# Re Robinson

**IN THE MATTER OF:**

**The Dealer Member Rules of the Investment Industry Regulatory Organization of Canada**

**and**

**Kelly Robinson**

2016 IIROC 38

Investment Industry Regulatory Organization of Canada
Hearing Panel (Pacific District)

Heard: September 9, 2016 in Vancouver, British Columbia
Decision: September 9, 2016
Reasons: September 30, 2016

**Hearing Panel:**
Leon Getz, Q.C., Chair, Robert Travers and Alexandra Williams
**Appearances:**
Stacey Robertson, Enforcement Counsel
H. Roderick Anderson, for Kelly Robinson

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# REASONS FOR ACCEPTANCE OF SETTLEMENT AGREEMENT

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¶ 1 We were constituted for the sole purpose of deciding, as provided for in IIROC Dealer Member Rule 20.36, whether to accept or reject a Settlement Agreement made earlier this year between Mr. Robinson and IIROC's Enforcement Staff. A copy of the Settlement Agreement is annexed to these Reasons.

¶ 2 In reaching our decision, we may only consider whether the agreed upon penalties are, or are not, clearly outside an acceptable range of appropriateness, having regard to the indisputable benefits to all parties of the settlement process. Those benefits have been described in a number of cases – for example, *Re Deutsche Bank Securities Ltd*., 2013 IIROC 7 at para. 9; *Re Clark*, [1999] I.D.A.C.D. No. 40 at page 4; and *Re Milewski*, [1999] I.D.A.C.D. No. 17 at page 12 – and are well-known and do not require repetition here. If the penalties agreed to are, in our opinion, clearly outside an acceptable range of appropriateness we must reject the Agreement; if they are not, we must accept it.

¶ 3 Mr. Robinson has agreed with IIROC that he committed two contraventions of IIROC's Dealer Member Rules. We deal with them separately.

**Contravention 1**

¶ 4 Mr. Robinson has acknowledged that between 2007 and 2014, while employed in the Vancouver office of Canaccord Genuity Corp. ("Canaccord"), he maintained two brokerage accounts - one in Panama and the other in Switzerland - without the knowledge and consent of his employer. This was a breach of Canaccord's policy, which required disclosure of and approval by its Compliance Department of all external brokerage accounts. It was also– see *Re Druhan*, [2005] I.D.A.C.D. No 11 – a breach of Dealer Member Rule 29.1.

¶ 5 The concern about unauthorized accounts is simply and clearly expressed in Section 2.3 of IIROC's former Dealer Member Disciplinary Sanction Guidelines:

> Any account maintained by a registrant, which has not been authorized by the applicable authorities at their Dealer Member firm, may not be scrutinized to the degree in which it should. Suspicious or unusual transactions may not appear in the absence of knowledge that a registrant maintains the account.

¶ 6 Moreover, as pointed out by the Panel in *Re Kim*, [2007] I.D.A.C.D. No. 54 (at para. 38):

> Maintaining undeclared accounts also provides registrants with the ability to avoid being marked on pro orders when executing trades, and potentially to trade in stocks that are on a restricted list. If that were to happen, it could bring great harm to the industry and the capital markets and have greater impact than wrongdoing involving clients.

¶ 7 We note, however, that there is no allegation here that there were any improprieties in the trading activities in either of Mr. Robinson's unauthorized accounts.

**Contravention 2**

¶ 8 Mr. Robinson has admitted that In May 2014 he provided misleading information to IIROC Staff in relation to:

(i) his knowledge of Brookemont Capital Inc. ("BKT") and whether he had any relationship with any of its principals;

(ii) a payment for BKT shares held in his Panama account; and

(iii) a BKT share certificate deposited in his Panama account

and that in so acting he committed a violation of Dealer Member Rule 19.6, and of Dealer Member Rule 29.1 and its predecessor.

¶ 9 The facts underlying these admissions are detailed in paragraphs 20-23 of the Settlement Agreement. It is unnecessary to repeat them here.

¶ 10 In *Re Wood*, 2015 BCSECCOM 169, the respondent admitted that he had deliberately lied under oath on matters that were central to an investigation. The Commission found that the misconduct was intended to undermine the investigation and impair the regulator's ability to do its job.

¶ 11 The Commission found (at para. 9) that Mr. Wood's lies "did hinder the Commission's investigation in that it took almost one year . . to discover" his trading improprieties. There is no comparable evidence here about the effects of Mr. Robinson's deception. In our view, however, that is relevant, if at all, only to the severity of the sanctions to be imposed, not to whether the act of misleading the investigators is a contravention of Dealer Member Rule 29.1.

**Sanctions**

¶ 12 This brings us to the question of sanctions. Mr. Robinson has agreed to the following penalties:

a. a fine of $50,000;

b. suspension from registration in any capacity with IIROC for 12 months; and

c. payment to IIROC of $5,000 on account of its costs.

¶ 13 We begin by reminding ourselves that our job is to decide whether the sanctions agreed to fall clearly outside an acceptable range of appropriateness. If they do, we must reject the Agreement; if they do not, we must accept it.

¶ 14 The relevant factual considerations seem to us to be these:

a. First, although this is not referred to in the Settlement Agreement, as a practical matter if upon expiry of the proposed 12-month suspension Mr. Robinson wishes to re-enter the industry, he will have to rewrite the Conduct and Practices Handbook course examination. This fact may fairly be considered a part of the "sanctions package".

b. As we were informed at the hearing, in January 2014 Mr. Robinson voluntarily disclosed the existence of his two previously undisclosed accounts to his employer, Canaccord. As a result, his employment was terminated and he has not been engaged in the investment industry since.

c. There is no evidence that Mr. Robinson's admitted misconduct in fact caused any harm to any of his clients or the securities market generally. On the other hand, by compromising Canaccord's ability to properly discharge its supervisory responsibilities, his conduct heightened the possibility of damage to the integrity of the securities market.

d. Aside from some seven years between January 1990 and September 1996, Mr. Robinson was a registrant for slightly more than 25 years. During that time he had a clean disciplinary record.

e. There is no evidence that Mr. Robinson used his undisclosed accounts for any illicit purpose.

f. The very fact that Mr. Robinson acknowledged his misconduct and entered into the Settlement Agreement is to his credit.

¶ 15 This brings us to Mr. Robinson's agreement to pay a fine of $50,000. We were referred to a number of other cases in which financial penalties were imposed for misconduct similar in nature to his.

¶ 16 *Re Kotar* 2015 IIROC 97 also involved acceptance of a settlement agreement with a registrant who had opened a single unauthorized account. At an interview attended by representatives of his employer and of the Securities Commission, he denied the existence of the account until, confronted with account opening documents signed by him, he admitted that the account "might be" his. His employment was then terminated for misleading his employer and he subsequently entered into a settlement agreement providing, among other things, for a fine of $20,000.

¶ 17 *Re Lohrische* 2010 IIROC 31 did not involve unauthorized accounts but the respondent was found to have committed three contraventions of Dealer Member Rule 29.1 by tendering forged documents as to his credentials to the regulator and otherwise providing false or misleading answers to questions about them. There was no settlement agreement. The panel imposed a permanent ban from approval in any capacity, a fine of $40,000 and ordered him to pay costs of $27,000.

¶ 18 In *Re Wood*, referred to above, the respondent was fined $30,000 and his registration was suspended for one year.

¶ 19 Each of these cases – and there are others like them to which we were referred – depends on its particular facts. One can parse them in different ways. Making the best judgment we can in the light of the similarities and differences among them, our unanimous conclusion is that the agreed upon penalties are not clearly outside an acceptable range of appropriateness.

¶ 20 It is for these reasons that we accepted the Settlement Agreement.

Dated at Vancouver, British Columbia this 30th day of September, 2016.

Leon Getz

Alexandra Williams

Robert Travers

## SETTLEMENT AGREEMENT

### I. INTRODUCTION

1. IIROC Enforcement Staff ("Staff") and the Respondent, Kelly Robinson, consent and agree to the settlement of this matter by way of this agreement (the "Settlement Agreement").

2. The Enforcement Department of IIROC has conducted an investigation ("the Investigation") in the conduct of Kelly Robinson.

3. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C (the "Hearing Panel").

### II. JOINT SETTLEMENT RECOMMENDATION

4. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.

5. The Respondent admits to the following contraventions of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:

**Contravention 1**

Between 2007 and 2014, the Respondent maintained two brokerage accounts outside of his firm without the knowledge and consent of his employer contrary to Dealer Member Rule 29.1.

**Contravention 2**

In May of 2014 the Respondent misled IIROC Staff by:

(i) providing misleading information concerning his knowledge of Brookemont Capital Inc. ("BKT") and whether he had any relationship with any of the principals of BKT;

(ii) providing misleading information concerning a payment for BKT shares held in his account at Verdmont Capital in Panama; and

(iii) providing misleading information concerning a BKT share certificate deposited in his account at Verdmont Capital in Panama; and

thereby acted contrary to Dealer Member Rules 19.6 and 29.1 (IDA by-law 29.1 prior to June 1, 2008).

6. Staff and the Respondent agrees to the following terms of settlement:

a) Suspension from registration in any capacity with IIROC for 12 months; and

b) The Respondent must pay a fine in the amount of $50,000.

7. The Respondent agrees to pay costs to IIROC in the sum of $5,000.

### III. STATEMENT OF FACTS

#### (i) Acknowledgment

8. Staff and the Respondent agree with the facts set out in this Section III and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts.

#### (ii) Factual Background

**Overview**

1. These facts relate to the period of time from June 2007 to January 2014 while the Respondent was a Registered Representative at the Vancouver office of Canaccord Genuity Corp. ("Canaccord"). They

also relate to a subsequent period while IIROC was completing its investigation into the Respondent.

2. The Respondent maintained offshore brokerage accounts in Panama and Switzerland during the relevant time without the knowledge and consent of his employer.

3. The Respondent deposited shares of BKT owned by his wife into his account at Verdmont Capital in Panama (the "Verdmont Account") in or around December 2007.

4. In May 2014, the Respondent was interviewed under oath by IIROC investigation staff. The Respondent misled IIROC investigation staff about his involvement with BKT and one of its principals.

5. He also misled IIROC investigation staff about some of the activity in his Verdmont Account involving shares of BKT.

**Registration History**

6. The Respondent has been registered in the industry as a trader at various firms from September 1982 to August 2002 with a break from January 1990 to September 1996.

7. From August 2002 to January 2014, the Respondent was registered as a Registered Representative and Trader with Canaccord in Vancouver, B.C. The Respondent left Canaccord in January 2014 and has not been registered in the industry since that time.

**Failure to Disclose Account**

**The Verdmont Account**

8. The Respondent opened an investment account with Verdmont Capital in Panama in the name of Carbria Corp. on or around November 30, 2007 (the "Verdmont Account").

9. The Respondent was the only beneficial owner and had sole signing authority over the Verdmont Account. He controlled all of the activity in the Verdmont Account.

10. The Respondent was employed by Canaccord at the time that he opened the Verdmont Account.

11. The Respondent did not notify or seek the approval of Canaccord to open the Verdmont Account.

12. Canaccord's written Policies and Procedures manual specifically requires that all accounts held outside of Canaccord must be disclosed to its Compliance Department. The Policies and Procedures also require Canaccord's approval to hold any outside accounts.

13. The last share transaction in the Verdmont account occurred on December 13, 2011.

**The Hypo Account**

14. The Respondent also opened an investment account at Hyposwiss Bank in Zurich, Switzerland on or around November 17, 2009 (the "Hypo Account").

15. The Respondent was the only beneficial owner and had sole signing authority over the Hypo Account. He controlled all of the activity in the Hypo Account.

16. The Respondent was employed by Canaccord at the time that he opened the Hypo Account.

17. The Respondent did not notify or seek the approval of Canaccord to open the Hypo Account.

18. Canaccord's written Policies and Procedures manual specifically require that all accounts held outside of Canaccord must be disclosed to its Compliance Department. The Policies and Procedures also require Canaccord's approval to hold any outside accounts.

19. There were no security transactions in the Hypo account until January 20, 2010.

**Misleading IIROC Investigation and Registration Staff**

20. The Respondent was interviewed under oath by IIROC Enforcement Staff on May 7, 2014. In that interview, the Respondent stated that:

    (a) He did not know any of the principals of BKT;

    (b) He first learned of BKT from TH, who was the broker for his Verdmont Account, in or around November 2007;

    (c) He sent a wire transfer in or around November 2007 in the amount of $25,000.00 to Verdmont for the purchase of 600,000 BKT shares;

    (d) He did not know why his Verdmont Account statements indicated an initial transaction on December 12, 2007 of a BKT share certificate deposited for 370,000 shares.

21. In fact, the Respondent's cousin was a senior officer and director of BKT and as of June 5, 2007, he owned over 26% of BKT's shares. Therefore the Respondent misled Enforcement Staff on the issue of whether he knew any of the principals of BKT.

22. The Respondent's wife purchased 370,000 shares of BKT on or about June 5, 2007. Given the Respondent's relationship with the principal and largest shareholder in BKT and that his wife was a shareholder long before he met TH, the Respondent misled Enforcement Staff when he stated that he first learned about BKT from TH in or around November 2007.

23. The initial transaction in the Respondent's Verdmont Account was a deposit of a share certificate representing 370,000 shares of BKT on December 12, 2007. These 370,000 shares were the same as those purchased by the Respondent's wife on June 5, 2007. There was no money sent by the Respondent to Verdmont for these BKT shares therefore, the Respondent misled Enforcement Staff by stating he had made a $25,000.00 wire transfer to Verdmont and concerning the source of the deposit of the share certificate for 370,000 shares, of BKT, deposited into his Verdmont Account.

## IV. TERMS OF SETTLEMENT

9. This settlement is agreed upon in accordance with IIROC Dealer Member Rules 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.

10. The Settlement Agreement is subject to acceptance by the Hearing Panel.

11. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

12. The Settlement Agreement will be presented to the Hearing Panel at a hearing ("the Settlement Hearing") for approval. Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.

13. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.

14. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement; or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.

15. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.

16. Staff and the Respondent agree that if the Hearing Panel accepts the Settlement Agreement, they, or anyone on their behalf, will not make any public statements inconsistent with the Settlement Agreement.

17. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.

18. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

**AGREED TO** by the Respondent at the City of Vancouver in the Province of British Columbia, this 21st day of July, 2016.

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| **"Rod Anderson"** | **"Kelly Robinson"** |
| **Witness** | **Kelly Robinson** |
| | **(Respondent)** |

**AGREED TO** by Staff at the City of Vancouver in the Province of British Columbia, this 30 day of August, 2016.

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| **"Mike Smith"** | **"Stacy Robertson"** |
| **Witness** | **Stacy Robertson** |
| | Enforcement Counsel on behalf of Staff of the Investment Industry Regulatory Organization of Canada |

**ACCEPTED** at the City of Vancouver in the Province of British Columbia, this 9th day of September, 2016, by the following Hearing Panel:

Per: "Leon Getz"
***Panel Chair***

Per: "Robert Travers"
Panel Member

Per: "Alexandra Williams"
Panel Member