



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 Glenn Kau-Lee Fung – Violations of Regulation 1300.1 (d), 1300.2 and Policy 2

Person Disciplined The Pacific District Council of the Investment Dealers Association of Canada (the “Association”) has imposed discipline penalties on Glenn Kau-Lee Fung, at all material times the Branch Manager of the Vancouver, BC branch office of HSBC Securities (Canada) Inc. (“HSBC”), a Member of the Association. Mr. Fung also had supervisory responsibilities for HSBC’s sub-branch office in Kelowna, BC (the “Sub-Branch”).

By-laws, Regulations, Policies Violated On May 27, 2004, the Pacific District Council considered, reviewed and accepted a Settlement Agreement negotiated between Mr. Fung and Association staff.

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

- During the period from February 1999 to May 2000, inclusive, he permitted Rene Arthur Girard (“Girard”), a Registered Representative employed at the Sub-Branch, to open and to be responsible for the account of a client, LB, who was at all material times a resident of the province of Saskatchewan, when Girard was not registered in any capacity in the province of Saskatchewan, and he thereby failed to properly supervise the activities of Girard, contrary to Association Regulation 1300.2 and Association Policy 2;
- During the period from August 1999 to April 2000, inclusive, he failed to properly supervise Girard’s trading activity in the account of a client to ensure that the recommendations made for that client’s account were appropriate for the client and in keeping with their investment objectives, contrary to Association Regulation 1300.1 (d), Association Regulation 1300.2 and Association Policy 2.

Penalty Assessed The penalties assessed against Mr. Fung include a fine of \$25,000, a condition of re-approval in any registered capacity that Mr. Fung successfully re-write and pass the examination based on the *Branch Managers Course* administered by the Canadian Securities Institute, and a prohibition against re-approval in any registered capacity until such time as the fine and costs herein are paid in full. In addition, Mr. Fung is required to pay \$4,500.00 towards the Association’s costs of the investigation of this matter.

In a decision dated May 28, 2004, the Pacific District Council stated that it was concerned that the penalty did not include a period of suspension or prohibition from supervisory responsibilities. However, the Pacific District Council considered the extenuating circumstances on the facts of this case, including the fact that Mr. Fung is no longer registered and is no longer within the jurisdiction and that Mr. Fung is prohibited from being re-approved in any capacity until the fine and costs are paid in full. Further, and perhaps most significantly, the Pacific District Council considered that, as a condition of re-approval **in any capacity**, Mr. Fung must successfully re-write and pass the examination based on the *Branch Managers Course*. In light of the foregoing, the Council was of the view that the penalty negotiated in the Settlement Agreement was within a reasonable range.

Summary of Facts

Mr. Fung had supervisory responsibility over Girard who employed at the Sub-Branch as a Registered Representative. Girard opened an account for a client who was, at all times a resident of Saskatchewan. Girard was not, however, at the material time, registered in any capacity with the Saskatchewan Securities Commission.

The New Account Application Form (“NCAF”) for the client recorded the client’s address as “c/o 384 Bernard Avenue, Kelowna, BC V1Y 6N5”. That address was, in fact, the address of the Sub-Branch. The area on the NCAF for the client’s home and business telephone numbers was not completed. Further, the question “Is IA Registered In Province In Which Client Resides?” is unanswered. Finally, the NCAF for this client indicated that the statements and confirmations should be sent to 384 Bernard Avenue, Kelowna, BC V1Y 6N5 and that duplicate confirmations should also be sent to that address.

It was well understood by all HSBC employees that NCAFs had to be fully completed before a new account would be approved and that an investment advisor could not open an account for a client who resided in a province where the investment advisor was not registered. Further, NCAFs were normally only brought to Mr. Fung’s attention when they were fully and properly completed. Mr. Fung’s practice was to focus his attention on the portions of the NCAF that related directly to suitability. Those portions of the NCAFs for Girard’s client were fully completed.

Girard completed a second NCAF for the same Saskatchewan client to open another account. This NCAF also recorded the client’s address as “c/o 384 Bernard Avenue, Kelowna, BC, V1Y 6N5”. The areas for the client’s home and business telephone numbers were also left blank. Further this NCAF indicated that the duplicate confirmations should be sent to “as above”, which referred to the 384 Bernard Avenue, Kelowna, BC.

Mr. Fung signed both of the NCAFs for this client in the area marked “Designated Person/Branch Manager”.

All documents were sent to the client and no loss resulted to the client from any of the foregoing facts.

Girard opened an account with respect to another client. The NCAF for this client recorded investment objectives of 5% Cash or Equivalent, 45% Income, 50% Growth and 0% Aggressive Trading. The risk factors were recorded as 20% Low, 50%

Medium and 30% High. Mr. Fung also signed this NCAF in his capacity as “Designated Person/Branch Manager”.

Mr. Fung conducted daily and monthly reviews of the accounts of Girard’s clients. He acknowledged that some of the trading activity in the second client’s account during the months September and October 1999 and March and April 2000 was aggressive. However, notwithstanding the aggressive trading activity in the client’s account and the fact that the client’s stated investment objectives did not allow for aggressive trading, Mr. Fung made only one inquiry of Girard. This inquiry was on an April 2000 commission report for Girard and was with respect to the purchase and sale of 150 Nokia shares on April 10, 2000. Mr. Fung noted on that inquiry “Day trading is speculative, inconsistent with stated objectives. Comment on corrective action. You are recommending the purchase and sale of the same security. Potential conflict of interest. Was purchasing/sale solicited? GF”

The clients had in fact authorized Girard in the fall of 1999 to adopt a more aggressive strategy in their account. All of the trading which took place was in accordance with the true objectives of the client, although the NCAF was not updated.

Mr. Fung has not previously been the subject of professional discipline by a regulatory body of the securities industry.

Mr. Fung resigned from HSBC on March 5, 2004 in good standing and had transferred to HSBC Brokerage (USA) Inc. in New York. He is, accordingly, no longer registered in British Columbia.

Please see Disciplinary Bulletin # 3274 with respect to disciplinary action taken against Girard.

Kenneth A. Nason
Association Secretary