

IN THE MATTER OF:

**THE RULES OF THE INVESTMENT INDUSTRY REGULATORY
ORGANIZATION OF CANADA**

AND

MICHAEL PATRICK WHITE

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 IIROC Rules in this matter. The purpose of the Initial Appearance is to schedule a hearing (“Hearing”).

The Initial Appearance will be held by way of videoconference on: May 17, 2022 at 10:00 a.m.

The Respondent must serve a Response (“Response”) to this Notice of Hearing and the Statement of Allegations dated March 11, 2022 (“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 Subsection 8415(1), the Initial Appearance may be immediately converted to a Hearing.

If the Respondent files a Response in accordance with Subsection 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 Subsection 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 an:

Electronic Hearing/Video Conference

The Respondent may object to the format of the Hearing. The objection must be made in accordance with Section 8409.

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

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, impose any one or more of the following sanctions:

Where the Respondent is/was a Regulated Person who is not a Dealer Member:

- (a) a reprimand;
- (b) disgorgement of any amount obtained, including any loss avoided, directly or indirectly, as a result of the contravention;
- (c) a fine not exceeding the greater of:
 - (i) \$5,000,000 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.

Where the Respondent is/was a Dealer Member:

- (a) a reprimand;
- (b) disgorgement of any amount obtained, including any loss avoided, directly or indirectly, as a result of the contravention
- (c) a fine not exceeding the greater of:
 - (i) \$5,000,000 per contravention; and
 - (ii) an amount equal to three times the profit made or loss avoided by the Dealer Member, directly or indirectly, by reason of the contravention;
- (d) suspension of membership in IIROC or of any right or privilege associated with membership, including a direction to cease dealing with clients, for any period of time and on any terms and conditions;
- (e) imposition of any terms and conditions on the Dealer Member's continued membership, including on access to a Marketplace;
- (f) expulsion from membership and termination of the rights and privileges of membership, including access to a Marketplace;
- (g) a permanent bar to membership in IIROC;

- (h) appointment of a monitor; and
- (i) any other 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.

DATED this 11 day of March, 2022.

“National Hearing Officer”

NATIONAL HEARING OFFICER

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

MICHAEL PATRICK WHITE

STATEMENT OF ALLEGATIONS

Further to a Notice of Hearing dated March 11, 2022, Enforcement Staff make the following allegations:

PART I – REQUIREMENTS CONTRAVENED

Between January 2017 and January 2020, the Respondent failed to use due diligence to ensure that his investment recommendations were suitable for certain clients, contrary to Dealer Member Rule 1300.1 (q).

PART II – RELEVANT FACTS AND CONCLUSIONS

Overview

1. Between January 2017 and January 2020 (“the Relevant Period”) the Respondent failed to ensure his recommendations were suitable for two sets of clients: MS and her corporate account DSHI; and FJ & RJ, a married couple.
2. All of the individual clients were over the age of 65 as of January 2017.

3. During the Relevant Period, the Respondent recommended and purchased unsuitable investments for these clients, including Exempt Market Products.
4. In the case of FJ & RJ, Exempt Market Products were not suitable in part because these clients did not meet the requirements of being accredited investors.

Background

5. The Respondent has been a Registered Representative (“RR”) since 1990 and an RR with Echelon Wealth Partners Inc. (“Echelon”) since 2016. The Respondent has been on leave from Echelon since January 27, 2020.

Client MS and Her Corporate Account for DSHI

6. In 2012, while an RR at another Dealer Member the Respondent opened three personal accounts for MS; Cash, RRSP, and TFSA.
7. He also opened a corporate account for DSHI, a company created in 2007 to hold a portion of the assets of the sale of a family business. MS is the sole beneficial owner, director, and president of DSHI.
8. All accounts for MS and DSHI were fee based.
9. MS’ account documentation in 2012 reflected her year of birth as 1950, that she was employed full time, with good investment knowledge, had a net worth of approximately \$12M, and a range of risk tolerance for each account as detailed below in Appendix A.
10. MS retired in or about June 2017 and in that year the Respondent opened a LIRA account for her, which was also fee based.

11. Over the course of the Respondent's management of MS' personal accounts there was a progressive increase in documented risk tolerance and aggressive growth objectives. The details of such increases in MS' personal accounts are found at Appendix A.
12. Similarly, over the course of the Respondent's management of MS' DSHI account there was an increase in documented risk tolerance and aggressive growth objectives.
13. By 2018 the DSHI account reflected 100% high risk tolerance and investment objectives of 100% aggressive growth. The details of MS' DSHI account are found at Appendix B.
14. The Respondent did not discuss the updates to the investment objectives or the increases in risk tolerance with MS. She viewed her investment knowledge as minimal and that she had a low risk tolerance at all times.
15. Although MS signed all of the account applications, updates, and subscription agreements for the Exempt Market Products the Respondent provided no explanation in relation to any of these documents.
16. MS relied on the Respondent for his investment advice and recommendations for her personal accounts as well as the DSHI account.
17. The Respondent recommended and purchased almost exclusively high risk securities in MS' accounts and the DSHI account during the Relevant Period, including Exempt Market Products and new issue securities.
18. Both of these types of purchases generated additional commission fees within the fee based accounts as detailed below. The total value of such purchases was in excess of \$2.8M.

19. However, the Respondent did not describe any investments as high risk, or that there may be challenges in liquidating certain of the investments. He did not indicate that any of the investments would involve commissions outside of the fee-based account arrangement and did not review performance of the investments/accounts with MS.
20. The investments and the degree of risk were contrary to MS and DSHI true circumstances and were not suitable in light of MS' age, employment status, risk tolerance, and investment objectives.
21. Beginning in November 2018 and through December 2018, MS either liquidated and/or transferred in kind the vast majority of the assets from both her personal accounts and the DSHI account out of Echelon.
22. Certain securities remained in her cash account and the DSHI account with Echelon as there was either no active market for, and/or the market value could not be determined, for these securities.
23. During the Relevant Period MS' accounts, other than the TFSA account, sustained total crystalized losses of approximately \$267,000 as follows:
 - DSHI- \$195,900
 - Cash- \$30,900
 - RSP- \$39,000
 - LIRA- \$930
 - TFSA- + \$58,000

24. During the Relevant Period the Respondent earned commissions of approximately \$60,500 from purchases of Exempt Market Products and new issue securities in MS' and the DSHI accounts.

Clients FJ & RJ

25. In January and February 2018, the Respondent opened three accounts for his clients FJ & RJ; a joint account and an individual TFSA account for each. All of the accounts were fee based.
26. The Respondent recorded client information for FJ & RJ at account opening reflecting birth years as 1948 and 1949 respectively, that both were retired with average/fair investment knowledge, with a net worth of approximately \$1.4M, liquid assets of \$885,000, and a risk tolerance of 80% high and 20% medium risk for all three accounts.
27. At the Respondent's initial meeting with these clients they advised the Respondent that their objectives were to hold approximately 75% of their portfolio in safe, dividend/income producing investments; and 25% to be a riskier component based upon previously held securities, that were transferred in from another Dealer Member.
28. While FJ & RJ signed all account documents, the forms were pre-filled with the risk tolerance and investment objectives and were presented to them for signature during their initial meeting with the Respondent. The Respondent did not discuss the contents of these documents with FJ & RJ.
29. Over the course of the Respondent's management of the FJ & RJ accounts, he increased the risk tolerance for each these clients' TFSA accounts to 100% high risk and investment objectives to 100% aggressive growth.

30. The Respondent did not discuss these updates with FJ & RJ. The details of the increases to risk and objectives for these clients' accounts are found at Appendix C.
31. FJ & RJ relied on the Respondent for his investment advice and recommendations.
32. Over the course of the Respondent's management of FJ & RJ's accounts, he recommended and purchased predominantly high risk securities, including Exempt Market Products which generated additional commission fees within the fee based accounts.
33. However, he did not describe any investments as high risk, or that there may be challenges in liquidating certain of the investments. He did not indicate that any of the investments would involve commissions outside of the fee-based account arrangement.

Recommendations and Purchases for FJ & RJ Requiring Accredited Investor Certification

34. In May 2018 the Respondent updated FJ & RJ's documented liquid assets for their joint account to reflect an increase from the original \$885,000 to \$1M.
35. Three months later the Respondent recommended and purchased private placements of certain Exempt Market Products in the joint account. These purchases required FJ & RJ to certify that they were accredited investors by indicating that they had financial assets in excess of \$1M.
36. However, FJ & RJ financial assets were correctly reflected on the original joint account application at \$885,000; they at no time had \$1M in financial assets.
37. When they specifically raised concerns with the Respondent about the subscription agreements for the private placements, noting that they did not have \$1M in financial assets and that the risk disclosure section of the subscription agreements indicated they

could lose their full investment, the Respondent provided assurances about the investments.

38. From June 2018 to November 2018 the Respondent recommended and purchased five private placement Exempt Market Product investments for FJ & RJ with a value of approximately \$272,000.
39. The investments and the degree of risk were contrary to FJ & RJ's true circumstances and were not suitable in light of their age, employment status, risk tolerance, and investment objectives.
40. FJ & RJ remained clients of the Respondent until he left on leave in January 2020, when their accounts were assigned to a new RR at Echelon.
41. Over the Relevant Period, these clients sustained realized and unrealized losses in their accounts as a whole of approximately \$207,000; \$201,000 of the losses resulted from purchases of Exempt Market Products.
42. The Respondent received net commission of approximately \$7,690 from purchases of Exempt Market Products in FJ & RJ's accounts.

Financial Benefit to the Respondent

43. As noted above, during the Relevant Period, the Respondent received fees and commissions from his management of the above clients' accounts, as follows:

	<u>Fees</u>	<u>Commissions from Exempt Market Products and new issues</u>
MS & DSHI	\$111,300	\$65,000
FJ & RJ	<u>\$2,680</u>	<u>\$7,690</u>

Subtotals \$113,980 + \$72,690 [= \$186,670]

44. Accordingly, the Respondent's total financial benefit was approximately \$186,670.

DATED at this 11 day of March, 2022.

Appendix A to Statement of Allegations for Michael Patrick White

MS – Cash Account

Date	Firm	Risk: Low	Risk: Medium	Risk: High	Objective: Income	Objective: Growth	Objective: Aggressive Growth
Feb-2012	Other	50	0	50	50	50	0
Sep-2014	Other	0	50	50	50	50	0
Dec-2015	Other	0	30	70	50	0	50
Aug-2016	Echelon	0	25	75	50	0	50
Sep-2017	Echelon	0	25	75	0	50	50

MS – RRSP Account

Date	Firm	Risk: Low	Risk: Medium	Risk: High	Objective: Income	Objective: Growth	Objective: Aggressive Growth
Feb-2012	Other	0	100	0	0	100	0
Sep-2014	Other	0	50	50	0	85	15
Dec-2015	Other	0	30	70	0	85	15
Aug-2016	Echelon	0	30	70	0	85	15

MS – TFSA Account

Date	Firm	Risk: Low	Risk: Medium	Risk: High	Objective: Income	Objective: Growth	Objective: Aggressive Growth
Feb-2012	Other	0	100	0	0	100	0
Sep-2014	Other	0	50	50	0	85	15
Aug-2016	Echelon	0	30	70	0	85	15
May-2018	Echelon	0	0	100	0	0	100

MS – LIRA Account

Date	Firm	Risk: Low	Risk: Medium	Risk: High	Objective: Income	Objective: Growth	Objective: Aggressive Growth
Sep-2017	Echelon	0	80	20	0	80	20
May-2018	Echelon	0	60	40	0	60	40

Appendix B to Statement of Allegations for Michael Patrick White

DSHI Account

Date	Firm	Risk: Low	Risk: Medium	Risk: High	Objective: Income	Objective: Growth	Objective: Aggressive Growth
Feb-2012	Other	80	10	10	80	20	0
Sep-2014	Other	50	25	25	70	15	15
Aug-2016	Echelon	35	30	35	70	15	15
May-2018	Echelon	0	0	100	0	0	100

Appendix C to Statement of Allegations for Michael Patrick White

FJ & RJ - Joint Cash Account

Date	Risk: Medium	Risk: High	Objective: Growth	Objective: Aggressive Growth
Jan-2018	20	80	20	80

RJ - TFSA

Date	Risk: Medium	Risk: High	Objective: Growth	Objective: Aggressive Growth
Feb-2018	20	80	20	80
May-2018	0	100	0	100

FJ - TFSA

Date	Risk: Medium	Risk: High	Objective: Growth	Objective: Aggressive Growth
Feb-2018	20	80	20	80
May-2018	0	100	0	100