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## Discipline

### **Charges brought against Gregory Pepper Shanks Not Sustained – Alleged Violations of By-law 29.1 and Regulations 1300.1(a), 1300.1(c), 1300.4**

June 28, 2002 - The Alberta District Council (the “District Council”) of the Investment Dealers Association of Canada (the “Association”) has completed its hearing with respect to violations of Association By-laws and Regulations alleged to have been committed by Gregory Pepper Shanks, at all material times a registered representative with Levesque Securities Inc., (now National Bank Financial Ltd.), a Member of the Association.

By-laws, Regulations, Policies Alleged to have been Violated On March 19 to 22, 2002, inclusive and from May 27 to 30, 2002, inclusive, a Committee of the District Council considered evidence with respect to allegations that Mr. Shanks failed to use due diligence to learn the essential facts relative to every customer and to every order accepted in relation to a client account, contrary to Regulation 1300.1(a); that he failed to use due diligence to ensure that recommendations made for two separate client accounts were appropriate and in keeping with the clients’ investment objectives contrary to Regulation 1300.1(c); that he exercised discretionary authority in relation to a client account, contrary to Regulation 1300.4; and that he engaged in conduct unbecoming a registered representative by excessively trading in a client account, contrary to Association By-law 29.1.

Decision of the District Council The District Council determined the charges brought against Mr. Shanks were not sustained.

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Summary  
of Facts

The allegations against Mr. Shanks arose from his conduct of two unrelated client accounts, those of A Co., and of Mr. and Mrs. B.

**The A Co. Account:**

A Co. was established and operated by Mr. A., who at the relevant time was in his mid to late 40s. The District Council found that Mr. A was not an unsophisticated investor, and that the funds he had invested with Mr. Shanks were excess cash, invested for the purpose of obtaining a better return.

Between May, 1994 and October, 1998, Mr. Shanks was the Registered Representative in charge of A Co.'s account. During this period of time, the A Co. account was invested in speculative securities, and at times was highly concentrated in such securities. At times significant use was made of margin, and further, the number of trades made in the account was quite high during a period of time. Over a period of five months, the annualized turnover rate in each month ranged from 5.92 times to 14.63 times.

The New Account Application Form ("NAAF") completed at the time the A Co. account was opened specified that A Co.'s investment objectives were to obtain income, long term growth, medium term growth, and short term growth. No percentage breakdowns were attributed to each such objective. The Association had alleged that, by failing to attribute percentage breakdowns to the risk factors and investment objectives on the NAAF, Mr. Shanks failed to use due diligence to learn the essential facts relative to every customer and to every order accepted in relation to the corporate account of Mr. A, contrary to Regulation 1300.1 (a).

The District Council concluded that the manner in which the NAAF was completed by Mr. Shanks, as described above, did not constitute a breach of Regulation 1300.1(a). Evidence presented to the District Council clearly established that Mr. Shanks used the standard form of Levesque Securities Inc. at the time the account was opened. Such form did not require the registered representative to attribute percentage breakdowns to either the risk factors or the investment objectives of the client.

The Association further alleged that Mr. Shanks failed to ensure that recommendations made for the corporate account of Mr. A. were appropriate for the client and in keeping with his investment objectives, contrary to Regulation 1300.1 (c). The District Council found that Mr. A was not interested in having a balanced portfolio, but rather, wished to take more risk in order to obtain a better return. Based upon Mr. A's investment objectives, risk tolerance, and investment knowledge, the District Council found that the securities purchased and the trading strategies employed by Mr. Shanks were appropriate for the account of A Co.

While the Association had not alleged churning, based on the turnover rates as described above, the Association had alleged that Mr. Shanks had engaged in conduct unbecoming a Registered Representative by excessively trading in the A Co. account. The District Council concluded there is no separate offence of excessive trading in and of itself, and in order for excessive trading to constitute an offence, it must be part of a churning offence or relate to a suitability offence.

The Association had alleged that Mr. Shanks had exercised discretionary authority in relation to the corporate account of Mr. A., contrary to Association Regulation 1300.4. The District Council found Mr. A was either aware of and approved each purchase in the A Co. account, or was aware of what was happening in the A Co. account, at the relevant times. The District Council determined, given the inconsistencies in Mr. A's testimony, it had not been established with reasonable certainty that Mr. Shanks exercised discretionary authority with respect to the A Co. account.

**The Account of Mr. and Mrs. B:**

Mr. and Mrs. B opened a joint account under the direction of Mr. Shanks in November, 1996. The NAAF completed for this account indicated investment objectives of 80% income and 20% short term capital gains. The NAAF specified risk factors of 100% low risk, and investment knowledge of limited/nil.

On September 15, 1997, Mr. B opened an additional account under Mr. Shanks' direction, which indicated his investment objectives to be 80% income and 20% short term capital gains. Mr. B's risk factors were specified to be 60% low risk and 40% medium risk, and his investment knowledge was limited/nil.

At the relevant time, Mr. B was 68 years old and in the process of retiring. The District Council found that Mr. and Mrs. B were conservative investors who did not want high risk or speculative securities in their accounts. As part of an investment proposal, income trusts were purchased for the accounts of Mr. and Mrs. B. The District Council found that the income trust units purchased were properly classified as medium risk securities. The District Council further found that Mr. B was prepared to accept, and did accept, a medium risk security, and that given his investment objectives, risk tolerance, and investment knowledge, the securities purchased for Mr. B's account were appropriate.

With respect to certain installment receipts which formed part of certain securities purchased for Mr. and Mrs. B's accounts, the District Council found that the concept of installment receipts was explained by Mr. Shanks, and that the recommendation that such receipts be purchased was not inappropriate.

Kenneth A. Nason  
*Association Secretary*