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For distribution to relevant parties within your firm

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Discipline

Discipline Penalties imposed on Nerio D’Ambrosi – Violation of Regulations 1300.1 (c) and 1300.4

Person Disciplined A Hearing Panel appointed pursuant to Association By-law 20 has imposed discipline penalties on Nerio D’Ambrosi (the “Respondent”), at all material times employed as a Registered Representative Options in the North York and Woodbridge branch offices of TD Securities Inc. (“TD”), a Member of the Association.

By-laws, Regulations, Policies Violated On October 25, 2004 the Hearing Panel considered and accepted a Settlement Agreement negotiated between the Respondent and Association staff.
Pursuant to the Settlement Agreement, the Respondent admitted that during 2000 and 2001, he failed to use due diligence to ensure that that short term trading recommendations made were appropriate for client EB and in keeping with her investment objectives, contrary to Association Regulation 1300.1 (c).

The Respondent also admitted that he effected discretionary trades in client EB’s account, during the same time period, without the prior written authorization of the client and without the account having been accepted as a discretionary account, contrary to Association Regulation 1300.4.

Penalty Assessed The discipline penalties assessed against the Respondent are:

- a fine in the amount of \$20,000 and;
- close supervision for 6 months to commence on the effective date of the Settlement Agreement.

The Respondent is also required to pay the Association’s costs in the amount of \$8,000.

Registration:

At the relevant time the Respondent was a Registered Representative Options in the North York and Woodbridge branch offices of TD. The Respondent entered the industry in 1995 and was registered with TD until the fall of 2004.

Client EB's account:

The investigation was initiated as a result of a complaint made to the Ontario Securities Commission by a client named EB.

EB opened a margin account with the Respondent in January 1999 ("the account"). EB was a 50 year old nurse with a grade 12 education. EB had never had a brokerage account prior to opening the account with the Respondent.

EB told the Respondent that she was seeking \$500 U.S. per month from the investments to provide for an elderly aunt and also that she wanted to preserve the principal amount. The account was funded with a deposit of \$80,000 U.S. which came from a shared inheritance.

The NAAF:

EB's NAAF for the account dated January 7, 1999 ("the NAAF") indicates that EB's annual income was \$50,000 to \$100,000 and that her net worth was \$250,000 to \$500,000. EB signed the NAAF at the time she opened the account. The NAAF also indicates that EB's investment experience was none and that her investment knowledge was limited.

EB's investment objectives on the NAAF were listed as 70% income and 30% long term capital gains. Although EB's risk level on the NAAF was checked off as being high, in fact, her actual risk level was low to moderate.

Discussion re: account:

The purpose of the account was discussed at the first meeting between the Respondent and EB. The Respondent explained to EB that in order to achieve a payout of U.S. \$500 each month, part of the account would have to be put into investments that had some risk and that the investments would fluctuate in value to some extent. There was no discussion that high risk or very aggressive investments would be required. The discussion of risk was in the context of ensuring that EB understood that the investments would not be of the guaranteed or very low risk variety.

Suitability issue:

As planned, monthly withdrawals of \$500 U.S. were made from EB's account from May 1999 to July 2001. Until October 1999 there was very little trading activity in EB's account.

During 2000 various short term trades were made in EB's account. The securities traded were generally volatile technology related stocks with moderate to high share prices, as well as some small cap technology and resource stocks. Examples of heavily traded stocks were Protein Design Labs, Ariba, JDS Uniphase and Nortel Networks.

The short term trading was unsuitable for EB given the purpose of the account and EB's investment objectives and risk tolerance.

Ariba and Research in Motion:

On November 21, 2000, the Respondent purchased 500 shares of Ariba in EB's account, at a total price of \$40,375 U.S. The Ariba shares declined in value to \$2,140 U.S. by November 30, 2001, for an unrealized loss of \$38,235 U.S.

On February 7, 2001, 500 shares of Research in Motion were purchased in EB's account at a total price of \$47,900. The Research in Motion shares declined in value to \$17,285 by November 30, 2001, for an unrealized loss of \$30,615.

Total cumulative loss:

By July 31, 2001, the combined net equity in the account had declined to \$35,422 U.S., after withdrawals of \$13,500 U.S. The losses sustained by the account were primarily caused by Ariba (U.S. side of the account) and Research in Motion (Canadian side of the account). As of November 2001, the total cumulative loss (unrealized and/or realized) in the account was \$54,602.52. This amount is net of any withdrawals or deposits.

Discretionary trading:

EB had very little contact with the Respondent throughout the operation of her account. She spoke with the Respondent every few months and these calls were generally initiated by her. Their telephone calls were very general in nature, involving an update of her investments.

EB thought that it was the normal course for the Respondent to make trades in her account without confirming the particulars of each trade in advance with her. The first time that EB discovered the particulars of a trade occurred when she received her confirmation slip or monthly statement in the mail. The Respondent did not confirm all of the details of the trades with EB prior to effecting trades in her account.

Other:

The Respondent has no previous disciplinary history and was co-operative with Association staff. At the present time the Respondent is employed by Raymond James Ltd.

Kenneth A. Nason
Association Secretary