

  
AUG 20 2020

**IN THE MATTER OF:**

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

**AND**

**ALFRED DROSE**

**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 by way of videoconference on September 29, 2020 at 10:00 a.m.

The Respondent must serve a Response (“Response”) to this Notice of Hearing and the Statement of Allegations dated August 7, 2020 (“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 IIROC (“Staff”). The alleged contraventions are contained in the Statement of Allegations.

Pursuant to Section 8409, the Hearing will be conducted as an:

- Oral Hearing
- Electronic Hearing
- Written Hearing

The Respondent may object to the format of the Hearing. The objection must be made in accordance with Section 8409.

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 sanctions and costs against the Respondent pursuant to Sections 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 Section 8210, impose any one or more of the following sanctions:

- (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) \$5,000,000 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;
- (i) permanent bar to employment in any capacity by a Regulated Person, and
- (j) any 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 Section 8214.

**DATED** this 20 day of August 2020.



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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**

**ALFRED DROSE**

**STATEMENT OF ALLEGATIONS**

Further to a Notice of Hearing dated August 20, 2020, Enforcement Staff make the following allegations:

**PART I – REQUIREMENTS CONTRAVENED**

1. Between February 2014 and June 2015, the Respondent engaged in excessive trading in the accounts of GA, which was not within the bounds of good business practice and was unsuitable for GA, contrary to Dealer Member Rules 1300.1 (o), 1300.1(q), and 1300.1(s).
2. Between February 2014 and June 2015, the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to his client, GA, contrary to Dealer Member Rule 1300.1(a).
3. In or about February 2014, the Respondent made a false attestation on an account document, contrary to Consolidated Rule 1400.

## PART II – RELEVANT FACTS AND CONCLUSIONS

### Overview

4. The Respondent accepted orders and traded speculative securities in the account of a vulnerable client without exercising due diligence to obtain essential facts relevant to the client, failed to know the client, and failed to properly assess suitability. Moreover, the Respondent engaged in excessive trading in the client account, preferring his own interests over those of the client. Further, the Respondent made a false attestation on an account opening document.

### Background

5. In September 2013, the Respondent joined Chippingham Financial Group Limited (“Chippingham”) as a futures and options licensed Registered Representative.
6. Chippingham was, at all material times, an IIROC Dealer Member.
7. The Respondent (born in 1958) had worked for ten different Dealer Members between 1983 and 1998. The Respondent was not an Approved Person between 1998 and 2012.
8. In September 2013, when the Respondent joined Chippingham, the Respondent had zero assets under administration (“AUA”).
9. In February 2014, the Respondent opened an account for himself at Chippingham.
10. In February 2014, just prior to GA becoming a client of Chippingham’s, the Respondent had \$23,328 in AUA, including his own account. The Respondent’s NCAF dated September 18, 2013 indicates his annual income as \$60,000, liquid assets of \$100,000,

and fixed assets of \$500,000. The Respondent's NCAF indicated that his spouse, AG, was a homemaker with no annual income.

11. As of September 18, 2013, the Respondent's annual income was less than the \$60,000 indicated on his NCAF, his liquid assets were significantly less than \$100,000, and his fixed assets were significantly less than \$500,000.
12. The Respondent's employment with Chippingham ended on or about July 17, 2015.
13. Following his employment with Chippingham, the Respondent was employed at several other Dealer Members until September 2016, when he ceased to be registered with IIROC.

**The Client: GA**

14. In or about February 2014, then 66-year-old GA opened an account with Chippingham (the "GA Account"), with the Respondent as the Registered Representative.
15. At the time the GA Account was opened, GA, a former lawyer, suffered from Alzheimer's Disease.
16. GA's cognitive decline led to intervention by the Law Society of Upper Canada, now known as the Law Society of Ontario ("LSO").
17. By February 2012, an order was made in connection with the appointment of a trustee to manage GA's law practice.
18. By December 2012, GA was in full time care as a result of Alzheimer's.

19. In December 2012, the LSO held a capacity hearing and by decision dated January 31, 2013, the hearing panel found that GA was incapacitated by reason of physical or mental illness or other infirmity (Alzheimer's), which, the panel held, required a surrender or revocation of his license within 30 days.

### **The GA Account Opening**

20. In or about February 2014, the Respondent met with GA for approximately five minutes prior to opening the GA Account.

21. The February 2014 meeting between the Respondent and GA took place at the offices of KS following a referral from KS. At that time, the Respondent had known KS for a number of years. The Respondent had no prior relationship with GA, having met him only briefly at a social event approximately 25 years before.

22. A previously completed KYC form was provided to the Respondent in connection with the opening of the GA Account.

23. The KYC form was dated February 14, 2014. The following is a summary of the KYC information contained on the account opening form:

Date of Birth	November 19, 1947
NAAF Dated	February 14, 2014
Age When NAAF Signed	66
Investment Objective	100% speculative
Risk Tolerance	100% high
Investment Knowledge	Good
Occupation	Lawyer
Annual Income	\$90,000
Liquid Assets	\$500,000
Fixed Assets	\$5,500,000
Net Worth	\$6,000,000

24. The Respondent did not complete the account opening documents with GA. GA did not complete the account opening documents in the Respondent's presence.
25. The Respondent did not witness GA sign the account opening documents.
26. The Respondent did not speak to GA about the information reflected on the KYC form, including about the client's financial circumstances, investment objectives, risk tolerance, or investment knowledge prior to opening the GA Account.
27. KS was named as trading authority ("TA") on the GA Account on opening of the GA Account.
28. The Respondent had no communication with GA after the GA Account was opened.
29. The GA Account was established with a 100% speculative objective and a 100% high risk tolerance.
30. Initially opened as a cash account, the GA Account was changed to a margin account on March 10, 2014.
31. Once the GA Account was opened, the Respondent's AUA then rose (from \$23,328) to \$597,794 on February 19, 2014.
32. In February 2014, after the GA Account was opened, it represented approximately 74.86% of the Respondent's AUA.
33. On June 11, 2015, the date of the last transaction in the GA Account, it represented approximately 41% of the Respondent's AUA.



34. Between February 2014 and June 2015, the Respondent's AUA was \$600,000 or less for most months, averaging \$543,975 over the sixteen-month period.

### **GA Account Documentation**

#### **i. Cash Account Opening**

35. On February 4, 2014 at or about 1:27pm, the Respondent sent KS an email with .pdf attachments of a blank NCAF, blank Irrevocable Power of Attorney – Securities form, a blank Trading Authority Authorization form, and blank Individual Futures Account Application.
36. GA's signature on the completed NCAF is dated February 5, 2014. The Respondent's signature is dated February 13, 2013 (2013 an apparent error), and approved by Chippingham's CCO on February 13, 2014.

#### **ii. Futures Account Opening**

37. On or about February 18, 2014 at or about 1:49pm, the Respondent sent KS an email with a .pdf attachment comprised of a handwritten note and partially completed pages from an options account application form and a futures account application form. The handwritten note stated, "[GA's] signature does not match his passport could you please initial & sign. [pGA] ... Sign page 4 section 8 [GA] sign... section 9 ...both ... pg 23 both sign."
38. On or about February 18, 2014 at or about 3:45pm, the Respondent sent an email to KS stating, "PLEASE INITIAL," with a .pdf attachment comprised of pages from a futures account application.

**iii. Margin Account Opening**

39. On February 19, 2014, the Respondent sent KS an email with a .pdf attachment containing a page from an NCAF that was used to add margin to the GA Account. The page contained the Respondent's signature dated February 18, 2014 and his initials in the section that states, "I attest that I have seen the original document indicated herein and have verified the client's signature against it." The document did not contain GA's signature.
40. The margin account opening was approved on March 10, 2014 with GA's signature dated February 24, 2014 and the Respondent's signature dated February 18, 2014.
41. Chippingham declined to open the futures account because of concerns regarding the accuracy of the values listed for GA's assets on the application form.
42. Following Chippingham's initial decline, the futures account was not pursued further.

**Trading in the GA Account**

43. Between February 2014 and June 2015, the Respondent executed approximately 168 trades in the GA Account. Total purchases in the GA Account equaled approximately \$14,626,172.77.
44. Trading in the GA Account was frequent and high risk, consisting of equities, ETFs, including leveraged ETFs, and options.
45. The GA Account had a turnover ratio of 26.52 for the period from February 2014 to April 2015 (the last month in which there were purchases in the GA Account).

46. Between February 2014 and July 2015, deposits totaling \$1,330,815 were made into the GA Account as follows:

February 14, 2014	\$450,815
April 4, 2014	\$190,000
January 26, 2015	\$600,000
March 30, 2015	\$90,000

47. The additional contributions to the GA Account were well in excess of the \$500,000 in liquid assets indicated on the KYC form.

48. There is no record of the source of the additional funds contributed to the GA Account following the opening of the GA Account.

49. Between February 2014 and June 2015, the GA Account incurred losses of approximately \$1,066,684 (after accounting for withdrawals of approximately \$264,131).

### **Excessive Commissions**

50. Between February 2014 and June 2015, approximately \$231,782 of gross commission accrued to the Respondent as a result of trading in the GA Account.

51. In April 2014 alone, approximately \$39,260 in gross commissions accrued to the Respondent from trading in the GA Account.

52. The gross commissions from the GA Account between February 2014 and June 2015 represented approximately 99.6% of the Respondent's total gross commission during this time (excluding trading by the Respondent on his own account).

53. The \$231,782 in gross commission equaled 17% of the \$1,330,815 deposited into the GA Account.
54. The Respondent selected a commission-based structure for the GA Account at the time the account was opened. The Respondent did not review the commissions charged to the GA Account to determine whether they were suitable.
55. The \$231,782 commission charged to the GA Account was excessive. Among other matters,
- (a) GA would have been charged significantly less in commission at an Order Execution Only firm based on 168 trades charged at \$9.95 per trade.
  - (b) Assuming that all the funds deposited in the GA Account during the time the account was opened were invested in the GA Account at the time of account opening, GA would have been charged approximately \$35,488 if the account was fee-based and charged a 2% fee for a sixteen-month duration (the length of time the GA Account was open).
  - (c) The commission to equity ratio of the GA Account was approximately 39.04% for the period from February 2014 to June 2015.

#### **Trading in Other Accounts under the Respondent's Management**

56. Between February 2014 and June 2015, the Respondent had six clients other than GA. He did not open any new client accounts after GA.

57. Between February 2014 and June 2015, the Respondent executed six trades for clients other than GA (not including trading by the Respondent in his own account), generating total gross commission of \$850 on those trades.

### **The Respondent Signed a False Attestation**

58. The Respondent signed a false attestation as to GA's signature on the margin account agreement. In particular,
- (a) the Respondent's signature on the .pdf attachment referenced in paragraph 39 above is dated February 18, 2019, before his February 19, 2018 email to KS to obtain signatures on the margin account documents.
  - (b) GA's signature on the executed margin account agreement is dated February 24, 2014, six days after the date of the Respondent's attestation dated February 18, 2014.

### **Conclusion**

59. The Respondent failed to review with the client the information contained on the NCAF or to otherwise review relevant information with the client. As a result, the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to the client, including information relevant to the client's income, employment, assets, support obligations, capacity and other matters relevant to the client's financial situation, or his investment knowledge, investment objectives, time horizon, and risk tolerance.
60. During the initial client meeting, the Respondent failed to obtain information required to know the client or to determine suitability. As such, the Respondent was not in a position to determine whether the investment strategy adopted – whether or not it was consistent with the NCAF – was suitable for the client.

61. Had the Respondent exercised the requisite due diligence, he would have learned of the client's profession, diminished capacity, and the existence of an attorney for property, if any.
62. Had the Respondent exercised the requisite due diligence and learned of GA's diminished capacity, he could have queried further with KS and elevated the matter to compliance for further direction. In not doing so, he failed in his obligations as a gatekeeper.
63. In any event, there is no evidence that the Respondent performed a suitability analysis, which evidence was required in light of the risky investment approach adopted.
64. In further breach of Dealer Member Rule 1300.1(a), the Respondent then accepted orders and traded speculative securities on the client's account without the due diligence required to learn and remain informed of the essential facts relevant to the client.
65. In any event, the excessive trading in the client's account, as evidenced by high turnover rate and high commission to equity ratio, rendered the series of transactions unsuitable for the client and in breach of Dealer Member Rule 1300.1(s).

#### **Failure to Consider Best Interests of Client**

66. By accepting the orders that he did on the GA Account, and the high commissions generated as a result (as evidenced by the high turnover rate and high commission to equity ratio), the Respondent failed to consider the best interests of the client and repeatedly preferred his interests to those of his client. The Respondent entered into transactions in the client's account for the purpose of generating commissions for himself and in disregard of the client's best interests.

**DATED** at Toronto, Ontario this 20<sup>th</sup> day of August 2020.