

## Re Gouda

### IN THE MATTER OF:

The Investment Dealer and Partially Consolidated Rules and the Dealer Member Rules

and

Omar Gouda

2024 CIRO 91

Canadian Investment Regulatory Organization Hearing Panel  
(Quebec District)

Heard: December 4, 2024

Decision: December 4, 2024

Reasons: December 18, 2024

#### Hearing Panel:

Michel Brunet, Chair, Sylvain Perreault and Daniel Houle

#### Appearances:

Francis Larin, Enforcement Counsel

Fabrice Benoit, Counsel for the Respondent

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## DECISION ON ACCEPTANCE OF SETTLEMENT AGREEMENT

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### SETTLEMENT AGREEMENT

¶ 1 On July 23, 2024, Staff of the Canadian Investment Regulatory Organization (CIRO) and the Respondent entered into a settlement agreement (the Settlement Agreement), which is attached hereto.

¶ 2 The settlement hearing was intended to determine whether the Panel should accept the Settlement Agreement pursuant to sections 8215 and 8428 of the Investment Dealer and Partially Consolidated Rules (the Investment Dealer Rules).

¶ 3 The hearing, held electronically on December 4, 2024, focused on the suitability of the sanctions provided in the Settlement Agreement.

¶ 4 After deliberating, the Hearing Panel informed the parties that it accepted the Settlement Agreement and that the reasons for its acceptance would follow later.

¶ 5 The Respondent did not personally attend the hearing, but was represented by his counsel.

#### Contraventions

¶ 6 The contraventions outlined in the Settlement Agreement are as follows:

##### Contravention 1

Between November 2020 and January 2022, the Respondent failed to use due diligence to ensure the recommendations made for his client BL were suitable, contrary to Dealer Member Rule 1300.1(q) (before January 1<sup>st</sup>, 2022) and Investment Dealer and Partially Consolidated Rule 3402 (beginning January 1<sup>st</sup>, 2022).

#### Contravention 2

Between November 2020 and January 2022, the Respondent engaged in excessive trading in the accounts of his client BL, which was not within the bounds of good business practice, contrary to Dealer Member Rule 1300.1(o) (before January 1<sup>st</sup>, 2022) and Investment Dealer and Partially Consolidated Rule 3102 (beginning January 1<sup>st</sup>, 2022).

¶ 7 In paragraph 3 of the Settlement Agreement, the Respondent agrees with the facts as set out in Part III thereof. There is no need to relate all the facts here. We note, however, that the Respondent had a few years of experience at the time he committed the contraventions in question and that he had no previous disciplinary history with CIRO.

#### **Sanctions provided in the Settlement Agreement**

¶ 8 The Respondent agrees to the following sanctions and costs:

- (i) a fine in the amount of \$25,000;
- (ii) disgorgement of \$7,693.30, representing the commissions received by the Respondent in this case;
- (iii) the obligation to pass the Conduct and Practices Handbook (CPH) Course exam, within 60 days after the acceptance of the Settlement Agreement;
- (iv) strict supervision by his employer for a period of 6 months;
- (v) an additional amount of \$2,500 in costs.

¶ 9 In his representations, Mr. Larin, CIRO Enforcement Counsel, reminded the Panel of the role it plays in deciding whether to accept a settlement agreement, a role that was well defined in the landmark decision *Re Milewski*, (1999) I.D.A.C.D. No.17. It described the test to be applied to determine whether a settlement agreement should be accepted:

Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council in making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.

This understanding is reflected in paragraph 20.26 of the By-laws, which authorizes the District Council to “accept” rather than “approve” a settlement agreement. In each case, a District Council must determine appropriateness, but the standards applicable to its doing so on a settlement hearing differ from those in a contested hearing. Thus, the penalties imposed under settlement agreements, while relevant to a District Council exercising its discretion to penalize, provide only limited assistance in a hearing like this. (pp. 9-10)

¶ 10 Two of the decisions relating to similar facts that were submitted to us in support of the parties’ recommendation to accept the Settlement Agreement warranted special consideration: *Re Drose* 2021 IIROC 17 and *Re Dunn* 2020 IIROC 11.

¶ 11 In *Drose*, liability was determined after a disciplinary hearing. The Respondent was found guilty of contraventions similar to those for which the Respondent in the case before us has admitted his guilt:

- (i) Mr. Drose, the Respondent, by failing to know his client, diverged from the standard expected of him as an IIROC Registered Representative, and breached IIROC Dealer Member Rule 1300.1(a);
- (ii) The excessive trading in the GA Account fell outside the bounds of good business practice and was unsuitable for GA, contrary to Dealer Member Rules 1300.1(o), 1300.1(q) and 1300.1(s).

¶ 12 Special attention should be paid to the following passage:

The Respondent then engaged in excessive trading in the seventeen months during which the GA Account was opened. The GA Account represented more than 76% of the Respondent's AUA when the account was opened and averaged approximately 73% of the Respondent's AUA over the life of the account. The Respondent executed 168 trades over the life of the account, a number far greater than the seven trades in all of the respondent's other clients' accounts combined. He engaged in high risk, speculative, and short-term trading. As a result, the turnover rate on the GA Account, which provides evidence of the frequency with which the securities in the account were traded for new securities, was 26.52 (annualized). This trading was not profitable and resulted in losses to the client in excess of \$1.3 million. In comparison, the total gross commissions on the GA Account exceeded \$232,000, resulting in a commission to equity ratio of 39.09 (annualized).

¶ 13 The following sanctions were imposed on Mr. Drose:

- (i) a fine of \$137,171, including disgorgement of \$112,171;
- (ii) a 24-month prohibition on registration with IIROC in any capacity;
- (iii) re-write of the Conduct and Practices Handbook course exam prior to seeking re-registration with IIROC;
- (iv) 12 months strict supervision period after any IIROC approval;
- (v) costs of \$35,000 payable to IIROC.

¶ 14 The Respondent had contested the facts he was accused of during a hearing on the merits. That is a factor we must take into consideration.

¶ 15 The alleged contraventions in *Re Dunn*, the most relevant case according to Enforcement Counsel, were similar to those Mr. Gouda admitted to in the Settlement Agreement.

#### **Contravention 1**

Between November 2010 and October 2015, the Respondent engaged in excessive trading in the accounts of his clients BP and CA, contrary to Dealer Member Rules 1300.1(q) and 100.1(o).

#### **Contravention 2**

Between November 2010 and October 2015, the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to his clients BP and CA, contrary to Dealer Member Rule 1300.1(a).

¶ 16 Mr. Dunn admitted committing those contraventions and agreed to the following sanctions:

- a) a fine of \$25,000;
- b) a six-month suspension;
- c) six months period of strict supervision;
- d) re-write the Conduct and Practices Handbook Course exam before starting to work again;
- e) costs of \$5,000 to IIROC.

¶ 17 One material fact that distinguishes the Dunn case from the Gouda case is that, before signing the settlement agreement that gave rise to the sanctions outlined in paragraph 16 above, Mr. Dunn had entered into a previous settlement agreement some five years earlier, relating to the suitability of his recommendations to his clients and his failure to comply with KYC requirements. That meant that Mr. Dunn had disciplinary history for similar contraventions.

¶ 18 The sanctions imposed in the Drose and Dunn cases, taking into account the differences in material facts described above, as well as those in the other decisions submitted to us, have brought us to the unanimous conclusion that the sanctions outlined in the Settlement Agreement are acceptable and clearly fall within a reasonable range of appropriateness. They appear to be fair and reasonable, and should serve as deterrents for both the Respondent and the industry.

¶ 19 We remind those who might find these sanctions severe that people like the Respondent who work in this industry are privileged to work in a field where trust is paramount, a field where they incur a high degree of liability in exchange for being entrusted with the administration of other people's assets.

¶ 20 We therefore unanimously accept this Settlement Agreement.

**DATED** at Montréal this 18<sup>th</sup> day of December, 2024.

"Michel Brunet"

Michel Brunet, Chair

"Sylvain Perreault"

Sylvain Perreault

"Daniel Houle"

Daniel Houle

**IN THE MATTER OF:**

**The Investment Dealer and Partially Consolidated Rules And The Dealer Member Rules**

**and**

**Omar Gouda**

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## **SETTLEMENT AGREEMENT**

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### **PART I – INTRODUCTION**

¶ 1 The Canadian Investment Regulatory Organization (“CIRO”)<sup>i</sup> will issue a Notice of Application to announce a settlement hearing pursuant to sections 8215 and 8428 of the Investment Dealer and Partially Consolidated Rules (the “Investment Dealer Rules”) to consider whether a hearing panel should accept this Settlement Agreement between Enforcement Staff and Omar Gouda (the “Respondent”).

### **PART II – JOINT SETTLEMENT RECOMMENDATION**

¶ 2 Enforcement Staff and the Respondent jointly recommend that the hearing panel accept this Settlement Agreement in accordance with the terms and conditions set out below.

### **PART III – AGREED FACTS**

¶ 3 For the purposes of this Settlement Agreement, the Respondent agrees with the facts as set out in Part III if this Settlement Agreement.

#### **Background**

¶ 4 The Respondent has been registered with the Canadian Investment Regulatory Organization (CIRO) as well as its predecessor, the Investment Industry Regulatory Organization of Canada (IIROC), since October 2016.

¶ 5 From September 2020 to April 2022, the Respondent was employed by and registered with Research Capital Corporation (RCC).

¶ 6 Since September 2022, the Respondent is employed by and registered with another CIRO dealer-member.

¶ 7 The Respondent had no prior disciplinary history before CIRO.

#### **Client BL**

¶ 8 BL, born in 1972 and employed as a software developer, completed an initial *New Client Application Form* with the Respondent and RCC on or about October 17, 2020.

¶ 9 According to her file, client BL’s investment knowledge was then “limited”, her investment objectives set at 100% under “grow portfolio through income and/or capital gains” and her risk tolerance, “60% medium risk; 40% high risk”.

¶ 10 On or about October 25, 2021, BL completed another *New Client Application Form* with the Respondent and RCC, pursuant to which her investment knowledge was upgraded to “good” and her investment objectives revised to “60% grow portfolio through income and/or capital gains; 40% short term trading”, while her risk tolerance remained “60% medium risk; 40% high risk”.

¶ 11 For the 15 months included in the period from November 1<sup>st</sup>, 2020, to January 31, 2022 (“the Relevant Period”), the investments in BL’s accounts have exceeded the 40% high risk threshold on 11 occasions and, for 9 of these months, these high risk investments have represented between 66% and 92% of BL’s accounts.

¶ 12 For the Relevant Period, the Respondent has executed 173 trades in the accounts of BL, which resulted in an annualized turnover ratio of 6.57.

¶ 13 These trades generated commissions in the amount of \$23,762.20, which represented an annualized commission-to-equity ratio of 40% in the accounts of BL for the Relevant Period.

¶ 14 The Respondent’s initial share of these commissions represented 50% of this amount (\$11,881.10).

¶ 15 Whilst the investments in BL’s accounts over the Relevant Period represented a total of \$104,099.49, their value as at January 31<sup>st</sup>, 2022, was \$49,007.17.

¶ 16 RCC and BL have since agreed on a compensation for the losses incurred in BL’s accounts.

#### **PART IV – CONTRAVENTIONS**

¶ 17 By engaging in the conduct described above, the Respondent committed the following contraventions of CIRO requirements:

##### **Contravention 1**

Between November 2020 and January 2022, the Respondent failed to use due diligence to ensure the recommendations made for his client BL were suitable, contrary to paragraph 1 (q) of Dealer Member Rule 1300 (before January 1<sup>st</sup>, 2022) and section 3402 of the Investment Dealer and Partially Consolidated Rules (beginning January 1<sup>st</sup>, 2022).

##### **Contravention 2**

Between November 2020 and January 2022, the Respondent engaged in excessive trading in the accounts of his client BL, which was not within the bounds of good business practice, contrary to paragraph 1 (o) of Dealer Member Rule 1300 (before January 1<sup>st</sup>, 2022) and section 3102 of the Investment Dealer and Partially Consolidated Rules (beginning January 1<sup>st</sup>, 2022).

#### **PART V – TERMS OF SETTLEMENT**

¶ 18 The Respondent agrees to the following sanctions and costs:

- (i) A fine in the amount of \$25,000;
- (ii) Disgorgement of \$7,693.30 representing the commissions collected by the Respondent in this matter;
- (iii) The obligation to pass the Conduct and Practices Handbook (CPH) Course exam, within 60 days after the acceptance of this Settlement Agreement;
- (iv) Strict supervision by his employer for a period of 6 months;
- (v) An additional amount of \$2,500 in costs.

¶ 19 If this Settlement Agreement is accepted by the hearing panel, the Respondent agrees to pay the amounts referred to above within 30 days of such acceptance unless otherwise agreed between Enforcement Staff and the Respondent.

#### **PART VI – STAFF COMMITMENT**

¶ 20 If the hearing panel accepts this Settlement Agreement, Enforcement Staff will not initiate any further action against the Respondent in relation to the facts set out in Part III and the contraventions in Part IV of this Settlement Agreement, subject to the provisions of the paragraph below.

¶ 21 If the hearing panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of this Settlement Agreement, Enforcement Staff may bring proceedings under Investment Dealer Rule

8200 against the Respondent. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement.

#### **PART VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT**

¶ 22 This Settlement Agreement is conditional on acceptance by the hearing panel.

¶ 23 This Settlement Agreement shall be presented to a hearing panel at a settlement hearing in accordance with sections 8215 and 8428 of the Investment Dealer Rules, in addition to any other procedures that may be agreed upon between the parties.

¶ 24 Enforcement Staff and the Respondent agree that this Settlement Agreement will form all the agreed facts that will be submitted at the settlement hearing, unless the parties agree that additional facts should be submitted at the settlement hearing. If the Respondent does not appear at the settlement hearing, Staff may disclose additional relevant facts, if requested by the hearing panel.

¶ 25 If the hearing panel accepts this Settlement Agreement, the Respondent agrees to waive all rights under the Rules of CISO and any applicable legislation to any further hearing, appeal and review.

¶ 26 If the hearing panel rejects this Settlement Agreement, Enforcement Staff and the Respondent may enter into another settlement agreement or Enforcement Staff may proceed to a disciplinary hearing based on the same or related allegations.

¶ 27 The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the hearing panel.

¶ 28 This Settlement Agreement will become available to the public upon its acceptance by the hearing panel and CISO will post a copy of this Settlement Agreement on the CISO website. CISO will publish a notice and news release of the facts, contraventions, and the sanctions agreed upon in this Settlement Agreement and the hearing panel's written reasons for its decision to accept this Settlement Agreement.

¶ 29 If this Settlement Agreement is accepted, the Respondent agrees that neither they nor anyone acting on their behalf, will make a public statement inconsistent with this Settlement Agreement.

¶ 30 This Settlement Agreement is effective and binding upon the Respondent and Enforcement Staff as of the date of its acceptance by the hearing panel.

#### **PART VIII – EXECUTION OF SETTLEMENT AGREEMENT**

¶ 31 This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.

¶ 32 An electronic copy of any signature will be treated as an original signature.

**DATED** this 23 day of October, 2024.

(s) Omar Gouda

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Omar Gouda

**DATED** this 23 day of October, 2024.

(s) Francis Larin

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Francis Larin

Enforcement Counsel

on behalf of Enforcement Staff  
of the Canadian Investment Regulatory Organization

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<sup>i</sup> The Canadian Investment Regulatory Organization (“CIRO”) has adopted interim rules that incorporate the pre-amalgamation regulatory requirements contained in the rules and policies of IIROC and the by-laws, rules and policies of the MFDA (the “Interim Rules”). The Interim Rules include (i) the Investment Dealer and Partially Consolidated Rules, (ii) the UMIR and (iii) the Mutual Fund Dealer Rules. These rules are largely based on the rules of IIROC and certain by-laws, rules and policies of the MFDA that were in force immediately prior to amalgamation. Where the rules of IIROC and the rules and by-laws and policies of the MFDA that were in force immediately prior to amalgamation have been incorporated into the Interim Rules, Enforcement Staff have referenced the relevant sections of the Interim Rules.

Section 1105 (Transitional provision) of the Investment Dealer and Partially Consolidated Rules sets out CIRO’s continuing jurisdiction, including that CIRO shall continue the regulation of any person subject to the jurisdiction of the Investment Industry Regulatory Organization of Canada that was formerly conducted by the Investment Industry Regulatory Organization of Canada.