



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 James Donald Wooster – Violations of By-law 29.1, Regulation 1300.1 (a) and Regulation 1300.1 (c)

Person Disciplined The Pacific District Council of the Investment Dealers Association of Canada (the “Association”) has imposed discipline penalties on James Donald Wooster, at all material times a registered representative with Nesbitt Burns Corp. (which became BMO Nesbitt Burns Inc.) and subsequently with Canaccord Capital Corp., members of the Association.

By-laws, Regulations, Policies Violated Following a disciplinary hearing held July 28, December 15 and 16, 2003, the Pacific District Council found, in its decision dated May 5, 2004 that James Donald Wooster:

- In December 1990, failed to use due diligence to ensure that he learned the essential facts concerning his client, RM, contrary to Association Regulation 1300.1 (a);
- in February 1993, unilaterally and without the knowledge or consent of his client, RM, amended her stated investment objectives for her cash account, as set out in the relevant New Client Account Form, contrary to Association By-law 29.1;
- in June 1993, unilaterally and without RM’s knowledge or consent, amended the stated investment objectives for both the cash and RRSP accounts of his client, RM, contrary to Association By-law 29.1;
- in June 1993, completed a single New Client Account Form for his client RM to update both RM’s cash account and RM’s RRSP account New Client Account Forms and he thereby failed to use due diligence to learn the essential facts relative to every account accepted, as required by Association Regulation 1300.1 (a);
- between May 24, 1995 and November 20, 1995, effected a total of 10 unauthorized trades in the RRSP and margin accounts of his client, RM, contrary to Association By-law 29.1;

- between July 1991 and September 1997, he recommended that his client, RM, purchase securities for her cash, RRSP and margin accounts that unreasonably exceeded her actual investment objectives for those accounts, contrary to Association Regulation 1300.1 (c);
- between February 24, 1993 and January 22, 1997, he recommended the purchase of certain specific securities in RM's accounts that were not suitable for purchase by her, contrary to Association Regulation 1300.1 (c);
- in around October 2000 and April 2001, misrepresented to his client, KP, the status of certain funds deposited in KP's margin account but belonging to KP's brother, contrary to Association By-law 29.1; and
- in around March 2001, made misrepresentations to his employer concerning the margin account of his client, KP, contrary to Association By-law 29.1.

Penalty
Assessed

The penalty assessed against Mr. Wooster by the Pacific District Council in its decision dated July 9, 2004, includes an aggregate fine in the amount of \$25,000 in respect of the breaches of Regulation 1300 and an aggregate fine in the amount of \$80,000 in respect of the breaches of By-law 29.1 (total fine \$105,000). The Pacific District Council also ordered disgorgement in the amount of \$2,236.50 in respect of the unauthorized trades. Further, the Panel ordered that Mr. Wooster be ineligible for re-approval in any capacity by the Association for a period of three years. Further, as a condition of any re-approval in any capacity by the Association, Mr. Wooster is required to successfully re-write and pass the examination based on the *Conduct and Practices Handbook Course* administered by the Canadian Securities Institute. Mr. Wooster was further ordered to pay \$40,000 of the costs incurred by the Association in connection with these proceedings. Finally, Mr. Wooster is ineligible for re-approval in any capacity by the Association unless he has paid the fine, disgorgement and costs herein in full.

Summary
of Facts

RM was a client of Mr. Wooster's. She was a conservative investor. In 1990, some of the information recorded on RM's New Client Account Form ("NCAF") did not accurately reflect her circumstances (eg. incorrect occupation and income). However, her investment objectives of 50% income and 50% long-term growth were accurately recorded.

In February 1993, Mr. Wooster unilaterally and without the knowledge or consent of RM, amended the investment objectives on the NCAF for RM's cash account to 70% long-term growth and 30% venture. In June 1993, Mr. Wooster completed a single NCAF to update both RM's cash and RRSP accounts. Further with respect to the June 1993 NCAF update, Mr. Wooster once again modified RM's investment objectives without the knowledge or consent of RM.

In May 1995 and in November 1995, Mr. Wooster effected a total of 10 unauthorized trades in the accounts of RM.

Between July 1991 and September 1997, Mr. Wooster recommended that RM purchase securities for her accounts that unreasonably exceeded her actual investment objectives for these accounts. In its decision, the Pacific District Council stated that:

The evidence indicates that there were times at which the accounts were only marginally "off-side". This may have been due to temporary market conditions. It should also be acknowledged that the categories in the NCAF – "income", "long-

term growth”, moderate growth”, “venture”, etc. – are by no means precise, at least at the margins, to some extent overlap and that reasonable people may differ as to whether a particular investment or combination of investments falls into one category or another. But no amount of fudging can provide an explanation for the fact that, for example, for almost two years from July 1993 the stated investment objectives for RM’s margin account called for an allocation of 30% to income producing investments, yet in all but four months (January to May 1995) during that period the account contained no income producing investments at all or that in those four exceptional months such investments never represented more than about 17.5% of the value of the account. These facts seem to us to reflect, at its lowest, an egregious disregard of RM’s instructions.

The Pacific District Council found that between February 1993 and January 1997, Mr. Wooster recommended the purchase of certain securities for RM’s account that were not suitable for purchase by her. These purchases involved shares in companies that had a history of losses unrelieved by any profits (and in some cases do not appear to have had any operating revenues) and each had a negative return on equity (in one case of 456% and in another of more than 800%). The shares therefore represented highly speculative investments for a client who was a conservative investor. The panel could not “think of any possible analysis that could possibly have led to the conclusion that these were appropriate investments in any of her accounts for someone with RM’s objectives. Their purchase in her RRSP account was particularly scandalous, not least where they represented a significant part of the holdings in that account.”

Another client of Mr. Wooster’s, KP, deposited \$238,577.70 into his margin account. KP advised Mr. Wooster that this money belonged to his, KP’s, brother and accordingly, had to be unencumbered and kept separate from KP’s assets. KP and his brother were reluctant to open a separate account for these funds. Notwithstanding KP’s instructions, Mr. Wooster allowed KP’s account to incur a significant margin debt. KP’s brother’s monies prevented margin calls and accordingly, these monies were encumbered.

Mr. Wooster’s firm sent him a memo stating that KP is 76 years and into margin debt for triple annual income. The firm required Mr. Wooster’s comments in respect of this situation. Mr. Wooster replied to the memo stating that the money was strictly the client’s investment money and the client fully intended to reduce or eliminate margin at the first possible moment. Mr. Wooster, accordingly misrepresented the situation to his firm.

Further, on two separate forms designed by KP himself, Mr. Wooster acknowledged that the firm was holding the brother’s money and that it was totally independent and was not encumbered. This was clearly a misrepresentation to KP as the brother’s money was encumbered in that it prevented margin calls in KP’s account.

In assessing the appropriate penalty, the Pacific District Council stated that the breaches of By-law 29.1 involved a betrayal of a client or an employer. Cumulatively, and in particular when considered in light of the fact that in many respects they echo complaints that were the subject matter of Mr. Wooster’s previous discipline (see Bulletin # 2766), they reflect a startling pattern of indifference to the standards of conduct reflected in By-law 29.1, the interests of clients and employers and the industry of which Mr. Wooster was a part.

The Panel stated further with respect to the penalty that “It is difficult to overstate the seriousness of any of this conduct. Each of the elements involves, to put it simply, rank dishonesty. No mitigating circumstances have been suggested nor can we think of any.”

Mr. Wooster is not currently employed in the securities industry.

Kenneth A. Nason
Association Secretary