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Canadian Investment
Regulatory
Organization

Organisme canadien
de réglementation
des investissements

IN THE MATTER OF:

**THE INVESTMENT DEALER AND PARTIALLY CONSOLIDATED
RULES AND THE DEALER MEMBER
RULES of the Canadian Investment Regulatory Organization**

and

ECHELON WEALTH PARTNERS INC. and STEPHEN BURNS

**NOTICE OF MOTION
(Second Motion by the Respondents for Rule Contravention Particulars)**

NOTICE is hereby given that a motion will be brought before a Hearing Panel (the "**Hearing Panel**") of the Canadian Investment Regulatory Organization ("**CIRO**") on a date to be determined.

NOTICE is further given that it is proposed that the motion be conducted as an oral hearing.

THE MOTION is for:

- (a) An Order that CIRO Enforcement Staff ("**Staff**") comply with the Order of the Chair of the Hearing Panel (the "**Chair**") dated November 1, 2024 (the "**Particulars Order**"), to particularize for the Respondents the individual Investment Dealer and Partially Consolidated Rules (the "**Investment Dealer**

Rules”) and specific sections and sub-sections thereof alleged to have been contravened by each of the Respondents;

- (b) An Order that Staff provide factual particulars underlying the New Allegations (as defined below) for which no or insufficient factual particulars have been provided to date; and
- (c) Such further and other relief as counsel may advise and the Hearing Panel may grant.

THE GROUNDS for the motion are:

A. BACKGROUND

- (a) This is the second motion for rule contravention particulars that the Respondents have been forced to bring in this proceeding. The Merits Hearing is currently scheduled for February 3 to 7 and 10 to 14, 2025;
- (b) The proceeding was commenced by Notice of Hearing and Statement of Allegations issued March 8, 2024 (the “**SOA**”). The SOA alleged the following contraventions of the Dealer Member Rules and the Investment Dealer Rules:

Contravention 1

Between July 2018 and June 2022 (the “Relevant Period”), Echelon Wealth Partners Inc. (“Echelon”) and Stephen Burns (“Burns”) failed to use due diligence to learn and remain informed of the essential facts relative to the accounts and orders of four foreign broker-dealers, contrary to Dealer Member Rule 1300.1 (prior to January 1st, 2022) and **Investment Dealer Rule 3200** (after January 1st, 2022).

Contravention 2

Between July 2018 and June 2022, Echelon and Burns failed to act as gatekeepers in relation to the trading activity in US Over-the-Counter (“OTC”) securities by the foreign broker dealers, contrary to **Investment Dealer Rule 1400**.

Contravention 3

Between July 2018 and June 2022, Echelon failed to establish, maintain, and enforce an adequate system of controls and supervision in relation to US OTC trading, contrary to Dealer Member Rule 38.1 (prior to January 1st, 2022) and **Investment Dealer Rule 3900** (after January 1st, 2022). [Emphasis Added]

- (c) The Respondents served and filed a Response dated April 8, 2024. To address concerns raised by counsel for the Respondents at the Initial Appearance held on May 29, 2024, the Chair directed Staff to provide particulars of the rule contraventions alleged;
- (d) By email dated June 14, 2024, Staff provided the following particulars (noted in underline) of the Rule contraventions alleged in the SOA (the “**June Particulars**”):

Contravention 1: Dealer Member Rule 1300.1(a) (for the period prior to January 1, 2022) and Part A “Know-Your-Client and Identification Requirements” of Investment Dealer Rule 3200 (for the period after January 1, 2022).

Contravention 2: Section 1402 of Investment Dealer Rule 1400.

Contravention 3: Dealer Member Rule 38.1 in its entirety (for the period prior to January 1, 2022) and Part A “General Supervision Requirements” of Investment Dealer Rule 3900 and Part B “Supervision of All Accounts” of Investment Dealer Rule 3900 (for the period after January 1, 2022).

- (e) The June Particulars for Contraventions 1 and 3 did not specify individual

rules, sections and sub-sections allegedly violated by each of the Respondents. Instead, the generalized rule ranges for Contraventions 1 and 3 in the June Particulars still comprised multiple rules, sections and sub-sections containing multiple obligations and prohibitions and, therefore, multiple potential violations.

Accordingly, the June Particulars were insufficient to permit the Respondents to know the case they must meet and to make full answer and defence at the Merits Hearing. In addition, the June Particulars were insufficient to define the issues and prevent surprise, including by ensuring that the Merits Hearing would be fair and efficient;

B. THE PARTICULARS ORDER

(f) Accordingly, after Staff refused to provide additional particulars requested by the Respondents, by Notice of Motion dated September 16, 2024, the Respondents commenced a motion for rule contravention particulars (the “**First Particulars Motion**”). The First Particulars Motion was successful following an oral hearing held on November 1, 2024. The Particulars Order was issued as a result;

(g) The Particulars Order required that:

IT IS ORDERED that the Particulars Motion is granted. Staff is to particularize for the Respondents the individual Investment Dealer and Partially Consolidated Rules (the “**Investment Dealer Rules**”) and specific sections and sub-sections thereof alleged to have been contravened by each of the Respondents by no later than November 15, 2024. [Emphasis Added]

C. THE NOVEMBER PARTICULARS

(h) By letter dated November 14, 2024, Staff provided the following additional particulars of the rule contraventions alleged in the SOA (the “**November Particulars**”):

Contravention 1: - Rules 1300.1(a), 1300.1(n) and 1300.1(o) (Dealer Member Rules)
- Sections 3202 and 3209 of Rule 3200 (Investment Dealer Rules)

Contravention 2: - Sections 1402, 1403(1) and (2), 1404, 1405 and 1406 of Rule 1400 (Investment Dealer Rules)

Contravention 3: - Rule 38.1 (Dealer Member Rules)
- Sections 3901, 3904, 3905, 3908, 3925, 3926 and 3927 of Rule 3900 (Investment Dealer Rules)

(i) The November Particulars raise the following primary issues:

- i. First and foremost, Staff have refused or failed to comply with the Particulars Order. For Contraventions 1 and 3, Staff have still not specified the sub-sections of the Investment Dealer Rules allegedly violated, contrary to the express terms and requirements of the Particulars Order. Staff have also refused or failed to specify which alleged rule violations apply to which Respondent, contrary to the express terms and requirements of the Particulars Order;
- ii. For Contravention 1, Staff have now added alleged violations of Dealer Member Rules 1300.1 (n) and 1300.1 (o), which were not

contained in the June Particulars. Similarly, for Contravention 2, Staff have now added alleged violations of Investment Dealer Rules 1403(1) and (2), 1404, 1405 and 1406, which were not contained in the June Particulars (together, the “**New Allegations**”); and

iii. Whereas in the June Particulars for Contravention 3, Staff particularized the alleged violation of Dealer Member Rule 38.1 “in its entirety”, Staff have now removed reference to “in its entirety”;

(j) The Particulars Order was issued to ensure that the Respondents could know the case they must meet and make full answer and defence at the Merits Hearing and so that the Merits Hearing would be fair and efficient. In addition, the Particulars Order was made having regard to the requirements applicable to statements of allegations as set out in Investment Dealer Rule 8414 (3)(i):

(3) A statement of allegations may accompany or comprise part of a notice of *hearing* and must contain: (i) a reference to *Corporation requirements* or *applicable laws* that the *respondent* is alleged to have contravened,

(k) The November Particulars, including by failing to comply with the Particulars Order, frustrate the purposes for which the Particulars Order was made. Staff’s conduct with respect to the issue of particulars, generally, is causing unfairness and delay in the proceeding;

D. NON-COMPLIANCE WITH THE PARTICULARS ORDER

(l) At minimum, the November Particulars do not specify the sub-sections of the Investment Dealer Rules alleged to have been contravened by each of the Respondents. For example:

- i. With respect to Contravention 1, Investment Dealer Rule 3209 has four sub-sections, none of which have been specified. Sub-section 3209 (4) requires that information collected under 3202(1)(iii) be reviewed no less frequently than once every 36 months, except for a managed account and a discretionary account which must be reviewed no less frequently than once every 12 months. The Respondents do not know at this stage of the proceeding whether Staff intend to prove a breach of this obligation at the Merits Hearing;
- ii. With respect to Contravention 2, Investment Dealer Rule 1404, which forms part of the New Allegations, has four sub-sections, none of which have been specified. Sub-section 1404 (4) provides that CIRO may require the adoption of additional or different policies and procedures if the existing policies and procedures are insufficient to comply with CIRO requirements. The Respondents do not know at this stage of the proceeding whether Staff intend to prove a breach of this obligation at the Merits Hearing;
- iii. With respect to Contravention 3, Dealer Member Rule 38.1 has seven sub- sections, none of which have been specified. As stated, in the June Particulars, Staff specified that the entirety of the rule was

applicable. However, in the November Particulars, Staff removed the 'entirety' reference. Sub-section 38.1 (iv) requires that there be sufficient personnel and other resources to fully and properly enforce written policies and procedures. The Respondents do not know at this stage of the proceeding whether Staff intend to prove a breach of this obligation at the Merits Hearing. In addition, Sub-section 38.1 (vii) requires that adequate records of supervisory activity, compliance issues identified and resolution of those issues be maintained. The Respondents do not know at this stage of the proceeding whether Staff intend to prove breach of this obligation at the Merits Hearing;

iv. With respect to Contravention 3, Investment Dealer Rule 3908 has five subsections, none of which have been specified. Sub-section 3908 (1) requires the maintenance of records of the names of Supervisors, their supervisory responsibilities and the date each Supervisor was assigned. The Respondents do not know at this stage of the proceeding whether Staff intend to prove breach of this obligation at the Merits Hearing;

(m) The foregoing examples are only some of the total number of instances where sub- sections of the Investment Dealer Rules have still not been specified, contrary to the Particulars Order. In addition, for Dealer Member Rule 38.1 for Contravention 3, Staff has reverted to a more generalized description of the Rule than the description contained in the June Particulars. Further, Staff's approach continues to be inconsistent and arbitrary. For some of the

Dealer Member Rules and some of the Investment Dealer Rules, Staff have identified the applicable sub-sections. However, for other rules, they have not;

- (n) The November Particulars are also silent on the issue of which alleged rule violations apply to which Respondent;
- (o) As argued on the First Particulars Motion, the failure to particularize the rule contraventions (in the manner that has now been ordered by the Chair), not only impairs the Respondents' ability to make full answer and defence, it also disadvantages the Hearing Panel. The Hearing Panel will have to discern, without assistance from Staff, what violations are in issue as they hear evidence at the Merits Hearing. The Hearing Panel will not have the proper basis to make the necessary determinations of whether Staff has met their burden of proving the specific contraventions alleged. This impedes the proper exercise of the Hearing Panel's jurisdiction;

E. FACTUAL PARTICULARS REQUIRED

(p) For the following New Allegations, the SOA contains no or insufficient underlying factual particulars regarding the rule violations now alleged (or potentially alleged) in the November Particulars:

- i. Contravention 1 – Dealer Member Rule 1300.1 (n) – Staff have specified this sub-section, which provides that “Dealer Members must maintain records of all information obtained and verification procedures conducted under this Rule 1300.1 in a form accessible to the Corporation for a period of five years after the closing of the account to which they relate.” The SOA does not plead any or sufficient material facts about whether either of the Respondents failed to maintain client verification records in a form accessible to CIRO for a period of five years;
- ii. Contravention 2 – Investment Dealer Rule 1404 (4) – Staff have not specified this sub-section, but they have added reference to the Rule in the November Particulars. The sub-section provides that “The Corporation may require a Dealer Member to adopt additional or different policies and procedures if the existing policies and procedures are insufficient to comply with Corporation requirements.” The SOA does not plead any or sufficient material facts about whether either of the Respondents failed to adopt additional or different policies and procedures when required to do so by CIRO

because their existing policies and procedures were identified as insufficient to comply with CIRO requirements;

- iii. Contravention 2 – Investment Dealer Rule 1405 (3) – Staff have not specified this sub-section, but they have added reference to the Rule in the November Particulars. The sub-section provides that “The Corporation may require a Dealer Member to provide it with evidence, satisfactory to the Corporation, of the Dealer Member’s compliance with Corporation requirements.” The SOA does not plead any or sufficient material facts about whether either of the Respondents failed to provide CIRO when requested with evidence regarding their compliance with CIRO requirements;

(q) To the extent that Staff intends to pursue the above New Allegations, the factual particulars underlying them must be provided to the Respondents to ensure that they know the case they must meet and are able to make full answer and defence at the Merits Hearing;¹ and

(r) Such further and other grounds as counsel may advise and the Hearing Panel may permit.

¹ [Rene Pardo et al.](#), 2007 ONSEC 16, at [para. 11](#)

THE FOLLOWING evidence and materials will be relied upon at the hearing of the motion:

- (a) The Respondents' Motion Record, in accordance with Investment Dealer Rule 8413 (3);
- (b) The Respondents' memorandum of fact and law, in accordance with Investment Dealer Rule 8413 (11); and
- (c) Such further and other materials as counsel may advise and the Hearing Panel may permit.

DATED November 29, 2024

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