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*For distribution to relevant parties within your firm*

**BULLETIN #3288**  
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## Discipline

### Discipline Penalties Imposed on John Craig Dunn – Violations of By-law 29.1, Regulation 1300.2, 1300.1(c) and Policy No. 2

Person Disciplined      The Ontario District Council of the Investment Dealers Association (“the Association”) has imposed discipline penalties on John Craig Dunn, at the relevant time a Branch Manager and Registered Representative with BMO Nesbitt Burns Inc. (“Nesbitt”), a Member of the Association.

By-laws,  
Regulations, Policies  
Violated

On April 28, 2004, the Ontario District Council found Mr. Dunn to have:

- (a) while employed as a Branch Manager of a Member of the Association, allowed a non-registered person to act in furtherance of trades, and thereby engaged in business conduct or practice unbecoming a registrant or contrary to the public interest, contrary to By-law 29.1;
- (b) while employed as a Branch Manager of a Member of the Association, failed to supervise client accounts, contrary to By-law 29.1, Regulation 1300.2 and Policy 2;
- (c) while employed as a Registered Representative of a Member of the Association, failed to use due diligence to ensure that the recommendations made for a client account was appropriate for the client and in keeping with the client’s investment objectives, contrary to Regulation 1300.1(c); and
- (d) while employed as a Registered Representative of a Member of the Association, failed to provide clients with objective or unbiased information regarding their investments in Tee-Comm Electronics Inc., and thereby engaged in business conduct or practice unbecoming a registrant or contrary to the public interest, contrary to By-law 29.1.

Penalty Assessed

The discipline penalties assessed against Mr. Dunn were:

- a fine in the amount of \$10,000 for allowing a non registered person to act in furtherance of trades;
- a fine in the amount of \$50,000 for failing to supervise client accounts;
- a fine in the amount of \$15,000 for failing to use due diligence to ensure that the recommendations made for a client account were appropriate for the client and in keeping with the client's investment objectives;
- a fine in the amount of \$25,000 for failing to provide clients with objective or unbiased information regarding their investments in Tee Comm Electronics Inc.;
- the costs of the Association's investigation and prosecution of this matter fixed at \$15,000;
- a permanent ban from ever acting in any supervisory capacity with a Member of the Association;
- as a condition of re-approval by the Association in any capacity with any Member of the Association, that Mr. Dunn re-write and pass the examination based on the Conduct and Practice handbook for security industry professionals, administered by the Canadian Securities Institute. Evidence of successful completion of the examination must be presented to the Association; and
- a prohibition on re-approval in any capacity with a Member of the Association until the fine and costs imposed are paid in full.

Summary of Facts

Mr. Dunn was the Manager of the Mississauga branch office of BMO Nesbitt Burns Inc. (and its predecessor Nesbitt Thomson Inc.) from June 1989 to October 27, 2002.

All of the allegations against Mr. Dunn arose out of trading activity in Tee-Comm Electronics Inc. ("Tee-Comm"). Tee-Comm was a TSE-listed company based in Milton, Ontario that manufactured and distributed home satellite systems through an international network of distributors and dealers. Between January 1996 and May 1997, Tee-Comm common shares were high-risk, aggressive growth securities, in that during that period, the company had a negative cash flow, negative earnings, and faced overwhelming competition in its market sector.

Nesbitt's Research Department issued coverage of Tee-Comm in March 1995. It never gave Tee-Comm an above average rating, and from January 1996 onward gave it its "least recommended" rating, advising investors to reduce their positions. In June 1996, Tee-Comm completed a \$107 million dollar issue of convertible debentures through ScotiaMcLeod Inc. In May 1997, the Bank of Montreal demanded repayment of a debt owed under a line of credit with Tee-Comm and an interim receiver was appointed. So thereafter, the shares of Tee-

Comm became worthless. Tee-Comm was subsequently suspended from the TSE and the Ontario Securities Commission issued a cease trade order on May 27, 1997.

### **Allow An Unregistered Person to Trade**

Among the Registered Representatives under Mr. Dunn's supervision was Anthony Colalillo, who was employed at Nesbitt's Mississauga branch office from May 1993 to August 28, 1997. However, Mr. Colalillo was not approved by the Association to act as a registered representative until January 17, 1998. Between May 1993 and the time that Mr. Colalillo was first approved by the Association (some 8 ½ months later), Mr. Colalillo opened at least two accounts, prepared the New Account Application Forms, solicited transactions, took client orders and prepared trade tickets for those accounts. Although Mr. Dunn signed the New Account Application Forms for those accounts, Mr. Dunn had little or no involvement in the actual management of the accounts and did not personally meet with the clients to discuss their investment objectives or risk tolerances. In so doing, Mr. Dunn allowed Mr. Colalillo to act in furtherance of trades while he was unregistered, contrary to Association By-law 29.1

### **Failure to Supervise**

During the Association's investigation into Mr. Colalillo's activities, it was determined that Mr. Dunn failed to supervise at least two client accounts. It was determined in previous Association proceedings against Mr. Colalillo (*see* Association Bulletin No. 3070, dated November 11, 2002) that Anthony Colalillo mismanaged both of the accounts of the clients J.S. and Mr. and Mrs. A.T. to the extent that the accounts became overly concentrated in aggressive high-risk securities. In particular, with respect to the accounts of Mr. J.S., several of the transactions completed by Mr. Colalillo were outside of the stated investment objectives for the accounts. Mr. Dunn did not question these transactions during the course of his daily reviews, contrary to Association Policy No. 2. Furthermore, there were a number of months during which the commissions generated by Mr. J.S.'s account would have exceeded \$1,000 or more. Consequently, subject to Association Policy No. 2, Mr. Dunn was obliged to contact a review of the transactions that took place during that time period. Such a review would have revealed that there were a number of transactions that did not fit within the investment objectives of the client and that the client had taken out an equity loan of \$30,000 to cover purchases made in the account, and that the management of the account was inappropriate. Mr. Dunn did not document whether he had any discussions with Mr. Colalillo with respect to Mr. J.S.'s account, and at no time did Mr. Dunn contact Mr. J.S. to discuss the trading in his margin account or the possible changes to his investment objectives that seemed to be indicated by the transactions that took place in his account.

With respect to the clients Mr. and Mrs. A.T., between August 1993 and June 1997, the A.T.'s accounts did not hold securities that met three of their four investment objectives. From February 1995 to June 1996, securities in Tee-Comm represented between 49% and 90% of the net equity value of the A.T.s' joint account, and over 50% of the net equity value of the margin account held by Mr. A.T. Consequently, Mr. and Mrs. A.T.'s accounts were concentrated in Tee-

Comm and did not conform to their stated investment objectives. At not time did Mr. Dunn question any of the Tee-Comm transactions in these accounts during the course of his daily reviews. With respect to his monthly reviews, on at least four occasions, the monthly commissions charged to Mr. and Mrs. A.T.'s U.S. dollar account exceeded \$1,000. Had Mr. Dunn conducted the required monthly reviews, he would have found that the U.S. dollar account was highly leveraged with a large debit position. Furthermore, the A.T. margin account was subject to numerous margin calls during the last six months of 1996. No corrective action was taken by Mr. Dunn to remedy the situation. Lastly, in July 1996, Mr. Colalillo solicited a transaction in the A.T.s' joint account involving the transfer of shares from the accounts of two other clients that Mr. Colalillo represented at Nesbitt. The transaction negatively impacted the value of the Mr. and Mrs. A.T.'s joint account to the extent that the A.T.s over paid for the securities that were transferred, and the transaction increased the A.T.s' exposure to Tee-Comm (and another speculative security) in their joint account. It was determined that these transactions were not in the best interest of Mr. and Mrs. A.T. Furthermore, the Nesbitt Policy Manual in effect at the time required that a letter of authorization be obtained from the clients to permit the transfer of securities between unrelated accounts. During the course of the Association's investigation, it was found that Mr. A.T. was never asked by Mr. Colalillo to sign such a letter of authorization, and that, in fact, no such letter exists. Mr. Dunn did not document any review of the transfer between the accounts of Mr. and Mrs. A.T. and Mr. Colalillo's other clients. At no time did Mr. Dunn contact Mr. or Mrs. A.T. to discuss the trading in their accounts, the use of margin, or possible changes to their investment objectives to better reflect the holdings in their accounts.

In summary, Mr. Dunn's conduct and failure to supervise the above-noted accounts amounted to violations of Association By-law 29.1, Regulation 1300.2, and Policy No. 2.

### **Recommending Unsuitable Securities**

Mr. Dunn was the registered representative on record for a corporate account – U.E. Limited. Despite the fact that the investment objectives for the corporation were 50% moderate and 50% aggressive trading, with a risk tolerance of “some”, between November 1995 and May 1997, the corporation's account at Nesbitt held only Tee-Comm related securities. The account was also highly leveraged, in that during the material time, the use of margin ranged from 37% to 92% of the net equity value of the account. Mr. Dunn conducted transactions that caused the account to become a high-risk account with large debit balances. In the end, the account lost \$452,412. It was found that this mismanagement of the client's account amounted to a violation of Association Regulation 1300.1(c).

### **Failure to Provide Objective or Unbiased Information to Clients**

It was found that Mr. Dunn failed to provide a number of Nesbitt clients (some of whom are Mr. Colalillo's and some of whom are Mr. Dunn's) with objective or unbiased information regarding their investments in Tee-Comm. The Association's investigation revealed that Mr. Dunn only provided the clients with positive information concerning Tee-Comm and did not advise the clients of the risks inherent investing in those securities. He also did not advise the clients that

from January 1996 onwards, Nesbitt itself was not recommending the stock and that Tee-Comm was incurring large financial losses and was expected to continue to have negative cash flow. Furthermore, it was found that Mr. Dunn represented to his clients that he was in frequent contact with members of senior Tee-Comm management and that he was being provided with certain information by Tee-Comm personnel that had not been made available to the general public. Mr. Dunn held out to his clients that he knew more about the company than Nesbitt's own analyst. Consequently, the clients were left with a distorted picture of the company's prospects- a perspective that caused them to hold on to Tee-Comm stock and debentures until they eventually became worthless. It was determined that Mr. Dunn's failure to provide his clients with objective and/or unbiased information about Tee-Comm amounted to conduct unbecoming a registered representative or contrary to the public interest, contrary to Association By-law 29.1.

Upon being duly served with the Notice of Hearing and Particulars, it was found by the Ontario District Council; that. Dunn did not provide a Reply pursuant to Association By-law 20.14. While Mr. Dunn did respond in writing to the Notice of Hearing, it was not delivered within the time required by the By-law. As well, the Ontario District Council found that the purported Reply did not raise any tenable defences. Furthermore, Mr. Dunn did not appear at the disciplinary hearing held on April 28, 2004. Upon receiving both oral and written submissions from counsel for the Association, the Ontario District Council accepted the facts and conclusions as set out in the Notice of Hearing and Particulars as proven pursuant to Association By-law 20.16, and imposed the disciplinary penalties set out above.

Mr. Dunn has not been registered in any capacity with a Member firm since August 2002.

Kenneth A. Nason  
Association Secretary