



# bulletin



Contact:

*For distribution to relevant parties within your firm*

Ricardo Codina  
Enforcement Counsel  
(416) 943-6981  
[rcodina@ida.ca](mailto:rcodina@ida.ca)

**BULLETIN #3588**  
December 4, 2006

K. Kelly Margaritis  
Enforcement Counsel  
(416) 943-6909  
[kmargaritis@ida.ca](mailto:kmargaritis@ida.ca)

## Discipline

### **Discipline Penalties Imposed on Denes Luciano Fransesco Peroni and Robert Paul Joseph Héту; Violations of IDA By-law 29.1**

Persons Disciplined A Hearing Panel, appointed pursuant to IDA By-law 20, has imposed penalties on Denes Luciano Fransesco Peroni and Robert Paul Joseph Héту, formerly of the Sudbury branch of Berkshire Securities Inc. (Berkshire).

By-laws,  
Regulations,  
Policies Violated

Following a hearing held between April 3 to 6, 2006, the Hearing Panel released its decision dated May 2, 2006, and found that Mr. Peroni and Mr. Héту had engaged in conduct unbecoming and contrary to the public interest, in violation of IDA By-law 29.1 by:

- (a) Failing to advise Berkshire of the true cost of three advertising campaigns carried out in cooperation with three mutual fund companies, for the purpose of obtaining compensation that exceeded what is permitted by National Instrument 81-105; and
- (b) Knowingly or recklessly misrepresenting to Berkshire that an advertisement had appeared 12 times in a newspaper when it had only appeared four times.

The Hearing Panel found that Mr. Peroni and Mr. Héту's conduct was not inadvertent and that they knowingly engaged in the misconduct.

Penalty Assessed After receiving and considering written submissions on penalty from the parties, by decision dated November 17, 2006, the Hearing Panel imposed the following sanctions:

- (a) Mr. Peroni and Mr. Héту are suspended in all capacities for a period of nine months commencing on November 17, 2006; and
- (b) Mr. Peroni and Mr. Héту are each fined a sum of \$ 25,000.

The Hearing Panel also ordered the Respondents to jointly pay costs in the amount of \$ 50,000 and directed each of them to re-write the examination based on the Conduct and Practices Handbook before being re-approved as Registered Representatives.

Mr. Peroni and Mr. Héту have not been registered with an IDA Member since May 2006.

Summary of Facts From October 2001 to March 2004, Mr. Peroni and Mr. Héту were employed at Berkshire's Sudbury branch office as Registered Representatives (RRs). While at Berkshire, they worked in partnership in that they shared a joint RR code for many clients.

#### **National Instrument 81-105**

In May 1998, the Canadian Securities Regulatory Authorities adopted National Instrument 81-105 ("NI 81-105") which was applicable to Berkshire and, by extension, to its employees. NI 81-105 describes acceptable practices for the sale of mutual funds by RRs and investment dealers. One of the purposes of NI 81-105 is to address concerns about the possibility of RRs recommending mutual funds for their clients, on the basis of incentives that they are receiving from the mutual fund companies, as opposed to what is suitable and in the best interests of their clients. Part 5 of NI 81-105 provides a code of conduct for cooperative marketing practices between investment dealers and mutual fund companies. A mutual fund company is permitted to compensate RRs, through their employer, for their direct costs associated with, *inter alia*, advertising, where the mutual fund company's products are referred to in the advertisement. However, the mutual fund company cannot pay more than 50% of such costs.

#### **Compliance Procedures at Berkshire for Cooperative Advertising**

In order to ensure compliance with NI 81-105, Berkshire created compliance procedures that had to be followed by its employees when requesting compensation for cooperative advertising

campaigns. These procedures required Berkshire's employees to submit forms to Berkshire's Compliance Department for approval, indicating the cost of the advertising campaign and attaching the invoices for the advertising.

### **Cooperative Advertising Campaign with AIC**

Between May 13, 2002, and June 23, 2002, Mr. Peroni and Mr. Héту ran an advertising campaign with AIC Limited, a mutual fund company. On May 7, 2002, they represented to Berkshire that the advertisement would appear in twelve issues of *Northern Life*, a Sudbury newspaper. They also represented to Berkshire that the estimated cost of the campaign would be \$ 6,676.80, and submitted an invoice from *Northern Life* for that amount. AIC Limited accordingly paid Berkshire \$ 3,338.40, representing 50% of the purported advertising costs. These funds were paid to Mr. Héту.

However, the advertising campaign with AIC Limited did not cost \$ 6,676.80. On the same day that *Northern Life* prepared the invoice in the amount of \$ 6,676.80, it also issued a credit memo in the same amount effectively reversing the amount owed under that invoice. *Northern Life* then sent Mr. Peroni four separate invoices on May 29, June 2, 19 and 23, 2002, representing the true charges for each of the four advertisements that were published in *Northern Life*. The true cost of the advertising campaign was only \$ 1,217.14.

### **Attempt to Mislead Berkshire about AIC Advertising Campaign**

Berkshire requested Mr. Peroni and Mr. Héту to provide copies of the 12 advertisements that were purportedly run as part of the AIC Limited advertising campaign. On June 2, 2003, Berkshire received copies of what was purported to be twelve advertisements that had appeared in 12 different issues of *Northern Life*, as part of the AIC Limited advertising campaign. However, eight of the purported different advertisements were photocopies of the same advertisement that had appeared in one issue of *Northern Life*. Only four advertisements had been run as part of this advertising campaign.

### **Cooperative Advertising Campaign with CI**

Between January 27, 2002, and February 22, 2002, Mr. Héту and Mr. Peroni ran an advertising campaign with CI Mutual Funds Inc., another mutual fund company. This advertising campaign was for six advertisements to be published in *Northern Life*.

Mr. Peroni and Mr. Héту received approval for the advertising

campaign and ran it. On January 27, 2002, and February 3, 6, 10, 15 and 22, 2002, *Northern Life* sent Mr. Peroni invoices for the six advertisements. Each invoice was in the amount of \$ 243.43, for a total of \$ 1, 460.58.

On March 15, 2002, *Northern Life* sent Mr. Peroni another invoice for this advertising campaign, in the amount of \$ 2,921.10. The invoice indicated that it was for the same six advertisements. On the same day, *Northern Life* issued a credit memo to Mr. Peroni in the amount of \$ 2,921.10, effectively reversing the amount owed under the invoice issued that same day.

Notwithstanding that the true cost of the advertising campaign was only \$ 1, 460.58, Mr. Hetu represented to Berkshire that the cost of the campaign was \$ 2,921.10, based on the false invoice, and he and Mr. Peroni were compensated accordingly, i.e. 50% of the amount of \$ 2, 921.10, or \$ 1, 460.55.

### **Cooperative Advertising Campaign with Triax**

Between February 9 and 23, 2003, Mr. Peroni and Mr. Héту ran an advertising campaign with Triax Capital Corporation, another mutual fund company. The advertising campaign was for four advertisements to be published in *Northern Life*. Berkshire approved the advertising campaign.

On February 9, 14, 21 and 23, 2003, *Northern Life* sent Mr. Peroni invoices for the four advertisements. The total amount charged for the advertising campaign was \$ 914.08. However, on February 13, 2003, *Northern Life* sent Mr. Peroni another invoice for this advertising campaign in the amount of \$ 1,833.55. The invoice indicated that it was for the same four advertisements. On the same day, *Northern Life* issued a credit memo to Mr. Peroni effectively reversing the amount owed under the invoice issued that same day. Notwithstanding that the true cost of the advertising campaign was \$ 914.08, Mr. Héту submitted the false invoice to Berkshire and represented that the cost of the campaign was \$ 1,833.55.

Kenneth A. Nason  
*Association Secretary*