracts targeted by his strategy, without obtaining the client’s specific authorization.

As with the other clients, he closed positions shortly before their expiry, causing losses greater than the maximum loss to which the client was exposed by allowing the options to expire.

Mr. Guilbault prepared reports for the client showing that the options strategies employed were profitable, without obtaining Scotia's prior authorization to issue such reports.

The options traded in the client's accounts entailed substantial losses.

Accounts of E and F

In August 2002, E and his spouse F opened cash accounts with Mr. Guilbault. Their goals at the time were described as very conservative, their risk tolerance as low, and their investment knowledge as low. Two weeks later, an options account was opened for E and, his profile was changed to much more aggressive goals, a higher risk tolerance and a high knowledge of options investing.

In June 2003, Mr. Guilbault began effecting spreading strategies involving 50 contracts. Without Scotia's prior approval, he would prepare “summaries” for the client, to illustrate the result of the options strategies effected in his account. Towards the end of August, he met with the client, who was going abroad for several months, and gave him a new report that he had prepared and which inaccurately illustrated the profitability of his strategies.

Given the apparently positive results shown by this report, E suggested that his spouse follow the same strategy. Before going overseas, F therefore opened an options account. Her stated profile was then changed to the same as her spouse, except that her knowledge of options was listed as moderate.

In the months that followed, while they were abroad, Mr. Guilbault effected options trades in these clients' accounts without their knowledge. As with the other clients, he closed positions shortly before they expired, causing higher losses than the maximum losses to which the clients were exposed by letting the options expire. Effective November 2003, he increased the number of contracts covered by these strategies to 200 contracts per transaction, without the clients' authorization. With some of the trades effected between September and December 2003, the Respondent committed more than the capital in the accounts.

The transactions effected in E and F’s options accounts entailed very substantial trading losses. In five months, all of the amounts invested in the accounts of E and F were lost, leaving their accounts in a short position.

Account of H

In April 2002, an options account was opened for H at Scotia.

Options trading for H, from March 2003, resulted in substantial losses. As with the other clients concerned, Mr. Guilbault closed positions shortly before they expired rather than letting them expire, entailing greater losses for the client.

Effective November 2003, as with the other clients, he significantly increased the number of contracts traded under the strategies used in H’s account.

The written decision, with the reasons of the Hearing Panel, will be published on the Association website as soon as they become available.

Kenneth A. Nason
Association Secretary