

NOV 18 2016



IN THE MATTER OF:

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

AND

GRAEME ROBERT KIRKLAND

NOTICE OF HEARING

An initial appearance (“Initial Appearance”) will be held before a hearing panel (“Hearing Panel”) of the Investment Industry Regulatory Organization of Canada (“IIROC”) pursuant to Sections 8203 and 8205 of the Consolidated Enforcement, Examination and Approval Rules of IIROC in this matter. The purpose of the Initial Appearance is to schedule a hearing (“Hearing”).

The Initial Appearance will be held on: January 19, 2017

Time: 10:00 a.m.

The Initial Appearance will be held at: IIROC – Ontario Room
121 King Street West, Suite 2000
Toronto, ON

The Respondent must serve a Response (“Response”) to this Notice of Hearing and the Statement of Allegations dated [date] (“Statement of Allegations”) in accordance with Section 8415 within 30 days from the effective date of service of this Notice of Hearing.

If the Respondent does not file a Response in accordance with Section 8415(1), the Initial Appearance may be immediately converted to a Hearing.

If the Respondent files a Response in accordance with Section 8415(1), the Initial Appearance will be immediately followed by an initial prehearing conference. In preparation for the

prehearing conference, the Respondent must serve and file a prehearing conference form in accordance with Section 8416(5).

The purpose of the Hearing will be to determine whether the Respondent has committed the contraventions that are alleged by the staff of IROC ("Staff"). The alleged contraventions are contained in the Statement of Allegations.

Pursuant to Section 8409, the Hearing will be conducted as a[n]:

- Oral Hearing
- Electronic Hearing
- Written Hearing

The Initial Appearance, the Hearing and all related proceedings will be subject to the Rules of Practice and Procedure as set out in Section 8400.

Pursuant to the Rules of Practice and Procedure, the Respondent is entitled to attend the Hearing and to be heard, to be represented by counsel or by an agent, to call, examine and cross-examine witnesses, and to make submissions to the Hearing Panel at the Hearing.

If the Respondent fails to serve a Response at the Hearing the Hearing Panel may, pursuant to Section 8415(4):

- (a) proceed with the hearing as set out in this Notice of Hearing, without further notice to the Respondent;
- (b) accept as proven the facts and contraventions set out by Staff in the Statement of Allegations; and
- (c) order penalties and costs against the Respondent pursuant to Sections 8209, 8210 and 8214.

If the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by Staff in the Statement of Allegations, the Hearing Panel may, pursuant to IROC Dealer Member Rules 20.33 and 20.34 ,impose any one or more of the following penalties:

Where the Respondent is/was a Regulated Person who is not a Dealer Member:

- (a) a reprimand;
- (b) disgorgement of any amount obtained, including any loss avoided, directly or indirectly, as a result of the contravention;

- (c) 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 the person, directly or indirectly, as a result of the contravention.
- (d) suspension of the person's approval or any right or privilege associated with such approval, including access to a Marketplace, for any period of time and on any terms and conditions;
- (e) imposition of any terms or conditions on the person's continued approval or continued access to a Marketplace;
- (f) prohibition of approval in any capacity, for any period of time, including access to a Marketplace;
- (g) revocation of approval;
- (h) a permanent bar to approval in any capacity or to access to a Marketplace, and;
- (i) any sanction determined to be appropriate under the circumstances.

Where the 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, directly or indirectly, by reason of the contravention;
- (c) suspension of membership in IIROC or of any right or privilege associated with membership, including a direction to cease dealing with clients, for any period of time and on any terms and conditions;
- (d) imposition of any terms and conditions on the Dealer Member's continued membership, including on access to a Marketplace;
- (e) expulsion from membership and termination of the rights and privileges of membership, including access to a Marketplace, and;
- (f) any other sanction determined to be appropriate under the circumstances.

If the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by the Staff in the Statement of Allegations, the Hearing Panel may assess and order any

investigation and prosecution costs determined to be appropriate and reasonable in the circumstances pursuant to IIROC Dealer Member Rule 20.49.

DATED this 18th day of NOVEMBER 2016



NATIONAL HEARING COORDINATOR
Investment Industry Regulatory Organization of Canada
Suite 2000, 121 King Street West
Toronto, Ontario, M5H 3T9

IN THE MATTER OF:

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

AND

GRAEME ROBERT KIRKLAND

STATEMENT OF ALLEGATIONS

Further to a Notice of Hearing dated November 18, 2016, staff of the Investment Industry Regulatory Organization of Canada make the following allegations:

PART I - CONTRAVENTIONS ALLEGED

From January 2013 to February 2015 the Respondent:

- a) Made recommendations and purchases for his clients' accounts that were not within the bounds of good business practice contrary to IIROC Rule 1300.1(o); and
- b) Failed to consider and to address the material conflict of interest between himself and his clients that resulted from these recommendations and purchases contrary to IIROC Rules 42.1 and 42.2.

PART II - PARTICULARS

A. Overview

1. The Respondent made numerous recommendations to several of his clients to purchase new issues and/or initial public offerings of securities (collectively "New Issues").
2. When the Respondent purchased New Issues for his clients he earned commissions paid to him by the issuers of the securities that roughly doubled his earnings and thereby resulted in a significant additional financial benefit to him.
3. The commissions paid to him by the issuers influenced his decision, at least in part, to recommend New Issues to his clients.

4. In the majority of cases, due to the short time frame within which he recommended that these clients subsequently sell the New Issues, there was a limited economic benefit to his clients.
5. This trading was not within the bounds of good business practice. In addition, the Respondent did not take reasonable steps to identify, address, and avoid the conflict of interest that resulted from his recommendations and purchases of New Issues.

B. Registration History

6. From 2001 to 2002 the Respondent was a registrant with Investors Group and then was out of the securities industry from 2002 until 2007. He was registered with Scotia Capital Inc. from 2007 to 2008 and worked for three months at RBC Dominion Securities Inc. from late 2008 to February 2009.
7. He was a Registered Representative with BMO Nesbitt Burns Inc. from March 2009 to June 2016. The Respondent is not currently registered with an IIROC Dealer Member firm.

C. Transaction Not Within the Bounds of Good Business Practice- New Issues Commissions and Short Term Investing

8. The Respondent's earnings were based, in part, on the use of a fee based structure for certain client accounts ("Fee Based Accounts").
9. In addition the Respondent recommended and purchased numerous New Issues in several clients' accounts and thereby received an additional financial benefit in the form of significant amounts of commissions on these purchases paid by the issuers.
10. The Respondent admitted to Staff that the additional commissions paid to him by the issuer when he purchased a New Issue influenced his decision, at least in part, to recommend New Issues to his clients over securities that were already available on the open market.
11. However, in the majority of cases the Respondent recommended that his clients sell the New Issues and subsequently buy similar New Issues on a short term basis. As a result there was ultimately a limited economic benefit to his clients from this trading.
12. In fact, subsequent to the Respondent's recommendations to purchase a given New Issue he made no further recommendations to purchase the underlying security until or unless a further New Issue of the same security became available.
13. The Respondent also admitted to Staff that the result of his active investment strategy meant that he traded "*much more than average*" resulting in a high turnover in his clients' accounts.

D. Clients SA & PM

14. Among the clients for whom the Respondent purchased New Issues were SA and PM, a married couple.
15. The Respondent opened a total of six Fee Based Accounts for SA and PM in March and April 2014.
16. Prior to opening these accounts with the Respondent, these clients had only invested in Guaranteed Investment Certificates and mutual funds.
17. SA and PM made no withdrawals from or additional contributions to any of their six accounts during the 11 month period from March 2014 to February 2015 that they were the Respondent's clients.

Buy and Hold Accounts Were Profitable

18. SA and PM indicated to the Respondent that they wanted a "proactive" account management approach; however the Respondent employed a buy and hold approach for three of their six accounts ("Buy and Hold Accounts").
19. SA and PM deposited cash amounts of approximately \$30,000 each into two of the Buy and Hold Accounts.
20. They advised the Respondent that they were using borrowed money from an existing line of credit to fund these accounts. However the Respondent did not provide them with any risk disclosure statement nor did he advise BMO that the accounts were funded with borrowed funds.
21. The Buy and Hold Accounts were ultimately profitable and increased in value by approximately \$3,800 or 6%, over the 11 month period.
22. The Respondent did not purchase New Issues in these accounts, and received no additional compensation other than the flat fee for Fee Based Accounts.

Active Accounts-Purchases of New Issues

23. The Respondent did however employ a proactive approach for the remaining three accounts ("Active Accounts") and purchased several New Issues in these accounts on a short term basis.

24. Over the 11 month period the longest period of time that a New Issue was held in the Active Accounts was for approximately five months.
25. The Respondent did not inform SA and PM that New Issues would be one of the types of investments that would be utilized for the Active Accounts, nor did he disclose to them that he would be receiving commissions from the issuers on such purchases.
26. During the 11 month period, New Issues represented approximately half of the Respondent's purchases, and approximately three quarters of the dollar value of all purchases, in the Active Accounts.
27. A summary of the trading activity in the Active Accounts is as follows:

Account	Opening Balance	Closing Balance	No. of All Purchases	No. of Purchases of New Issues	Gross Commissions New Issues
1	\$85,300	\$79,600	18	12	\$3,700
2	\$100,300	\$84,400	20	10	\$3,500
3	\$31,700	\$20,400	8	2	\$705
Total	\$217,400	\$184,500	46	24	\$7950

28. By the end of February 2015 the Active Accounts had sustained a loss in value of approximately \$32,800, or 15%, of which approximately \$23,000 were realized losses in New Issues.
29. Over the same time period the Respondent earned approximately \$7200 of which \$3180 was net commissions earned on New Issues purchases.
30. By end of the 11 month period the value of purchases made by the Respondent was approximately \$430,000 or roughly twice the overall value of the opening balance of the Active Accounts. Of these purchases, approximately \$302,900 worth were purchases of New Issues.

E. Respondent's New Issues Purchases 2013 to 2014

31. In addition to SA and PM, from January 2013 to December 2014, the Respondent made several purchases of New Issues for at least 125, or roughly 70%, of his other clients' accounts.
32. Securities substantially similar to the New Issues that the Respondent purchased were at times available on the open market; however, the Respondent consistently recommended and purchased New Issues for his clients rather than the listed securities.

Commissions Earned from New Issues Purchases

33. For 2013 and 2014 the Respondent's purchases of New Issues and resulting commissions are summarized as follows:

Year	Assets Under Management (AUM)	New Issues Purchases		Gross Commissions for All New Issues Purchases	Net Commissions for All New Issues Purchases [approximated]
		\$ Value	% of AUM		
2013	\$35,946,600	\$12,062,000	33%	\$295,700	\$118,200
2014	\$35,373,000	\$34,177,000	96%	\$897,300	\$358,900

34. The Respondent earned a total of approximately \$477,000 in net commissions in 2013 and 2014 as a result of New Issues purchases alone.

Increase in New Issues Purchases in 2014

35. Although his AUM remained virtually the same as in 2013, in 2014 the Respondent more than doubled the dollar value of New Issues purchases, as well as the percentage of New Issues purchases, relative to his AUM.
36. The Respondent roughly tripled his net commissions from New Issues purchases in 2014 compared with 2013.

37. As a result, his total gross commissions doubled in 2014, prompting an inquiry in January 2015 from the firm's compliance staff as to why, relative to his AUM, his "...commissions [were] double what they should be."

Five New Issues Purchases

38. As detailed in Appendix A to this Statement of Allegations, of all New Issues that the Respondent purchased in 2014, five purchases that settled on four days ("Five New Issues Purchases") reflected the following:

- Total dollar value of the purchases was in excess of \$15,750,000.
- The Respondent earned gross commissions in excess of half, or approximately \$472,600, of all gross commission earned in 2014.
- The Respondent earned net commissions in excess of \$209,000.
- At least half and as much as 98% of the Five New Issues Purchases were sold within a few months of purchase.

Commissions Earned on Two New Issues Purchases on Single Day

39. On March 21, 2014, two of the Five New Issues Purchases settled and paid the Respondent, as indicated on Appendix A, in excess of \$224,000 in gross commissions and approximately \$92,500 in net commissions on that day alone.

40. Together, the value of the two New Issues purchased was approximately \$7,487,500 and represented over 20% of the Respondent's AUM at the time.

41. By the end of 2014 the following had occurred:

- The Respondent sold 90% of the securities of one of the New Issues for 127 clients.
- Only one of these 127 clients sold at a profit.
- The Respondent sold 98% of the units of the other New Issue for 107 clients.
- Approximately half of these 107 clients sold at a profit.

42. Other than recommending the Five New Issues Purchases, the Respondent made no subsequent recommendations to purchase the same securities once they were available on the open market.

43. Similarly, in the case of at least two other securities, the Respondent only recommended purchases when they were New Issues; but not otherwise although they were available on the open market during the same time.

F. Improper Business Practices and Conflicts of Interest

44. The Respondent's trading in the client accounts as described above was not within the bounds of good practice.
45. In addition, the Respondent placed himself in a conflict of interest when he engaged in numerous purchases of New Issues influenced, at least in part, by the fact that he received commissions paid by the issuer on such purchases.
46. As a result, while the trading was generally unprofitable for his clients, there was a substantial financial benefit to him.
47. The Respondent however, failed to identify, address, and avoid the conflict of interest throughout the relevant time.
48. The Respondent admitted to Staff that he ultimately recognized that there was potential or existing conflict of interest when he purchased New Issues for his clients.
49. Accordingly, in late 2015 he decided to "*substantially*" reduce his New Issues usage and reduce the amount of "turn" (revenue on assets) in his book of business in order to manage the potential conflicts of interest.

DATED at Toronto, Ontario this 21st day of November, 2016.

Appendix A to Statement of Allegations for Graeme Robert Kirkland

Settlement Date of New Issues 2014	Net Amount of All Purchases	Gross Commissions	Net Commissions	Subsequent Sale of New Issues [by % of Units]
March 21- Europe Blue Chip	\$5,083,000	\$152,400	\$61,820	90% sold by end of 2014* (87% below purchase price)
March 21- Pimco Global	\$2,404,500	\$72,000	\$30,730	98% sold by end of 2014 (45% below purchase price)
July 24- Brand Leaders	\$2,620,000	\$78,600	\$36,420	81% sold by end of 2014 (72% below purchase price)
October 21- Energy Leaders	\$3,366,000	\$100,900	\$48,280	83% sold by end of 2014 All units sold below purchase price.
December 18- Healthcare Leaders	\$2,280,000	\$68,000	\$31,920	98% sold by Feb 27, 2015 All units sold above purchase price.
Total	\$15,753,500	\$472,600	\$209,170	* 58% of which sold by June 26, 2014 prior to the record date of June 30, 2014, such that clients did not receive the dividend payable on the record date