Re Dyck

IN THE MATTER OF:

The Dealer Member Rules of the Investment Industry Regulatory Organization of Canada (IIROC)

and

The By-Laws of the Investment Dealers Association of Canada (IDA)

and

Terry Norman Dyck

2012 IIROC 31

Investment Industry Regulatory Organization of Canada
Hearing Panel (Ontario District Council)

Heard: February 29, 2012
Decision: May 7, 2012

Hearing Panel:
Paul M. Moore, Q.C, Chair, David Lang, Selwyn Kossuth
Appearance:
Natalija Popovic and Susan Kushneryk, IIROC Senior Enforcement Counsel
Mark Evans and Michael Beeforth, Counsel for the respondent

Reasons

The Hearing

¶ 1 A hearing in this matter was held on March 6, 2012.

¶ 2 The respondent did not put in a reply and did not challenge the evidence put in by IIROC.

¶ 3 The respondent was represented at the hearing by counsel, who raised no objections as to anything.

¶ 4 We accepted as proven the facts and violations alleged against the respondent by IIROC in the Notice of Hearing.

¶ 5 Counsel for IIROC then made submissions as to appropriate sanctions, which she stated were joint submissions of IIROC and the respondent. Counsel for the respondent did not disagree. Accordingly, we treated the submissions as joint submissions by IIROC and the respondent.

¶ 6 We decided that the sanctions recommended in the joint submissions were appropriate in the particular circumstances of this case.

¶ 7 We gave brief oral reasons for our decision and indicated that we would subsequently issue an order and written reasons.

¶ 8 The order was issued in early March. These are the written reasons.

The Allegations

¶ 9 IIROC alleged that during 2009 the respondent failed to use due diligence to learn and remain informed of the essential facts concerning leveraged exchange traded fund products that were the subject matter of orders accepted by him, contrary to IIROC Dealer Member Rule 1300.1(a); and, that he failed to use due diligence to ensure that his recommendations concerning these products were suitable for his clients, contrary to IIROC Dealer Member Rule 1300.1(q).

Facts

¶ 10 The respondent accepted orders for the purchase of leveraged exchange traded funds for several clients. The respondent believed that leveraged exchange traded funds were good investments and recommended them widely among his clients as "medium risk" or "moderate risk" investments, although the prospectuses for the funds described them as "highly speculative". By 2009, 141 of his clients held one or more of these funds across 186 accounts, almost half his book of clients.

¶ 11 The respondent did not understand how leveraged funds were different from and more speculative and risky than ordinary exchange traded funds, as indicated in the prospectuses of the funds. He did not comprehend the risk posed by leverage in these funds, nor the significant attendant costs associated with these funds that are not associated with normal exchange traded funds. Indeed, he did not believe that leverage exchange traded funds were complicated, risky products.

¶ 12 These funds were not suitable for many of these clients. They relied on him and several suffered significant losses, aggregating just over $270,000. Individual clients were impacted significantly.

Sanctions

¶ 13 IIROC and respondent's counsel jointly submitted that the following sanctions were appropriate:

(a) a prohibition from registration with IIROC at any time within 7 years from the date of our decision;

(b) a fine of $20,000; and

(c) an order for costs for $2,500.

Submissions as to Appropriateness

¶ 14 Counsel submitted that the proposed sanctions were appropriate because:

(a) they fairly reflect the respondent's wrongdoing;

(b) they will send a strong deterrent message on the critical issue of a registrant's obligation to know and understand risks of a product he is selling, to be able to perform his suitability obligation to his clients.

Reasons

¶ 15 Ensuring that a product is suitable for a client is one of the most basic obligations of an advisor. If the advisor does not understand a product he is selling, it is impossible to make a determination whether that product is suitable for a particular client.

¶ 16 We agreed with counsel that a strong deterrent message was warranted.

¶ 17 We initially thought the 7 years prohibition period rather long, where there was no question of dishonesty or bad intent and no prior disciplinary record. However, we gave great weight to the fact that the submissions as to the appropriateness of the sanctions were joint.

¶ 18 The respondent was negligent in not reading and heeding the risk disclosure information about the products in the prospectuses for them. He also was inexplicably simplistic in his understanding of the risks of leverage imbedded in the products.

¶ 19 We would normally have expected that sanctions in this case would include a requirement that, prior to returning to the investment industry, the respondent be required to take a basic securities course which included identifying risks in investment products, including risks associated with using leverage, derivatives and related matters. However, in view of the respondent's age and the fact that he will be out of the industry for at least 7 years, it is highly unlikely that he will ever return to the industry. We also recognize that if after 7 years, he applied for registration, those responsible for registering him would have to be satisfied that he was then suitable for the desired position.

¶ 20 In the final analysis, we were comfortable in accepting the joint submissions that the proposed sanctions were appropriate in the unique circumstances of the respondent and this case.

Dated at Toronto this 1st day of June, 2012.

Paul M. Moore, Q.C.

David Lang

Selwyn Kossuth