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BULLETIN # 2708
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Discipline

Discipline Penalties Imposed on Merrill Lynch Canada Inc. - Violation of By-law 29.1, Regulations 1300.1(c) and 1300.2, and Policy 2

Person Disciplined	The Pacific District Council of the Investment Dealers Association of Canada has imposed discipline penalties on Merrill Lynch Canada Inc. , at the relevant time Midland Walwyn Capital Inc. (“Midland Walwyn”), a member of the Association (the “Member”).
By-laws, Regulations, Policies Violated	<p>On March 16, 2000, the District Council considered, reviewed and accepted a settlement agreement that had been negotiated by the Association Enforcement Division staff with the Member. Pursuant to the settlement agreement, the Member admitted that, during 1993 and 1994, with respect to the activities of Scott Alexander Clark, a registered representative in its Penticton, BC branch office:</p> <ul style="list-style-type: none">• Midland Walwyn failed to properly supervise the trading activity in the account of a husband and wife to ensure that the trading recommendations made by the registered representative were not excessive for the clients, contrary to Association By-law 29.1, Regulation 1300.2, and Policy 2; and,• Midland Walwyn failed to properly supervise the trading activity in the account of the same clients to ensure that trading recommendations made by the registered representative were suitable for the clients and in keeping with their investment objectives, contrary to Association By-law 29.1, Regulations 1300.1(c) and 1300.2, and Policy 2.
Penalty Assessed	The discipline penalties assessed against the Member are a fine of \$25,000.00, and disgorgement of \$11,000.00. In addition, the Member is required to pay \$5,000.00 towards the Association’s costs of investigation of this matter.
Summary	Scott Alexander Clark was a registered representative in Midland Walwyn’s Penticton, BC branch office from January 1991 until January

of Facts

1995. During 1993 and 1994, he engaged in excessive trading in the account of his clients, a husband and wife. During the same period, he also made recommendations for the account that were unsuitable in that they resulted in excessive concentrations in the account of securities of two issuers, failed to meet the clients' stated income objective, and, in respect of the purchase of the securities of one issuer, involved a degree of risk that was inappropriate for the clients. The inappropriate trading activity resulted in losses to the clients of \$89,211.44.

Pursuant to Policy 2, Midland Walwyn would have been obliged to review the trading in the account on a monthly basis in 8 out of 12 months in 1993, and 4 out of 12 months in 1994, and numerous individual trades over the two-year period ought to have attracted supervisory attention.

Merrill Lynch Canada Inc. has compensated the clients.

The panel of the Pacific District Council that considered and accepted the settlement agreement commented that a substantially higher penalty would have been expected had the conduct under consideration occurred more recently.

For details of the discipline penalties imposed on Scott Alexander Clark in relation to this matter, please see Bulletin No. 2674, December 14, 1999. For details of the discipline penalties imposed on the branch manager, James Paul Dunlop, please see Bulletin No. 2707, March 30, 2000.

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