

Contact:
Paul Smith
Enforcement Counsel
(604) 331-4764

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Discipline

Discipline Penalties Imposed on David Lewis Silcoff – Violations of By-law 29.1, Regulation 1300.1 (a), and Regulation 1300.4.

Person Disciplined The Pacific District Council of the Investment Dealers Association of Canada (the “Association”) has imposed discipline penalties on David Lewis Silcoff, at all material times a Registered Representative with CIBC World Markets Inc., a member of the Association.

By-laws, Regulations, Policies Violated On May 10, 2004, the Pacific District Council considered, reviewed and accepted a Settlement Agreement negotiated between Mr. Silcoff and Association Staff.

Pursuant to the Settlement Agreement, Mr. Silcoff admitted that:

He acted contrary to Association Regulation 1300.1(a) in that:

- 1) On or about August 6, 1999, he recorded investment objectives for the M Account that were inconsistent with the objectives requested by M; and
- 2) On or about May 5, 2000, he recorded investment objectives for the E Account that were inconsistent with the information provided by EE and NE.

He acted contrary to Association Regulation 1300.4 in that:

- 3) From November 1, 1999 to November 30, 2000, he effected 175 discretionary transactions in the M Account, without the prior written authorization of M, and without the account being specifically approved and accepted as a discretionary account; and
- 4) From May 5, 2000 to February 28, 2001, he effected 75 discretionary trades in the E Account without the prior written authorization of EE or NE, and without the account being specifically approved and accepted as a discretionary account.

He acted contrary to Association By-law 29.1 in that:

- 5) From December 1, 2000 to May 30, 2001, he effected 66 transactions in the M Account, without prior authorization from MJ, the only authorized individual on the account, without informing MJ of the transactions when he knew that MJ would not receive any trade confirmation slips or monthly account statements detailing the transactions;
- 6) On or about May 24, 2001 and May 25, 2001, he effected 2 transactions in the E Account, without prior authorization from EE or NE, and without informing EE or NE of the transactions when he knew that they would not receive any trade confirmation slips or monthly account statements detailing the transactions;
- 7) On or about May 24, 2001 and May 25, 2001, he purchased 350 shares of Fuel Cell Energy Inc. in the E Account at a cost of approximately \$44,500, and sold those shares prior to settlement date without first obtaining payment for the said shares, a practice commonly known as free-riding;
- 8) On or about November 30, 2000, without the knowledge or consent of M or its President MJ, he knowingly caused the address of the M Account to be changed, so that account statements and trade confirmation slips would be misdirected away from M and MJ;
- 9) On or about April 24, 2001, without the knowledge or consent of BC or CC, he knowingly caused the address for the C Account to be changed so that account statements would be misdirected away from BC and CC;
- 10) On or about May 24, 2001, without the knowledge or consent of EE or NE, he knowingly caused the address for the E Account to be changed so that account statements and trade confirmation slips would be misdirected away from EE and NE;
- 11) Between July 31, 2000 and November 30, 2000, he made false statements to MJ, M's President, when he stated that value of the M Account had not deteriorated and that MJ had misread the account statements, when in fact the account balance had deteriorated;
- 12) In or about February, 2001, he made a false statement to MJ, M's President, when he stated that value of the M Account was approximately \$150,000 when he knew, or ought to have known, the value of the account was less than \$10,000;
- 13) On or about February 28, 2001, he made false statements to MJ, M's President, when he stated that the M Account was earning a rate of 5 ¼% interest on a cash balance of \$67,538.07 when, in fact, the M Account was accumulating liability by paying interest at rates of between 8% and 9 ¾% on a \$78,067.16 debit in the account;
- 14) On or about February 28, 2001, he made false statements to MJ, M's President, when he explained the reason M was not receiving account statements was because the account was not actively traded and statements were not sent out when accounts were inactive, when he knew the real reason account statements had not been received was because he had misdirected the statements by changing the address on the account;
- 15) Between May 5, 2000 and February 28, 2001, he made false statements to NE, when he stated that value of the E Account had not deteriorated and that NE had misread the account statements, when the fact was the balance had deteriorated;
- 16) In or about March, 2001, he made a false statement to NE, when he assured her there was more than \$18,000 in the E Account when he knew, or ought to have known, the value of the E Account was zero (\$0.00);

- 17) In or about May, 2001, he made false statements to CC, when he stated that BC and CC were not receiving account statements for their account because there was a mix up in the mailings of a few account statements that had originated from the Member's head office, when he knew the real reason the statements had not been received was because he had misdirected the statements by changing the address on the account;
- 18) On or about May 1, 2001, he made false statements to MJ, M's President, when he stated that there was more than \$70,000 cash in the M Account and that MJ could access that cash by writing a cheque from the CIBC Chequing Account which was linked to the M Account, when the fact was there was a negative cash balance of \$76,454.41 in the account;
- 19) On or about February 28, 2001, he created a false document styled in the form of an account statement and presented it to MJ, M's President, purportedly as evidence that the total value of the M Account was \$149,980.88 when the true value of the M Account was \$4,375.64;
- 20) On or about April 3, 2001 he misappropriated \$18,300 from the C Account and transferred that money to the E Account, without the knowledge or consent of EE or NE, to conceal losses he had caused in the account of EE and NE;
- 21) On or about April 3, 2001 he forged the signature of BC on a false letter of authorization from BC or CC that he himself created, to conceal the fact that he misappropriated \$18,300 from the C Account and thereby acted contrary to Association By-Law 29.1; He acted contrary to Association By-law 29.1 in that on or about May 1, 2001;
- 22) On or about May 1, 2001 he misappropriated \$79,000, from the C Account and transferred that money to the M Account, without the knowledge or consent of M or MJ, to conceal the losses he caused in the M account; and
- 23) On or about May 1, 2001 he forged the signature of BC on a false letter of authorization from BC or CC that he himself created, to conceal the fact that he misappropriated \$79,000 from the C Account.

Penalty
Assessed

The penalties assessed against Mr. Silcoff are:

- i) a permanent prohibition from approval to act in any registered capacity with any Member of the Association;
- ii) a fine in the amount of \$375,000.00; and
- iii) disgorgement of commissions in the amount of \$7,240.99, representing the amount he earned on the discretionary and unauthorized trades.

Mr. Silcoff is also required to pay \$40,000.00 towards the Association's costs of this matter.

Summary
of Facts

This matter relates to events that occurred during the period from August 6, 1999 – June 30, 2001 (the "Relevant Period") when Mr. Silcoff was a Registered Representative ("RR") working at CIBC World Markets Inc. at 885 West Georgia Street in Vancouver (the "West Georgia Branch").

BC and CC had an account (the "C Account") with another RR at the West Georgia Branch. On or about March 21, 2001, the C Account was assigned to Mr. Silcoff.

On or about August 6, 1999 M opened an account (the "M Account") with Mr. Silcoff. There was no discretionary trading agreement executed with respect to the M Account, nor had CIBC World Markets accepted the M Account as a discretionary trading account. Mr. Silcoff was not qualified, to establish discretionary trading accounts or conduct discretionary trades.

On or about May 5, 2000 EE and NE opened an account (the "E Account") with Mr. Silcoff. There was no discretionary trading agreement executed with respect to the E Account, nor had CIBC World Markets accepted the M Account as a discretionary trading account. Mr. Silcoff was not qualified, to establish discretionary trading accounts or conduct discretionary trades.

When the M Account was opened in August 1999, M's President MJ, the only authorized person on the M Account advised Mr. Silcoff that he "wanted zero risk." Notwithstanding the instructions given by MJ, Mr. Silcoff, either without MJ's knowledge or without advising MJ, recorded the investment objectives on the KYC for the M Account as 40% High Risk, 50% Medium Risk and 10% Low Risk.

From the time the account was opened in August 1999 through November 30, 2000 Mr. Silcoff effected 175 discretionary transactions in the M Account. MJ did not complain about the discretionary transactions but he did express concerns to Mr. Silcoff regarding the declining balance in the M Account. Mr. Silcoff assured MJ that the M Account was not losing money and that he was simply misreading the account statements. In fact, the discretionary transactions in the M Account resulted in significant losses.

On or about November 30, 2000 Mr. Silcoff, without authorization from MJ or M, drafted an Email instructing his assistant to change the address of the M Account to direct the monthly account statements and trade confirmation slips away from M and MJ. Mr. Silcoff redirected the statements for the M Account to conceal the fact that his discretionary trading in the M Account had reduced the value of the M account by more than \$85,000.00 in the three month period from August 31, 2000 to November 30, 2000.

After he changed the address on the M Account, Mr. Silcoff effected a further 66 transactions in the M Account without prior authorization from MJ and without informing MJ of the transactions when he knew that MJ would not receive any trade confirmation slips or monthly account statements detailing the transactions. These unauthorized transactions resulted in further losses being incurred in the M Account.

In February 2001, MJ advised Mr. Silcoff that he would need to withdraw approximately \$75,000 from the M Account in a short period of time. MJ asked Mr. Silcoff to confirm that he would be able to withdraw those funds from the M Account. Mr. Silcoff verbally advised MJ that the value of the M Account was approximately \$150,000 when he knew, or ought to have known, the value of the account was less than \$10,000.

On or about February 28, 2001, Mr. Silcoff further misrepresented the value of the M Account when he created a false document and faxed it to MJ presenting it as an account statement. The false document indicated that the total value of the M Account as of February 28, 2001 was \$149,980.88, which said total included a cash balance of

\$67,538.07. In fact, the total value of the M Account on February 28, 2001 was \$4,375.64, which said total included a cash debit of \$78,067.16.

Mr. Silcoff made further misrepresentations to MJ regarding the M Account when he advised MJ that M was earning a rate of 5 ¼% interest on the cash balance in the M Account, when he knew, or ought to have known that M was, in fact, accumulating further liability by paying interest at rates of between 8% and 9 ¾% on the \$78,067.16 debit in the account.

When MJ asked Mr. Silcoff why he had not received an account statement since October 2000, Mr. Silcoff made further misrepresentations to MJ in an attempt to cover up the fact that he had misdirected the M Account statements. Mr. Silcoff advised MJ that he was not receiving account statements because statements were not sent out when accounts were inactive and because the M Account was inactive he should not expect to receive account statements. MJ accepted Mr. Silcoff's explanation because he believed the M Account was inactive.

When the E Account was opened in May 2000 EE and NE advised Mr. Silcoff that they didn't want any high-risk investments. NE further advised that the approximately \$20,000 they were depositing had to be available in the spring of 2001 to pay out the lease on their car. Notwithstanding the instructions given by EE and NE, Mr. Silcoff, either without their knowledge or without advising them, recorded the investment objectives for the E Account as 75% High Risk, 25% Medium Risk and 00% Low Risk.

From the time the E Account was opened on May 5, 2000 through February 28, 2001 Mr. Silcoff effected 75 discretionary transactions in the E Account. When NE and EE became aware of the discretionary transactions in the E Account, NE called Mr. Silcoff to express concern over the trading in the E Account. Mr. Silcoff told NE not to be concerned because her bottom line account balance was not affected. When NE expressed concerns to Mr. Silcoff regarding the declining balance in the E Account, he assured her that the E Account was not losing money and that she was simply misreading the account statements. In fact, the discretionary transactions in the E Account resulted in a loss of \$18,531.94.

In March 2001 NE advised Mr. Silcoff that her car lease was running out and she required the approximately \$20,000 from her account to pay off the balance owing on her car. Notwithstanding that he knew, or ought to have known, the balance in the E Account was zero (\$0.00), Mr. Silcoff advised NE that there were sufficient funds in the E Account and that he would send her a cheque for the required amount.

On or about April 3, 2001, Mr. Silcoff knew there were no funds in the E Account to cover NE's request. He, therefore, instructed his assistant to draft a letter addressed to Mr. Silcoff that purported to be an authorization from BC or CC instructing Mr. Silcoff to transfer funds from the C Account to the E Account, without advising his assistant that neither BC or CC were aware of or had authorized the transfer. Mr. Silcoff then forged the signature of BC on the false document and used it to initiate the transfer of \$18,300 from the C Account to the E Account, without the knowledge of BC, CC, EE, or NE.

On or about April 24, 2001 Mr. Silcoff, without authorization from BC or CC, drafted an Email instructing CIBC World Markets' client records department to change the address of the C Account so that monthly account statements would be directed away from BC and CC. Mr. Silcoff knowingly misdirected the statements for the C Account to conceal the fact that he had misappropriated funds from the C Account on April 3, 2001 and to enable him to misappropriate further funds from the C Account without the knowledge of BC or CC.

In May 2001, CC contacted Mr. Silcoff by phone to ask why they had not received monthly account statements. Mr. Silcoff advised CC that there had been a mix up in a few of the mailings and that mix up originated from Head Office, when he knew the truth was that he had intentionally misdirected the account statements by changing the address on the C Account.

In April 2001, MJ contacted Mr. Silcoff and advised that he needed to withdraw \$70,000 from the M Account and requested the funds be couriered to him in the form of a bank draft or cheque. Mr. Silcoff advised MJ that he would courier the funds.

When the funds did not arrive, MJ telephoned Mr. Silcoff to ask why he had not received them. Mr. Silcoff advised MJ that he was waiting on a signature and the funds would be couriered as soon as possible.

When the funds did not arrive a second time, MJ contacted Mr. Silcoff and stated that if he did not receive the funds the next day he would attend at the West Georgia Branch himself to collect the funds. Later that same day Mr. Silcoff telephoned MJ and advised him that the best way to access the funds in the M Account was to write a cheque from the CIBC Chequing Account which was linked to the M Account.

Before he wrote the cheque for \$70,000 (the "Cheque"), MJ confirmed with Mr. Silcoff that there were sufficient funds in the M Account to cover the Cheque. Mr. Silcoff told MJ there were sufficient funds in the M Account to cover the \$70,000 Cheque when he knew the balance in the M Account was less than \$3,000 and the cash balance \$ -76,454.41.

Total losses as a result of the discretionary and unauthorized transactions in the M Account were \$152,552.98. In an effort to conceal the fact that he had lost so much money in the M Account and to ensure there were sufficient funds in the M Account to cover the Cheque, Mr. Silcoff, on or about May 1, 2001 drafted a false letter addressed to himself that purported to be an authorization from BC or CC to transfer funds from the C Account to the M Account.

Mr. Silcoff then forged the signature of BC on the false document and used the false document to validate the transfer of \$79,000 from the C Account to the M Account, without the knowledge of BC, CC, M, or MJ.

Neither BC or CC were aware that any funds had been misappropriated from the C Account because their address had been changed and they were not receiving account statements for the C Account.

On or about May 24, 2001, Mr. Silcoff, without the authorization from EE or NE, drafted an Email instructing CIBC World Markets' client records department to change the address of the E Account so that monthly account statements and confirmation slips would be directed away from EE and NE

Mr. Silcoff misdirected the account statement for the E Account so that he could use the E Account to conduct further unauthorized trades in an attempt to recover some of the earlier losses incurred in the E Account, or the M Account, or from the misappropriation of funds from the C Account

On or about May 24, 2001, Mr. Silcoff, without prior authorization and without informing EE or NE, purchased approximately \$44,500.00 worth of a high-risk security in the E Account, notwithstanding the account had a zero (\$ 0.00) balance and that NE and EE had no other money available to pay for the transaction. Mr. Silcoff purchased the security, knowing he would sell the same security before the purchase transaction settled, a practice commonly known as free-riding. A day later, Mr. Silcoff sold the same number of shares.

Kenneth A. Nason
Association Secretary