Re Rotstein & Zackheim

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

Mark Steven Rotstein and Jessica Elisabeth Zackheim

2012 IIROC 27

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

Heard: April 18, 2012 in Toronto, Ontario
Decision: May 7, 2012

Hearing Panel:
Edward T. McDermott (Chair), Terrence Bourne, Peter J. Gribbin
Appearance:
Ms. Susan Kushneryk, Enforcement Counsel
Mr. Robert Brush, Counsel for Mark Steven Rotstein
Mr. Daniel Bernstein, Counsel for Jessica Elisabeth Zackheim

Reasons for Decision

PURPOSE OF HEARING

¶ 1 This Hearing Panel was constituted pursuant to Part 10 of Dealer Member Rule 20 and Section 1.9 of Schedule C.1 to Transitional Rule No. 1 of the Investment Industry Regulatory Organization of Canada ("IIROC"). The purpose of the hearing was to determine whether the Respondents, Mark Steven Rotstein ("Rotstein"), a Registered Representative, Options, employed by RBC Dominion Securities Inc. ("RBC DS") from February 10, 1997 until April 5, 2011, and Jessica Elisabeth Zackheim ("Zackheim"), an Investment Representative, employed by RBC DS from January 2001 until April 5, 2011, acted in contravention of IDA By-Law 29.1 and IIROC Dealer Member Rule 29.1 by engaging in a practice for over a decade of signing client names to account and other investment related documents and passing those signatures off as the clients' own.

¶ 2 Dealer Member Rule 29.1 provides as follows:

> **Business Conduct**
>
> 29.1 Dealer Members and each partner, Director, officer, Supervisor, Registered Representative, Investment representative and employee of a Dealer Member (i) shall observe high standards of ethics and conduct in the transaction of their business, (ii) shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest, and (iii) shall be of such character and business repute and have such experience and training as is consistent with the standards described in

clauses (i) and (ii) or as may be prescribed by the Board.

For the purposes of disciplinary proceedings pursuant to the Rules, each Dealer Member shall be responsible for all acts and omissions of each partner, Director, Officer, Supervisor, Registered Representative, Investment Representative and employee of a Dealer Member, and each of the foregoing individuals shall comply with all Rules required to be complied with by the Dealer Member. ...

IDA By-Law 29.1 is in similar terms.

¶ 3 This Hearing Panel was accordingly originally constituted to hear the evidence and determine the issue as to whether the Respondents have acted in contravention of IDA By-law 29.1 and Dealer Member Rule 29.1 as alleged.

¶ 4 Prior to the commencement of the hearing, this Hearing Panel was informed that the parties had arrived at a Settlement Agreement which they wished to place before the Hearing Panel for its acceptance or rejection in accordance with the provisions of Rules 20.35 through 24.0 dealing with settlement hearings.

¶ 5 The Hearing Panel accordingly convened on April 18, 2012 for the purpose of conducting a settlement hearing relative to the Settlement Agreement which had been negotiated and agreed to by the parties subject to our determination as to whether the agreement should be accepted or rejected.

¶ 6 The Hearing Panel received and gave careful consideration to the Settlement Agreement and the submissions of all of the parties in support of such agreement. At the conclusion of the hearing, the Panel recessed the hearing in order that it could deliberate on the information and submissions that had been made to it. The Hearing Panel subsequently advised the parties that it was prepared to accept the Settlement Agreement on the terms proposed and proceeded to execute and record its acceptance of such agreement.

¶ 7 The following constitutes the reasons for such decision of this Hearing Panel which led it to conclude that the Settlement Agreement provided an appropriate response to the contravention of the Dealer Member Rules to which the Respondents had admitted guilt under the terms of the Settlement Agreement.

THE ROLE OF THE HEARING PANEL

¶ 8 As indicated above, under the provisions of Rule 20.36, this Hearing Panel may either accept or reject the Settlement Agreement. It is not open to us to rewrite, alter or amend the terms of the agreement which had been negotiated between the parties. We are also restricted to a consideration of the factual agreements recorded in the terms of the Settlement Agreement unless the parties agree to provide us with additional facts.

¶ 9 Based upon this material it is our responsibility to review the agreement in order to satisfy ourselves that it falls within a reasonable range of appropriateness to the offence and circumstances recorded in the agreement and that there is nothing in the agreement which would be contrary to the public interest or bring the administration of the Rules of IIROC into public disrepute. If we are satisfied that the Settlement Agreement does not offend these principles then it should be accepted.

¶ 10 It is against this backdrop that this Hearing Panel undertook a review of the Settlement Agreement which was placed before us on April 18, 2012 and concluded that the agreement should be accepted.

CONTRAVENTION

¶ 11 Under the terms of the Settlement Agreement the Respondents have admitted that they signed clients' names on various account and investment documents for over a decade including, for example, fee schedules; risk disclosure and acknowledgement forms; account agreements; US tax certifications; transfer authorizations; trading authorizations and private placement subscription forms. They further admit that such actions constitute contraventions of IDA By-Law 29.1 and IIROC Dealer Member Rule 29.1.

¶ 12 The full number and nature of the documents to which the Respondents signed client names which were passed off as signatures of the client was not determined but there may have literally been hundreds of such documents.

¶ 13 In addition to signing client names, the Respondents also admit that from time to time they signed

documents as witness to client signatures when they had not in fact witnessed those clients signing the documents.

¶ 14 Ms. Zackheim was engaged as Mr. Rotstein's associate and when she signed clients' names on the various documents, she did so with Mr. Rotstein's authorization and knowledge.

¶ 15 These are indeed serious contraventions of the provisions of Rule 29.1 as the actions of the Respondents created risks for the clients, their dealer and themselves and jeopardized the integrity of the capital markets. Without genuine client signatures there is no way of confirming that the clients received the proper disclosure or gave the certifications and instructions contained in the documents. The seriousness of the contraventions is aggravated by the number of documents involved and the length of time over which the contraventions occurred (over a decade).

¶ 16 It is the view of the Hearing Panel that such contraventions require a strong response in order to act as a deterrent to these Respondents and others from engaging in any form of similar misconduct.

MITIGATING FACTORS

¶ 17 In considering the appropriateness of the penalty, the Hearing Panel may also take into account any mitigating factors which may potentially ameliorate the ultimate penalty to be imposed. We were advised through the terms of the Settlement Agreement that a number of such mitigating circumstances were present in this particular case, including the following:

(a) Neither of the Respondents had any prior record of regulatory discipline.

(b) When first confronted by RBC DS regarding these issues, the Respondents were forthright; admitted the conduct constituting the contravention and complied with RBC DS' investigation.

(c) After the Respondents were terminated by RBC DS for cause (on April 5, 2011), they approached Scotia Capital Inc. ("Scotia") and were forthright about their conduct and the circumstances under which they were terminated by RBC DS. The IIROC Ontario District Council Registration Sub-Committee approved their re-registration subject to certain strict terms and conditions which included close supervision and a requirement to send a letter approved by the Registration Sub-Committee to all Scotia clients that they provide service to (including all new clients) explaining the substance of the contraventions committed by them. The Respondents have complied with the terms and conditions imposed upon them as a condition of re-registration.

(d) The Respondents cooperated with the IIROC's Staff throughout the course of the investigation, admitted their wrongdoing and were forthright in providing information about all the relevant facts and circumstances. They also cooperated with the Staff throughout the course of this proceeding.

(e) The Respondents both now understand the seriousness of their misconduct and the risks to their clients and the integrity of the capital markets which arose as a result of their misconduct. They have indicated that they regret their conduct, the risks it created and any harm caused to their clients as a result of their conduct.

(f) Of some considerable importance is that we were advised that the Respondents did not sign clients' names for the purpose of any personal gain or for any dishonest or fraudulent purpose. We also note as well that the Respondents sustained additional economic consequences as a result of their misconduct since 30% of the asset value of their former book of business was lost in their transfer to Scotia.

(g) We were also advised that the Respondents generally only signed client names for a relatively small subset of their clientele who had a close and longstanding relationship with Rotstein. The Respondents believed that they had the authority to sign the names of such clients and to pass

such signatures off as those of the client. They only engaged in this practice for the convenience of these clients.

(h) We were advised that at least 15 of the Respondents' clients whose names had been signed by the Respondents to various documents had provided written statements to Staff that they had verbally authorized the Respondents to sign their names and an additional 40 clients have provided attestations in favour of the Respondents supporting their work and service to these clients.

(i) There is no evidence that any of the Respondents' clients suffered any financial harm as a result of their misconduct.

THE PENALTY

¶ 18 It is against this backdrop that the parties, all of whom were represented by experienced and able counsel, negotiated a settlement of this matter imposing the following penalties:

(a) Rotstein is prohibited from registration with IIROC for a period of twelve months to be served in two intervals of six consecutive months without interruption, which intervals shall be completed by no later than October 15, 2014;

(b) Rotstein shall pay IIROC a fine in the amount of $250,000;

(c) Zackheim is prohibited from registration with IIROC for a period of twelve months to be served in two intervals of six consecutive months without interruption, which intervals shall be completed by no later than October 15, 2014;

(d) Zackheim shall pay IIROC a fine in the amount of $50,000;

(e) Rotstein's and Zackheim's registration terms and conditions imposed pursuant to the Ontario District Council Registration Subcommittee Decision dated July 21, 2011, modified as necessary and set out in the attached Appendix (the "Terms and Conditions") shall remain in place until April 30, 2015; and

(f) The Respondents agree to pay IIROC the sum of $10,000 to reflect the costs that Staff incurred in connection with this matter.

THE REASONS FOR DECISION OF THE HEARING PANEL

¶ 19 As indicated above, it is clear from the jurisprudence of the Courts and numerous hearing panels of IIROC that our role is not to decide whether we would have arrived at the same decision as that reached by the parties in the Settlement Agreement but rather to determine whether, in the particular circumstances of the case, the penalties are within a reasonable range of appropriateness with the overall objective of protecting the investing public and maintaining the integrity of the capital markets, the investment industry and IIROC's processes as well as deterring similar misconduct in the future by the Respondents and others.

¶ 20 If the penalty agreed to by the parties is within a reasonable range of appropriateness then it should not be rejected by a hearing panel.

¶ 21 In our view, after taking into account the nature of the offence and all of the aggravating and mitigating circumstances referred to above as well as the settlement process and the fact that the parties have agreed to this settlement, this Hearing Panel has determined that the penalties agreed to by the parties (assisted by experienced and able counsel) do fall within a reasonable range of appropriateness and accordingly they were accepted by this Hearing Panel.

¶ 22 While the amount of the fine and other monetary penalty as well as the length of the suspensions are substantial, so also was the nature of the contravention particularly having regard to the breadth and duration of the misconduct.

¶ 23 We have also been referred to and have taken into account the maximum amount of the fine and length

of suspension which might have been imposed by this Hearing Panel under the provisions of Rule 20.33 as well as the Dealer Member Guidelines for False Endorsement of Regulatory Documents which recommends a minimum fine of $10,000 and a suspension of from one month to five years in egregious cases. We have also noted that the recommended fine for forgery under the Guidelines is a minimum of $25,000 for Approved Persons and a permanent ban on approval, absent mitigating circumstances. Even if such mitigating circumstances exist, the recommended range of suspension under the Guidelines is 3 months to 10 years. While such Guidelines are not binding on a hearing panel, they are informative with respect to the level of penalties members of the industry generally consider to be appropriate for certain contraventions.

¶ 24 We also reviewed the various precedents submitted on behalf of Enforcement Counsel. While the authorities submitted are not directly analogous to the facts in this case, they do indicate that in matters involving the forging of clients' signatures, if only on a single or limited number of occasions, a significant suspension ranging between six months and two years may well be imposed. None of the cases cited however involved the aggravating or mitigating factors present in this matter. The cases referred to include: *Re Inglis*, [2005] I.D.A.C.D. No. 10 (Q.L.); *Re Lamontagne*, [2009] IIROC No. 6, var'd on appeal at 2009 ABASC 490; and *Re Bell*, [2005] I.D.A.C.D. No. 15 (Q.L.).

¶ 25 We have also reviewed and agree with the Terms and Conditions imposed by the decision of the Ontario District Council Registration Subcommittee which under the terms of the Settlement Agreement are to continue in effect for another three years (until April 30, 2015). Those Terms and Conditions are annexed to these Reasons for Decision as Appendix "A" and include a requirement for close supervision of the Respondents as well as specific requirements designed to ensure that all clients' documents are properly executed by the clients and witnessed by persons other than the Respondents.

¶ 26 In discharging our obligation to review the Settlement Agreement to determine if it should be accepted or rejected, we have paid particular attention to the portion of the agreement which allows the suspensions to be served in two intervals of six consecutive months provided that the full twelve months of suspension is completed by no later than October 15, 2014. We were advised by the parties that this was a provision of first instance in an IIROC case and was crafted by the parties in order to address the concern that if the Rotstein/Zackheim team were to be unable to provide service to its clients (with whom they obviously have a strong bond) for a prolonged period then the clients would be deprived of the ability to have their affairs and assets attended to by the Registered Representatives of their desire and choice. The division of the suspensions into two equal tranches to be completed by a set date is intended to address any deleterious effect the suspensions might have on the clients without detracting from the punishment which it was intended to impose on the Respondents for their misconduct. In support of the proposal to approve a divided period of suspension, the parties also submitted that it is appropriate for this Hearing Panel to take into account the potentially significant impact on the business of the Respondents if they were not permitted to divide the period of suspensions.

¶ 27 We believe that the impact on a respondent's business of a lengthy period of suspension might in special circumstances be an appropriate consideration to take into account in considering the issue of whether a Hearing Panel should sanction a divided period of suspension. It must, however, be viewed in light of all of the circumstances of a particular case and should not be afforded any significant weight if the result of dividing the suspension would be to impair the objectives of the disciplinary process referred to above including in particular the principle of deterrence inherent in a period of suspension.

¶ 28 During the Settlement Hearing, the Hearing Panel was provided with a number of precedents where similar arrangements have been implemented in proceedings under other regulatory authorities such as the Law Society of Upper Canada. Because this approach was novel for the investment industry, we gave anxious consideration to this part of the Settlement Agreement but in light of the particular circumstances of this case have determined that it is an appropriate provision to include in the Settlement Agreement. We do not, however, expect that this approach would be adopted except in special circumstances and only where its imposition will not detract from the purpose and deterrent effect of the penalties which have been agreed upon by the parties and accepted by the Hearing Panel.

¶ 29 In the result, all of the foregoing tends to confirm the view of this Hearing Panel that the penalties agreed upon support the objectives of the disciplinary process; serve as both a general and specific deterrent for the misconduct committed and give appropriate weight to the mitigating circumstances raised on behalf of the Respondents.

¶ 30 In all of the circumstances we believe that the penalty agreed upon was appropriate in the circumstances and it has been accepted by this Hearing Panel.

DATED this 7th day of May, 2012.

Edward T. McDermott, Chair

Terrence Bourne, Industry Representative

Peter J. Gribbin, Industry Representative

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Enforcement staff of the Investment Industry Regulatory Organization of Canada ("IIROC") and the Respondents, Mark Steven Rotstein ("Rotstein") and Jessica Elisabeth Zackheim ("Zackheim") (together, the "Respondents"), consent and agree to the settlement of this matter by way of this agreement (the "Settlement Agreement").

2. IIROC's Enforcement Department has conducted an investigation (the "Investigation") into the Respondents' conduct.

3. The Investigation discloses matters for which the Respondents 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. IIROC staff ("Staff") and the Respondents jointly recommend that the Hearing Panel accept this Settlement Agreement.

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

> For more than a decade until March 2011, the Respondents signed client names on client account and investment related documents and passed those signatures off as the clients' own, contrary to IDA By-law 29.1 and IIROC Dealer Member Rule 29.1.

6. Staff and the Respondents agree to the following terms of settlement:
   (b) Rotstein is prohibited from registration with IIROC for a period of twelve months to be served in two intervals of six consecutive months without interruption, which intervals shall be completed by no later than October 15, 2014;

   (b) Rotstein shall pay IIROC a fine in the amount of $250,000;

   (c) Zackheim is prohibited from registration with IIROC for a period of twelve months to be served in two intervals of six consecutive months without interruption, which intervals shall be completed by no later than October 15, 2014;

   (d) Zackheim shall pay IIROC a fine in the amount of $50,000; and

   (e) Rotstein's and Zackheim's registration terms and conditions imposed pursuant to the Ontario District Council Registration Subcommittee Decision dated July 21, 2011, modified as necessary

and set out in the attached Appendix (the "Terms and Conditions") shall remain in place until April 30, 2015.

7. The Respondents agree to pay IIROC the sum of $10,000 to reflect the costs that Staff incurred in connection with this matter.

III. STATEMENT OF FACTS

(i) *Acknowledgment*

8. Staff and the Respondents 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

9. Rotstein and Zackheim engaged in a practice for over a decade of signing client names and passing those signatures off as the clients' own on account and investment related documents. Rotstein and Zackheim relied on their signatures of clients' names in dozens, and potentially hundreds, of instances.

10. Rotstein or Zackheim, with Rotstein's knowledge and authorization, signed clients' names on account and investment documents, including for example fee schedules, risk disclosure and acknowledgement forms, account agreements, US tax certifications, transfer authorizations, trading authorizations and private placement subscription forms. Without genuine client signatures, there is no confirmation that those clients obtained the disclosure to which they were entitled or provided the certifications and instructions set out in the documents. Rotstein and Zackheim acknowledge that the absence of such confirmation created risks for clients, for the dealer and for themselves.

11. Rotstein and Zackheim acknowledge that, by repeatedly signing clients' names and passing those signatures off as the clients' own, they failed to observe high standards of ethics and conduct in their business and engaged in business conduct that is unbecoming to registrants and highly detrimental to the public interest.

12. Rotstein's and Zackheim's misconduct was significant. They created risks for the clients whose names they signed, for their dealer and for themselves. In acknowledgement of the severity of the misconduct, the parties have agreed that the Respondents will each be suspended for a year. In light of all of the circumstances particular to this case, including the totality of sanctions imposed, those suspensions will each be applied in two separate intervals so that Rotstein and Zackheim will be able to maintain their operations in a way that is not detrimental to their clients' interests.

The Respondents

13. Rotstein was registered as a Registered Representative, Options at RBC Dominion Securities Inc. ("RBC DS") from February 10, 1997, until April 5, 2011, when his employment at RBC DS was terminated for cause in connection with his signing client names on account and investment documents.

14. Zackheim worked at RBC DS from April 27, 1998, until April 5, 2011, when her employment was terminated for cause in connection with her signing client names on account and investment documents. Zackheim worked as Rotstein's associate from May 2000, and was registered as an Investment Representative from January 2001, until her employment was terminated.

15. Rotstein and Zackheim applied for re-registration with Scotia Capital Inc. ("Scotia"). The IIROC Ontario District Council Registration Subcommittee approved their re-registration, subject to the Terms and Conditions, in a Decision dated July 21, 2011. Rotstein and Zackheim have been registered at Scotia since that date.

16. Rotstein and Zackheim together operate under the name "Rotstein Wealth Management" and provided generally conservative investment advice to individuals, families and small corporations. By the spring of 2011, Rotstein's and Zackheim's business consisted of more than 2,000 client accounts with assets

valued at approximately $500 million.

Respondents' Practice of Signing Client Names

17. From at least as early as 2000, Rotstein and Zackheim signed client names on account and investment related documents and passed those signatures off as the clients' own. When Zackheim signed client names, she did so either on the instruction of Rotstein or to Rotstein's knowledge. Rotstein and Zackheim generally signed client names only for clients who had a close and longstanding relationship with Rotstein.

18. On some or all occasions when Rotstein and Zackheim signed client names, they consulted original client signatures on previously signed documents for the purpose of assisting to replicate those signatures.

19. Some examples of documents on which Rotstein or Zackheim, with Rotstein's knowledge and authorization, signed client names include the following:

    (a) Disclosure of Equity Interests and Consent Form dated June 21, 2000, for client BP;

    (b) Equity Creditline Agreement dated November 12, 2002, for clients AK and DZ;

    (c) Trading Authorization dated January 30, 2004, appointing agent with authority to deal with RBC DS in respect of the account for client BP;

    (d) Declaration of Trust for a Minor dated December 6, 2004, for client RS;

    (e) Canada-United States Income Tax Treaty Statement dated December 6, 2004, for client RS;

    (f) Transfer Authorization for Registered Investments dated June 21, 2005, for client AC;

    (g) Client Account Agreement for Registered Retirement Savings Plan, Account Application and Fee Schedule, all dated May 26, 2006, for client BF;

    (h) Client Account Agreement for Registered Retirement Savings Plan, Account Application and Fee Schedule, all dated May 26, 2006, for client SF;

    (i) Subscription form for Sprott Hedge Fund L.P. II dated October 31, 2007, and February 18, 2008, for client JT;

    (j) Application for Margin Trading dated October 10, 2008, for client PE;

    (k) Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding ("US IRS Form W8-BEN") for client JR-T dated August 10, 2009;

    (l) Beneficiary Designation Form for Multiple Beneficiary Designation dated November 18, 2010, for client MTF;

    (m) Accredited Investor Form dated November 23, 2010, for client GS;

    (n) US IRS Form W8-BEN dated January 10, 2011, for client P-WH Ltd.;

    (o) Investment Fund and Equity Private Placement Application and Certification Form for $25,000 investment in Venator Income Fund dated February 9, 2011, for client NK;

    (p) Risk Acknowledgement and Release for Exempt Market Securities for investment in Venator Income Fund dated February 9, 2011, for client NK;

    (q) Investment Fund and Equity Private Placement Application and Certification Form for $200,000 investment in Arrow Head Partners and Risk Acknowledgement and Release for Exempt Market Securities, both dated March 9, 2011, for client MTF;

    (r) Risk acknowledgement form for investment in Chrysalis Capital VIII Corporation, dated March 22, 2011, for client DM; and

(s) Risk acknowledgement form for investment in Chrysalis Capital VIII Corporation, dated March 22, 2011, for client SB.

20. The full number and nature of documents on which Rotstein and Zackheim signed client names, and passed off those signatures as the clients' own, is not known but there is evidence that there may have been hundreds of documents.

21. In addition to signing client names, Rotstein and Zackheim from time to time signed documents as witness to client signatures when they had not in fact witnessed those clients signing the documents.

Client Authorization

22. Rotstein and Zackheim signed client names for the convenience of those clients, to avoid the clients having to take the time to personally attend to the paperwork in respect of their accounts. Rotstein and Zackheim did not sign clients' names for the purpose of personal gain or for dishonest or fraudulent purposes. There is no evidence that any of Rotstein's or Zackheim's clients suffered any financial harm as a result of their conduct.

23. Rotstein and Zackheim believe that their clients authorized them to sign their names, and pass those signatures off as the clients' own, in each instance that they did so. At least 15 of Rotstein and Zackheim's clients have provided written statements to Staff in the course of this proceeding confirming that they verbally authorized Rotstein and Zackheim to sign their names and more than 40 clients overall have provided written statements to Staff supportive of Rotstein and Zackheim generally, their work and their client service.

Economic Impact on Rotstein and Zackheim

24. Not all of Rotstein's and Zackheim's clients decided to transfer to Scotia with them. Rotstein and Zackheim have lost approximately 30% of the value of their client assets on their transfer to Scotia.

Rotstein and Zackheim Cooperated

25. Rotstein and Zackheim both understand the risks created by their misconduct, regret that conduct and regret any harm caused to their clients as a result.

26. When first approached by RBC DS regarding the issue of signing client names, Rotstein and Zackheim were both forthright, admitting the conduct and complying with RBC DS's investigation.

27. When they approached Scotia, Rotstein and Zackheim were again forthright about their conduct. Rotstein and Zackheim contacted their clients to tell them about the issues that had arisen. Rotstein and Zackheim complied with the Terms and Conditions and worked with Scotia to ensure an orderly transfer of the assets of those clients who wanted to remain with Rotstein and Zackheim.

28. Rotstein and Zackheim cooperated with IIROC's Registration Department in respect of their application for re-registration, including proposing terms and conditions to address IIROC's concerns.

29. Rotstein and Zackheim cooperated with Staff through the course of the Investigation, including by attending at IIROC's offices to meet with Staff, where they admitted their wrongdoing and were forthright in providing information about the relevant facts and circumstances.

30. Rotstein and Zackheim have also cooperated with Staff through the course of this proceeding.

31. Neither Rotstein nor Zackheim have any prior record of regulatory discipline.

IV. TERMS OF SETTLEMENT

32. 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.

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

34. The Settlement Agreement shall become effective and binding upon the Respondents and Staff as of the

date of its acceptance by the Hearing Panel.

35. 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.

36. If the Hearing Panel accepts the Settlement Agreement, the Respondents waive their rights under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.

37. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondents may enter into another settlement agreement, or Staff may proceed to an expedited or disciplinary hearing in relation to the matters disclosed in the Investigation.

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

39. Staff and the Respondents 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.

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

41. 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 Mark Steven Rotstein at the City of Toronto, in the Province of Ontario, this 17th day of April, 2012.

"Gord Love" *"Mark Rotstein"*

Witness **Mark Steven Rotstein**

AGREED TO by the Respondent Jessica Elisabeth Zackheim at the City of Toronto, in the Province of Ontario, this 17th day of April, 2012.

"Gord Love" *"Jessica Zackheim"*

Witness **Jessica Elisabeth Zackheim**

AGREED TO by Staff at the City of Toronto, in the Province of Ontario this 17th day of April, 2012.

"Sharon Lloyd-Gyurkovics" *"Susan Kushneryk"*

Witness **Susan Kushneryk**

Senior Enforcement Counsel on behalf of Staff of the Investment Industry Regulatory Organization of Canada

ACCEPTED at the City of Toronto, in the Province of Ontario, this 18th day of April, 2012, by the following Hearing Panel:

"Edward McDermott"

Mr. Edward McDermott

"Peter Gribbin"

Mr. Peter Gribbin

"Terry Bourne"

Mr. Terry Bourne

APPENDIX

to the Settlement Agreement between IIROC Enforcement staff, Mark Steven Rotstein and Jessica Elisabeth Zackheim

Terms and Conditions on Registration and Approval

IIROC's registration and approval of Mark Steven Rotstein and Jessica Elisabeth Zackheim is subject to the following terms and conditions:

(i) Rotstein and Zackheim are subject to close supervision, with reports to be filed on a monthly basis with IIROC Registration;

(ii) Rotstein and Zackheim must work in a business location at which a qualified Supervisor is present;

(iii) Scotia must send the approved letter [explaining that Rotstein and Zackheim signed client names and passed off those signatures as the clients' own], reviewed by the Registration Subcommittee of the Ontario District Council, to all Scotia clients serviced by Rotstein and Zackheim (including new clients as they retain Scotia on an ongoing basis during the currency of the terms and conditions on registration and approval);

(iv) All documents requiring signature by clients of Rotstein and Zackheim must be witnessed by a third party other than Rotstein or Zackheim;

(v) All documents executed by clients in the branch must be witnessed by the Branch Manager or his or her delegate; and

(vi) All documents sent out to clients for remote signature must be sent out by the Branch Manager and all such documents executed by clients and witnessed must be returned to the Branch Manager for verification of the client signature against Scotia records.