INVESTMENT DEALERS ASSOCIATION OF CANADA

bulletin

ASSOCIATION CANADIENNE DES COURTIERS EN VALEURS MOBILIÈRES

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For distribution to relevant parties within your firm

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Discipline

Discipline Penalties imposed on Paul Mark Herd – Violation of By-Law 29.1 and Regulation 1300.4

Person Disciplined

The Ontario District Council of the Investment Dealers Association of Canada (the "Association") has imposed discipline penalties on Paul Mark Herd, at all material times a registered representative employed by RBC Dominion Securities Inc., a Member of the Association.

By-laws, Regulations, Policies Violated

On May 13, 2003 the Ontario District Council considered, reviewed and accepted a Settlement Agreement negotiated between Mr. Herd and Association staff.

Pursuant to the Settlement Agreement, Mr. Herd admitted that he:

- engaged in conduct unbecoming a registered representative by trading excessively in his client's Canadian Dollar Margin Account for the purpose of earning commissions, contrary to By-law 29.1;

- engaged in conduct unbecoming a registered representative by being less than forthright with the management of his Member firm as to the extent of his client's participation in the trading activity being undertaken in his account, contrary to By-law 29.1; and

- exercised discretion in effecting trades in his client's Canadian Dollar Margin Account, in respect of which the client had not given his written authorization for the exercise of such discretion and which had not been accepted as a discretionary account by Member firm management, contrary to Regulation 1300.4.

Penalty Assessed

The discipline penalty assessed against Mr. Herd is:

- a fine in the amount of $30,000;
- disgorgement of commissions in the amount of $50,000; and
- re-write and pass the examination based on the Conduct and Practices Handbook within 6 months.

Mr. Herd is also required to pay $5000.00 towards the Association's costs of the investigation of this matter.

Summary of Facts

From 1991 to 1999, Mr. Herd managed a Canadian Dollar Margin Account belonging to an elderly client, Mr. A. Mr. A is a retired teacher approximately 88 years of age, living in a senior's residence. He had a 1998 annual income of approximately $165,000.

Mr. A's investment plan, of which Mr. Herd was aware, was to have his investments grow to be passed on to his estate. Mr. A does not consider himself a good investor and thus relied upon Mr. Herd for all investment decisions in his account. During the relevant period he did not exhibit a strong interest in the particulars of his account and did not pay much attention to his confirmation slips, as he did not understand them. Mr. A. is comfortable with the use of margin in his account and understands that it involves a lot of risk.

Mr. A and Mr. Herd did not have frequent contact, speaking only between four and eight times a year. Nevertheless, during the four-year period between January 1995 and December 1998, there were a total of 252 securities transactions in the account, reflecting 90 different securities including 28 mutual funds, many from different fund families. Most or all of these trades involved the exercise of discretion by Mr. Herd to price or timing or quantity or a combination of those factors. Mr. Herd did not ensure that his client had given his written authorization for the exercise of discretion in respect of Mr. A's account, or that RBC had accepted the account as discretionary.

During the 4-year period from January 1, 1995 to December 31, 1998, Client A was charged $214,005.99 in commissions on a total of 252 trades. The commissions were primarily from Deferred Sales Charges ("DSC") on mutual fund switches. Of the $214,005.99 charged to the account of Client A, the sum of $108,093.15 was remitted to the various mutual fund companies. Mr. Herd’s share of the remaining commissions was $50,838.16.

The trading activity and corresponding commission charges during the time frame described above was of concern to RBC management. Consequently, on various occasions in each instance Mr. Herd was asked to provide explanations as to the basis for the high volume of transactions and commissions. In each case, Mr. Herd led RBC management to believe that Client A was a knowledgeable investor who was actively involved in the trading decisions relating to this account and that he approved of such activity.

Because of these apparent irregularities, an RBC Branch Manager paid a personal visit to Client A at his senior's residence early in January 1999. As a result of this meeting, Mr. Herd was terminated from his employment at RBCDS.

In accepting the Settlement Agreement the District Council took notice of the fact that Mr. Herd had been on close supervision for a period in excess of four years with no further incidents. Mr. Herd had also agreed to a resolution of this matter which did not necessitate the attendance of client A. In these specific circumstances, the District Council accepted that a period of suspension was not warranted.

Mr. Herd is currently employed with TD Securities Inc.

Kenneth A. Nason
Association Secretary