IIROC OCRCVM
Investment Industry Regulatory Organization of Canada
Organisme canadien de réglementation du commerce des valeurs mobilières

ISSUED
IIROC
National Hearing Coordinator

MAY 09 2019

IN THE MATTER OF:

THE RULES OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

AND

JOSEPH MARCEL DENIS (DENIS) ROCHON

NOTICE OF HEARING

An initial appearance ("Initial Appearance") will be held before a hearing panel ("Hearing Panel") of the Investment Industry Regulatory Organization of Canada ("IIROC") pursuant to Sections 8203 and 8205 of the Consolidated Enforcement, Examination and Approval Rules of IIROC in this matter. The purpose of the Initial Appearance is to schedule a hearing ("Hearing").

The Initial Appearance will be held on: June 25, 2019 at 10:00 a.m.

The Initial Appearance will be held at: Radisson Hotel 288 Portage Avenue Winnipeg, MB

The Respondent must serve a Response ("Response") to this Notice of Hearing and the Statement of Allegations dated May 9, 2019 ("Statement of Allegations") in accordance with Section 8415 within 30 days from the effective date of service of this Notice of Hearing.

If the Respondent does not file a Response in accordance with Section 8415(1), the Initial Appearance may be immediately converted to a Hearing.

If the Respondent files a Response in accordance with Section 8415(1), the Initial Appearance will be immediately followed by an initial prehearing conference. In preparation for the prehearing conference, the Respondent must serve and file a prehearing conference form in accordance with Section 8416(5).

The purpose of the Hearing will be to determine whether the Respondent has committed the contraventions that are alleged by the staff of IIROC ("Staff"). The alleged contraventions are contained in the Statement of Allegations.

Pursuant to Section 8409, the Hearing will be conducted as a[n]:

- ☐ Oral Hearing
- ☒ Electronic Hearing
- ☐ Written Hearing

The Initial Appearance, the Hearing and all related proceedings will be subject to the Rules of Practice and Procedure as set out in Section 8400.

Pursuant to the Rules of Practice and Procedure, the Respondent is entitled to attend the Hearing and to be heard, to be represented by counsel or by an agent, to call, examine and cross-examine witnesses, and to make submissions to the Hearing Panel at the Hearing.

If the Respondent fails to serve a Response at the Hearing the Hearing Panel may, pursuant to Section 8415(4):

(a) proceed with the hearing as set out in this Notice of Hearing, without further notice to the Respondent;

(b) accept as proven the facts and contraventions set out by Staff in the Statement of Allegations; and

(c) order sanctions and costs against the Respondent pursuant to Sections 8209, 8210 and 8214 and/or IIROC Dealer Member Rules 20.33 and 20.34.

If the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by Staff in the Statement of Allegations, the Hearing Panel may, pursuant to Sections 8209 and 8210 and/or IIROC Dealer Member Rules 20.33 and 20.34 impose any one or more of the following sanctions:

(a) a reprimand;

(b) disgorgement of any amount obtained, including any loss avoided, directly or indirectly, as a result of the contravention; [delete if not applicable]

(c) a fine not exceeding the greater of:

(i) $1,000,000 per contravention; and

(ii) an amount equal to three times the profit made or loss avoided by the person, directly or indirectly, as a result of the contravention.

(d) suspension of the person's approval or any right or privilege associated with such approval, including access to a Marketplace, for any period of time and on any terms and conditions;

(e) imposition of any terms or conditions on the person's continued approval or continued access to a Marketplace;

(f) prohibition of approval in any capacity, for any period of time, including access to a Marketplace;

(g) revocation of approval;

(h) a permanent bar to approval in any capacity or to access to a Marketplace;

(i) permanent bar to employment in any capacity by a Regulated Person; and

(j) any sanction determined to be appropriate under the circumstances.

If the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by the Staff in the Statement of Allegations, the Hearing Panel may assess and order any investigation and prosecution costs determined to be appropriate and reasonable in the circumstances pursuant to Section 8214 and/or IIROC Dealer Member Rule 20.49.

DATED this 9 day of May 2019.

NATIONAL HEARING COORDINATOR
Investment Industry Regulatory Organization of Canada
Suite 2000, 121 King Street West
Toronto, Ontario, M5H 3T9

IN THE MATTER OF:

THE RULES OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

AND

JOSEPH MARCEL DENIS (DENIS) ROCHON

STATEMENT OF ALLEGATIONS

Further to a Notice of Hearing dated May 9, 2019, staff of the Investment Industry Regulatory Organization of Canada make the following allegations:

PART I - CONTRAVENTIONS ALLEGED

Contravention 1

Between November, 2011 and May, 2017, the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to four (4) clients contrary to Dealer Member Rule 1300.1(a);

Contravention 2

Between January, 2012 and July, 2017, the Respondent failed to use due diligence to ensure that investment recommendations were suitable for four (4) clients contrary to Dealer Member Rule 1300.1(q);

PART II - PARTICULARS

Overview

1. The Respondent, Joseph Marcel Denis (Denis) Rochon ("Rochon") is a Registered Representative ("RR") in Winnipeg, Manitoba, responsible for the accounts of four clients, both married couples: SN/GN and RW/HW (together the "Clients").

2. Rochon failed to know the Clients, who were vulnerable seniors with limited investment knowledge.

3. He failed to use due diligence to ensure that his investment recommendations were suitable for the Clients when he pursued a short term, concentrated investment strategy which was contrary to their true financial circumstances.

4. Over an approximately 5 year period, each couple sustained total net losses of 30% and 38% respectively.

Registration History

5. At all material times, Rochon was an RR with Industrial Alliance Securities Inc. ("IAS") in Winnipeg, Manitoba. Although he has been in the financial industry since 1973, he has been an RR since 2004.

Clients – SN/GN

(i) Failure to Know Your Client

6. SN and GN are a retired, senior couple in Winnipeg. SN was born in 1931, and GN was born in 1939. SN worked as a health care professional, and GN worked as an office manager.

7. SN and GN were clients and friends of Rochon for more than 20 years.

8. SN and GN had limited investment knowledge, and relied on Rochon for his investment expertise and recommendations. They moved with him to IAS in October, 2011.

9. In November, 2011, SN opened a cash account, a RIF and a LIF with Rochon. GN opened a cash account, a RIF and a spousal RIF. The accounts were funded through a transfer in of securities (mostly mutual funds) with a market value of approximately $87,000. These securities were mostly mutual funds which had been managed by Rochon at his previous firm.

10. At the time, SN was 81 years old and GN was 72.

11. The new client application forms (NCAF) for the SN and GN accounts all contained investment objectives of "growth", and each were listed as having "good" investment knowledge. GN had a stated annual income of $80,000, and SN had a stated income of $50,000. Their combined net worth was stated to be between $500,000 and $550,000 ($300,000 liquid assets).

12. The NCAFs defined "growth" investment objectives and risk tolerance as follows:

    Cash & Cash Equivalents: 0-40%

    Fixed Income: 0-50%

    Equities: 30-100%

    Aggressive Investments and Strategies: 0-30%

    Risk is high

13. In November, 2012, SN and GN opened a joint margin account. It contained the same financial and investment objective information as the November, 2011 forms.

14. In May, 2013, account updates were completed. Investment objectives were still listed as "growth". Investment knowledge was changed to "average" for SN but remained as "good" for GN. A time horizon was identified as less than 3 years for the non-registered accounts, and 3 to 7 years for the registered accounts. It further indicated that the purpose of the

accounts were to finance part of retirement. The purpose of the joint margin account also referred to speculation.

15. At the time of this account update, SN was 82 years old and GN was 73.

16. In September, 2015, the accounts were all changed from commission based accounts to 2% annual (charged monthly) fee-based accounts.

17. In February, 2016, the accounts were updated, with the investment profile changed to "balanced", with a time horizon of 3 to 7 years for both registered and non-registered accounts. The forms state that SN and GN were now retired, although the stated income was $60,000 for SN and $10,000 for GN. The net worth remained at $550,000, but with liquid assets of $150,000. Investment knowledge remained as "average".

18. The NCAF's defined "balanced" investment objectives and risk tolerance as follows:

Cash & Cash Equivalents: 0-40%

Fixed Income: 30-70%

Equities: 30-70%

Aggressive Investments and Strategies: 0-20%

Risk is moderate to high

19. There was very little activity in the accounts once they became fee-based.

20. Although the investment objectives and risk tolerance parameters for SN and GN were broadly listed as "growth" and "balanced", these were not the actual investment objectives for SN and GN, who were seeking a steady, conservative, long-term growth investment strategy.

21. In particular, Rochon's decision to allow high, and moderate to high, risk tolerance parameters for clients of an advanced age was inconsistent with the clients' actual intended investment objectives and risk tolerance parameters. It also failed to consider that some of the invested funds were borrowed and this further increased the level of risk in the accounts.

22. For the period of January, 2012 to May, 2017, the stated investment objectives in the accounts were too aggressive for seniors who were either retired or approaching retirement, with limited investment knowledge, and were seeking a steady, conservative, long-term growth strategy.

23. Rochon failed to learn and remain informed of the essential facts relative to SN/GN as the stated investment objectives in their accounts were inconsistent with their true financial circumstances, investment knowledge, investment objectives and risk tolerance.

(ii) Suitability

24. SN and GN were vulnerable clients who relied on Rochon for investment advice and recommendations.

25. Through Rochon's own research, investment ideas and trading activity, he pursued an aggressive investment strategy in their accounts which involved an elevated degree of risk.

26. In addition to the $87,000 in kind transfer of securities deposited in November, 2011, in December, 2012, they transferred an additional $52,000 to their accounts. At that time, the combined market value of all the SN/GN accounts was $137,452. Subsequently, they added to the accounts with an additional $130,000 ($30,000 in June, 2013; $100,000 in December, 2013), which was borrowed through a home equity line of credit ("HELOC") against their mortgage free home.

27. Rochon recommended that SN/GN borrow funds with a HELOC in order to invest the proceeds. He believed that this was necessary as they wanted to stay in their home but had limited available liquid assets.

28. Rochon recommended that SN/GN invest in a combination of mutual funds, and large capitalization US issuers. Rochon employed what he described to Staff as a "deep value contrarian" investment strategy based on momentum and technical analysis. He also made use of a commercial service known as "Vector Vest" to identify investment opportunities.

29. Rochon would take concentrated positions in securities whose price had declined, and hold them in anticipation of a price recovery. His strategy was to roll any profits from these positions into lower risk mutual funds.

30. This investment strategy was risky in light of the concentrated positions and the relatively short-term duration of the investments, which increased volatility. In addition, the risk was significantly higher as a large portion of the funds were borrowed.

31. Further, many of the securities were purchased in a US margin account, in order to avoid currency conversion charges. However, as a result, SN/GN incurred approximately USD $16,000 in margin interest charges.

32. Rochon was also aware that SN/GN were making regular monthly withdrawals for daily living expenses.

33. As the clients were retired, or semi-retired seniors of advanced age with limited liquid assets, and were relying on their investments for daily living expenses, the risk of loss and resulting financial harm was very high.

34. Between December, 2012 and May, 2017, the combined market value of their accounts (including net withdrawals of $22,000) decreased from $137,452 to $80,379, which represents a total net loss of $35,073, or 30.38%. During the same time period, the S&P TSX Composite Index increased by 26.13% (excluding dividends).

35. The holdings in their accounts were concentrated and speculative, and in combination with the use of leverage, were contrary to their stated investment objectives and risk tolerance, as well as their true financial circumstances. These recommendations were not suitable in light of their age, financial situation, investment knowledge and experience.

Clients – RW/HW

Failure to Know Your Client

36. RW and HW are a retired, senior couple in Manitoba. RW was born in 1949, and HW was born in 1947. RW was a teacher for many years before retiring in 2009. HW was a teacher for a number of years before staying at home with their children. She then returned to work as an administrative assistant for approximately 20 years, before retiring in 2007. Following retirement, both RW and HW continued with periodic substitute teaching.

37. RW and HW were novice investors with limited investment knowledge and exposure to the financial markets. Their investment experience was limited to mutual funds, through a mutual fund advisor with whom they were pleased.

38. This advisor had recommended that RW/HW use a line of credit for a portion of their mutual fund investments. They did so for a number of years, investing in low risk mutual funds with the borrowed funds, and achieving satisfactory results.

39. In approximately 2011, the mutual fund advisor told them he was changing his business to focus more on insurance. He recommended Rochon as a new advisor for them. They were with Rochon briefly with another Dealer Member, and then moved with him to IAS in October, 2011.

40. RW and HW believed that Rochon would continue to recommend similar investments to those of their previous advisor. They had limited investment knowledge, and relied on Rochon for his investment expertise and recommendations. Rochon was also aware that RW/HW were using borrowed funds to finance some of the investments.

41. In January, 2012, RW opened a margin account and an RSP account. HW opened an RSP account, Spousal RSP, and a LIRA. The accounts were funded through a transfer in of securities (mutual funds) with a market value of approximately $114,000.

42. At this time, RW was 62 years old and HW was 64.

43. The new client application forms (NCAF) for the RW and HW accounts all contained investment objectives of "growth", and each were listed as having "good" investment knowledge. RW and HW were both listed as substitute teachers, with annual incomes of $55,600, and $40,000 respectively. Their combined net worth was stated to be $500,000 ($150,000 liquid assets).

44. The NCAFs defined "growth" investment objectives and risk tolerance as follows:

Cash & Cash Equivalents: 0-40%

Fixed Income: 0-50%

Equities: 30-100%

Aggressive Investments and Strategies: 0-30%

Risk is high

45. In May, 2013, account updates were completed. Investment objectives were still listed as "growth". Investment knowledge was changed to "average" for HW but remained as "good" for GN. Occupations remain listed as "substitute teachers". A time horizon was identified as less than 3 years for the non-registered accounts, and 3 to 7 years for the registered accounts. It further indicated that the purpose of the accounts were to finance part of retirement. The purpose of the margin and RSP account for RW referred to speculation.

46. In July, 2015, the accounts were all changed from commission based accounts to 2% annual (charged monthly) fee-based accounts.

47. In June, 2015, the accounts were updated, with the investment profile changed from "Growth" to "Maximum Growth" in all accounts. The rest of the information on the forms remained identical, with the exception of the purpose of the account, which removed the reference to speculation.

48. The NCAF's defined "maximum growth" investment objectives and risk tolerance as follows:

Cash & Cash Equivalents: 0-30%

Fixed Income: 0-30%

Equities: 60-100%

Aggressive Investments and Strategies: 0-100%

Risk is high

49. There was very little activity in the accounts once they became fee-based. RW/HW transferred their accounts in August, 2017.

50. Although the investment objectives and risk tolerance parameters for RW and HW were broadly listed as "growth" and later changed to "maximum growth", these were not the actual investment objectives for RW and HW, who were retired and seeking a steady, conservative, long term growth investment strategy.

51. In particular, Rochon's decision to increase the level of risk in the accounts as the clients grew older was inconsistent with the clients' actual intended investment objectives and risk tolerance. He also failed to consider that some of the invested funds were borrowed and this further increased the level of risk in the accounts.

52. For the period of January, 2012 to July, 2017, the stated investment objectives in their accounts were too aggressive for these clients, who were retired seniors, with limited investment knowledge, and were seeking a steady, conservative, long term growth strategy.

53. Rochon failed to learn and remain informed of the essential facts relative to RW/HW as the stated investment objectives in their accounts were inconsistent with their true financial circumstances, investment knowledge, investment objectives and risk tolerance.

Suitability

54. RW and HW were vulnerable clients who relied on Rochon for his investment advice and recommendations. They believed Rochon would continue with a conservative investment strategy similar to that of their previous mutual fund advisor.

55. Through Rochon's own research, investment ideas and trading activity, he pursued an aggressive investment strategy in their accounts which involved an elevated degree of risk.

56. As of June, 2012, the combined market value of all the RW/HW accounts was $114,265. This included funds borrowed from a line of credit in the amount of approximately $50,000. Rochon was aware that the accounts included borrowed funds.

57. Rochon recommended that RW/HW invest in a combination of mutual funds, and large capitalization US issuers. Rochon employed what he described to Staff as a "deep value contrarian" investment strategy based on momentum and technical analysis. He also made use of a commercial service known as "Vector Vest" to identify investment opportunities.

58. Rochon would take concentrated positions in securities whose price had declined, and hold them in anticipation of a price recovery. His strategy was to roll any profits from these positions into lower risk mutual funds.

59. This investment strategy was risky in light of the concentrated positions and the relatively short term duration of the investments, which increased volatility. In addition, the risk was significantly higher as a large portion of the funds were borrowed.

60. Further, many of the securities were purchased in a US margin account, in order to avoid currency conversion charges. However, as a result, RW/HW incurred approximately USD $7,800 in margin interest charges.

61. As the clients were retired seniors with limited liquid assets, the risk of loss and resulting financial harm was very high.

62. Between June, 2012 and July, 2017, the combined market value of their accounts (net of a $5,000 withdrawal) decreased from $114,265 to $65,694, which represents a total net loss of $43,460, or 38%. During the same time period, the S&P TSX Composite Index increased by 33.29% (excluding dividends).

63. The holdings in their accounts were concentrated and speculative, and contrary to their true financial circumstances. These recommendations were not suitable in light of their age, financial situation, investment knowledge and experience.

DATED at Calgary, Alberta this 9 day of May 2019.