

# Re Opaleke

IN THE MATTER OF:

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

**and**

**Sunday Bamidele Opaleke**

2015 IIROC 10

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

Heard: October 6, 2014  
Decision: February 3, 2015

## **Hearing Panel:**

Michael F. C. Radcliffe, Q.C. (Chair), Alan McLaughlin and Claude Tetrault

## **Appearances:**

David McLellan Enforcement Counsel, IIROC

Rosa Chan, Senior Investigator, IIROC

Sunday Bamidele Opaleke

Antonio Opaleke

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## **DECISION ON THE ACCEPTANCE OF SETTLEMENT AGREEMENT**

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### **Introduction**

¶ 1 Pursuant to Investment Industry Regulatory Organization of Canada (IIROC) Dealer Member Rule 20.36, this Panel was constituted to consider whether to accept a settlement agreement (the “Settlement Agreement”) negotiated between IIROC’s Enforcement Department and Sunday Bamidele Opaleke (hereinafter referred to as “Mr. Opaleke”) under IIROC Dealer Member Rule 20.35.

¶ 2 At the conclusion of a settlement hearing held in Winnipeg, Manitoba on October 6, 2014, and after considering the submissions by the parties and the terms of the Settlement Agreement, we determined unanimously to accept the Settlement Agreement and we executed a copy of the Settlement Agreement. We advised the parties that our written reasons would follow. These are our reasons.

### **Settlement Agreement Terms**

¶ 3 The Settlement Agreement, a copy of which is annexed to this Decision contains a summary of the facts of this case, the contraventions admitted by Mr. Opaleke, and the agreed terms of settlement. The Settlement Agreement complies with Rule 14 of the IIROC Rules of Practice and Procedure.

¶ 4 The parties agreed to settlement terms of a fine of \$85,000 and costs payable to IIROC of \$10,000 and suspension from registration with IIROC in any capacity for a period of one (1) year.

### **Jurisdiction of Panel**

¶ 5 Mr. McLellan referred us to the decision in *Re Milewski* [1999] IDACD No. 17 regarding the role of the Panel in considering the Settlement Agreement. The Milewski decision has been referenced and applied in a number of subsequent hearing panel decisions. The panel in Milewski noted at page 11:

“... 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.”

¶ 6 Mr. McLellan advised us that considerable time was spent negotiating the terms of the settlement and pointed out the public interest benefits of the settlement process. Mr. Opaleke was not represented by counsel, but appeared in the company of his brother, Antonio Opaleke at the hearing. Mr. McLellan submitted that the settlement negotiations were reasonable in the circumstances. Counsel for IIROC recommended that the Panel accept the settlement as negotiated by the parties. Mr. Opaleke and his brother, Antonio Opaleke agreed to accept the Settlement Agreement which had been negotiated.

### **Joint Settlement Recommendations**

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

- a) Between approximately 2006 and 2012, the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to three (3) clients, contrary to IIROC Rule 1300.1(a) [IDA Regulation 1300.1(a) prior to June 1, 2008];
- b) Between approximately 2007 and 2012, the Respondent made investment recommendations that were not suitable for three (3) clients, contrary to IIROC Rule 1300.1(q) [IDA Regulation 1300.1(q) prior to June 1, 2008];
- c) Between approximately 2006 and 2011, the Respondent made discretionary trades in the accounts of three (3) clients without first having the accounts approved and accepted as discretionary accounts, contrary to IIROC Dealer Member Rules 1300.4 and 1300.5 [IDA Regulation 1300.4 and 1300.5 prior to June 1, 2008];
- d) Between approximately 2007 and 2012, the Respondent engaged in unauthorized trading with respect to one (1) client and thereby engaged in conduct unbecoming or detrimental to the public interest contrary to IIROC Dealer Member Rule 29.1 [IDA By-Law 29.1 prior to June 1, 2008];
- e) In or about July 2011, the Respondent offered to personally guarantee results through undisclosed compensation to one client, contrary to IIROC Dealer Member Rule 29.1.

### **Statement of Facts**

¶ 8 The Respondent Mr. Opaleke was a Registered Representative (“RR”) responsible for the accounts of four clients – SH; JB; RM and JR.

¶ 9 Opaleke failed to know three of his clients, who were retired and/or vulnerable with limited incomes and little investment knowledge. He also failed to ensure that his recommendations were suitable for these clients as he recommended almost no low risk securities.

¶ 10 In the case of two of these vulnerable clients, Mr. Opaleke recommended significant use of margin. The use of margin, which was over 40% of market value of the accounts for extended periods of time, was not suitable for these clients in the circumstances.

¶ 11 In addition, he engaged in discretionary trading in the accounts of three clients, and engaged in

unauthorized trading in one client account.

¶ 12 Mr. Opaleke also offered to personally guarantee results through undisclosed compensation to one client.

### **Registration History**

¶ 13 Mr. Opaleke joined Edward Jones in 1998 and at all material times he was employed with Edward Jones in a sub-branch in Winnipeg, Manitoba.

¶ 14 Mr. Opaleke was the only RR on site at his sub-branch, and he was supported by an assistant who handled administrative duties.

¶ 15 Mr. Opaleke did not have the authority to conduct discretionary trades in any client accounts.

¶ 16 On April 17, 2012, Edwards Jones terminated his employment. He has not worked in a registered capacity since that date.

### **Client - SH**

#### Failure to Know Your Client

¶ 17 SH first opened accounts with Mr. Opaleke in 1998. She suffers from permanent physical disability and poor short-term memory as a result of a 1996 motor vehicle accident. She is not able to work due to her disability, and her income consists of disability benefit payments, and spousal support payments from her ex-husband.

¶ 18 In 2008, SH sold her home in Winnipeg and moved into a cottage outside the city in order to improve her financial position. She received net proceeds from the sale of approximately \$144,000.

¶ 19 In January 2009, the net sale proceeds were deposited with Mr. Opaleke, as SH was looking to Mr. Opaleke for advice and direction concerning the investment of these funds. Her objective was to earn 6% per annum while protecting the principal as she needed to rely on these funds in the future for income.

¶ 20 A February 2009 client account update form for her primary account, the Canadian Margin account, states that SH was 44 years old with "limited" investment knowledge. Her stated annual income was \$21,000, and she had net liquid assets of \$175,000. In effect, nearly her entire net worth was comprised of the proceeds from the sale of her home.

¶ 21 Her stated risk tolerance and investment objective parameters were 5%-95%-0% (low-medium-high); with investment objectives of cash 5%; income 59%; growth/income 20%; growth 1%; aggressive 0%; aggressive income 15%.

¶ 22 In August 2011, her account was updated to risk tolerance of 0%-51%-49% (low-medium-high); and investment objectives of cash 0%; income 28%; growth/income 23%; growth 0%; aggressive 34%; aggressive income 15%.

¶ 23 From at least February 2009 onward, the stated parameters permitted too much risk and were inconsistent with the client's true financial situation, investment knowledge, investment objectives and risk tolerance.

¶ 24 As such, they were not appropriate for a vulnerable client with limited income and investment knowledge, who intended to rely on her investments for income.

#### Suitability

¶ 25 Between June 2007 and June 2011, the total average balance in her accounts was \$129,293.

¶ 26 The securities recommended to SH by Mr. Opaleke were nearly all medium risk preferred shares and equity mutual funds. On average, approximately 5% of her holdings were in low risk, fixed income securities.

¶ 27 During the relevant period of approximately January 2007 to October 2011, SH's account earned a profit

of \$8,242, a gain of 5%. During the same period, the S&P/TSX Composite Total Return Index increased 7.3% and a DEX Universe Bond Index fund returned 27.3%.

¶ 28 The lack of low risk, income-producing securities was too aggressive for a client who could not work, had limited investment knowledge, and was focused on capital preservation.

¶ 29 As such, the recommended securities were not suitable for the client in light of her employment status, investment knowledge, and financial circumstances.

#### Discretionary Trading

¶ 30 In an email dated February 10, 2012, in response to a query from the Edward Jones compliance department, Mr. Opaleke stated that SH gave him “verbal trading authorization” to execute trades when he was unable to contact her.

¶ 31 In subsequent emails to his compliance department on February 13 and 14, 2012, Mr. Opaleke identified seven (7) specific trades in her account between June 2006 and October 2011 that he had executed without obtaining her prior authorization.

¶ 32 In an interview with Staff conducted on January 22 and 31, 2013, Mr. Opaleke advised Staff that although he did not have specific prior authorization for the seven trades, he had executed these trades pursuant to a “verbal authorization agreement” with SH which permitted him to sell securities at his discretion.

¶ 33 Although Mr. Opaleke did not have discretionary authority over any of SH’s accounts, and the accounts were not approved as discretionary, Mr. Opaleke conducted the seven trades in SH’s account at his discretion.

#### **Client – JB**

##### Failure to Know Your Client

¶ 34 JB was a 57 year old registered nurse when she first opened an account with Mr. Opaleke in or about June 2004.

¶ 35 JB intended to rely on her investments when she retired, and her primary concern was having sufficient money for retirement. She was a single parent with very limited investment knowledge and she also needed money to help her son and daughter financially.

¶ 36 Between 2004 and 2012, JB held a total of four (4) accounts – a Canadian margin account; a US margin account; an RRSP; and a TFSA. Most of the trading activity was carried out in the Canadian and US margin accounts. However, the majority of JB’s holdings were in her Canadian margin and RRSP accounts.

¶ 37 The June 2004 NCAF for the Canadian margin account and the RRSP account states that she had an annual income of \$56,000, and net liquid assets of \$175,000. Her risk tolerance parameters were 25%-70%-5% (low-medium-high) and her investment objectives were 5% cash; 20% income; 45% growth and income; 25% growth; 5% aggressive; and 0% aggressive income. At the time, she was 57 years old.

¶ 38 An April 2006 update for the Canadian margin account changed the risk tolerance parameters to 4%-83%-13% (low-medium-high) and the investment objectives to 0% cash; 4% income; 46% growth and income; 37% growth; 13% aggressive; and 0% aggressive income.

¶ 39 A May 2006 NCAF update for the RRSP account changed the risk tolerance parameters to 4%-83%-13% (low-medium-high) and the investment objectives to 0% cash; 4% income; 38% growth and income; 45% growth; 13% aggressive; and 0% aggressive income.

¶ 40 The September 2007 NCAF update for the Canadian margin account states that she had an annual income of \$56,000, and net liquid assets of \$175,000. Her risk tolerance parameters were 3%-73%-24% (low-medium-high) and her investment objectives were 0% cash; 3% income; 48% growth and income; 25% growth; 24% aggressive; and 0% aggressive income. At the time, she was 60 years old.

¶ 41 Despite her pending retirement, the level of risk to JB’s accounts actually increased over time.

¶ 42 JB retired in 2008, but returned to work on a casual basis in 2010.

¶ 43 From at least April 2006 onward, the stated parameters permitted too much risk and were inconsistent with the client's true financial situation, investment knowledge, investment objectives and risk tolerance.

¶ 44 As such, they were not appropriate for a vulnerable client with limited investment knowledge, who intended to rely on her investments for income.

#### Suitability

¶ 45 Between June 2007 and December 2011, the total average balance in her accounts was \$182,645.

¶ 46 The securities recommended to JB by Mr. Opaleke were nearly all medium risk issuers and equity mutual funds. Less than 5% of her combined holdings in the Canadian margin and RRSP accounts were in low risk, fixed income securities.

¶ 47 In addition, although JB did not know what margin was, or how it worked, there was a significant use of margin in the Canadian and US margin accounts.

¶ 48 During the time period of January 2007 to April 2012, the level of margin in the Canadian margin account ranged from 41% to 48% of the market value in 29 of the 64 months.

¶ 49 Between January 2007 and April 2012, the four accounts sustained total losses of \$91,853, which is 40.3% of the net amount invested. During the same period, the S&P/TSX Composite Total Return Index increased 9.5% and a DEX Universe Bond Index fund returned 29.8%.

¶ 50 The lack of low risk, income producing securities was too aggressive for a client who was a vulnerable senior with limited investment knowledge, and who intended to rely on her investments in retirement.

¶ 51 In addition, the recommended use of a high degree of leverage through margin was not at all suitable for JB as it significantly increased the level of risk and resulting losses in her accounts.

¶ 52 As such, the recommended securities, in combination with the high use of margin, were not suitable for the client in light of her age, employment status, investment knowledge, and financial circumstances.

#### **Unauthorized Trading**

¶ 53 JB travelled outside of the country on vacation numerous times per year and was not available to be contacted during those periods.

¶ 54 Between 2007 and 2012, 32 trades were conducted in her RRSP account during time periods when she was out of the country. Only 5 of these 32 trades are documented by file notes suggesting contact with JB.

¶ 55 Mr. Opaleke executed 27 trades in JB's RRSP account without first obtaining her prior authorization.

#### **Client - RM**

##### Failure to Know Your Client

¶ 56 RM, a sales and marketing representative, was 57 years old when she first opened accounts with Mr. Opaleke in 2002.

¶ 57 She held a Canadian margin account, an RRSP account and a TFSA with Mr. Opaleke.

¶ 58 A March 2006 NCAF for her RRSP account states that she had moderate investment knowledge, an annual income of \$40,000, and net liquid assets of \$75,000; with risk tolerance parameters of 12%-68%-20% (low-medium-high) and investment objectives of 0% cash-12% income-43% growth/income; 25% growth; 20% aggressive; and 0% aggressive income.

¶ 59 A July 2008 NCAF for her Canadian margin account provides the same income and liquid asset particulars as the RRSP account. It states that she had risk tolerance parameters of 0%-72%-28% (low-medium-high), and investment objectives of 0% cash; 0% income-59% growth/income; 13% growth; 28%

aggressive; and 0% aggressive income.

¶ 60 RM had limited investment knowledge and assets. She was seeking low risk investments as she needed to rely on her investments in retirement.

¶ 61 Now 67 years old, RM continues to work as a sales representative earning \$40,000 per year.

¶ 62 From at least March 2006 onward, the stated risk parameters permitted too much risk and were inconsistent with the client's true financial situation, investment knowledge, investment objectives and risk tolerance.

¶ 63 As such, they were not appropriate for a senior client with limited investment knowledge, who intended to rely on her investments for income.

#### Suitability

¶ 64 Between June 2008 and December 2011, the total average balance in her three accounts was \$57,844.

¶ 65 The securities recommended to RM by Mr. Opaleke were nearly all medium risk issuers and equity mutual funds. Between 5% and 11% of her holdings in RRSP account were in low risk, fixed income securities. There were no low risk securities in her Canadian margin account.

¶ 66 In addition, there was a significant use of margin in the Canadian margin accounts.

¶ 67 During the period of July 2008 to April 2012, the level of margin in the Canadian margin account ranged from 35% to 48% of the market value for 19 of the 47 months.

¶ 68 Between January 2008 and April 2012, RM had total losses of \$6,310, or 7.74% of the net amount invested. During the same period, the S&P/TSX Composite Total Return Index increased 5.8% and a DEX Universe Bond Index fund returned 26%.

¶ 69 Losses were approximately \$2,573 (9.1%) in the Canadian margin account and \$2,648 (6.1%) in the RRSP account.

¶ 70 The absence of low risk, income-producing securities was too aggressive for a client who was a vulnerable senior with limited investment knowledge, and who intended to rely on her investments in retirement.

¶ 71 In addition, the recommended use of a high degree of leverage through margin was not at all suitable for RM as it significantly increased the level of risk, and resulting losses, in her accounts.

¶ 72 As such, the recommended securities, in combination with the high use of margin, were not suitable for the client in light of her age, employment status, investment knowledge, and financial circumstances.

#### Discretionary Trading

¶ 73 Between January 2008 and April 2012, Mr. Opaleke executed 70 trades in the RRSP account. Mr. Opaleke's electronic notes indicate that he obtained RM's authorization for 14 trades during this period.

¶ 74 Between January 2008 and April 2012, Mr. Opaleke executed 25 trades in the Canadian margin account. Mr. Opaleke's electronic notes indicate that he obtained RM's authorization for 3 of the trades during this period.

¶ 75 RM states that she was never contacted by Mr. Opaleke in advance of any trades in her accounts.

¶ 76 Mr. Opaleke's electronic notes do not contain any references to contacts with RM during this period.

¶ 77 During the material time, Mr. Opaleke executed trades in RM's accounts without confirming the details of all trades with RM prior to their execution.

#### **Client – JR**

¶ 78 JR is RM's 42 year old daughter and also Mr. Opaleke's client. She held both a Canadian margin

account and a TFSA.

### Discretionary Trading

¶ 79 According to a 2011 NCAF for her Canadian margin account, she has liquid assets of \$100,000 and an annual income of \$40,000. Her investment experience is described as “moderate”.

¶ 80 Between January 2008 and April 2012, Mr. Opaleke executed 143 trades in her account. Mr. Opaleke's electronic notes indicate that he obtained JR's authorization for 17 of the trades during this period.

¶ 81 JR states that she was only ever contacted by Mr. Opaleke once in advance of a trade in her account, and this occurred approximately 1 month before he was terminated by Edward Jones.

¶ 82 Mr. Opaleke's electronic notes do not contain any references to contacts with JR during this period.

¶ 83 During the material time, Mr. Opaleke executed trades in JR's accounts without confirming the details of all trades with JR prior to their execution.

### Conduct Unbecoming

¶ 84 On or about July 11, 2011, Mr. Opaleke advised JR that he would ensure that she achieved at least a 7% return in her TFSA. At the time, the TFSA held a balance of approximately \$4,300.

¶ 85 In a handwritten statement dated July 11, 2011, above Mr. Opaleke's signature on an Edward Jones account statement of the same date, it states:

“I will refund the difference between amount invested and market value if below amount invested when security is sold or redeemed.”

¶ 86 JR did not receive any compensation from Mr. Opaleke.

¶ 87 The offer to compensate the client JR by personally offering compensation to guarantee results without the knowledge and approval of his firm constitutes conduct unbecoming.

### **Panel Reasons and Decisions**

¶ 88 We adopt the comments of the Panel in Milewski regarding our role when considering a negotiated settlement. In particular, the Panel's role is to give serious consideration to the settlement negotiated by the parties and to not reject the settlement unless there are good reasons for doing so or unless the settlement is unreasonable or contrary to the public interest. We are of the unanimous view that the acceptance of the Settlement Agreement is consistent with the foregoing principles.

¶ 89 Mr. Opaleke admitted the allegations set out in the Settlement Agreement and admitted that his conduct breached the IIROC Dealer Member Rules as cited. The Panel accepts Mr. Opaleke's admission and we conclude that his conduct in this case amounts to a contravention of those requirements.

¶ 90 We acknowledge the assistance of counsel for IIROC who made helpful submissions regarding the application of the Guidelines in this case. We accept the submissions of counsel as summarized above.

¶ 91 The securities industry is a business of trust and confidence. Registrants must meet significant responsibilities and supervisors play an important role in protecting investors and maintaining the integrity of the capital markets. It is important for the registrants and firms to appreciate that there will be significant penalties, including suspensions and/or significant fines as a result of disciplinary action for failure to comply with the regulatory requirements.

¶ 92 The Panel considered a number of factors in determining whether to accept the Settlement Agreement including whether the terms of the settlement:

- a) Were reasonable, given the conduct of Mr. Opaleke;
- b) Addressed both specific and general deterrence;

- c) Will prevent the type of conduct described from occurring in the future;
- d) Will protect investors as a result of the proposed penalty; and
- e) Will foster confidence in the integrity of the capital markets, IIROC, and the regulatory process.

¶ 93 We are satisfied that Mr. Opaleke is unlikely to engage in similar conduct in the future and that the penalties in this case will deter others from engaging in similar misconduct. We are also satisfied that the settlement will improve compliance by the industry participants and foster confidence in the industry and the regulatory process.

### **Conclusion**

¶ 94 The Panel, after careful consideration, concluded that the settlement terms:

- a) Are reasonable and within the appropriate range for sanctions, given the facts and circumstances set out in the Settlement Agreement, the submissions of counsel, and the authorities cited; and
- b) Meet the IIROC’s Dealer Member Disciplinary Sanction Guidelines and the principles of specific and general deterrence.

¶ 95 For the reasons set out above, the Panel unanimously accepts the Settlement Agreement. In accordance with the terms of the Settlement Agreement, the Panel orders effective on the date of the Settlement Hearing that Mr. Opaleke:

- a) Will pay a fine in the amount of \$85,000;
- b) Be suspended from registration with IIROC in any capacity for a period of one (1) year; and
- c) Agrees to pay IIROC the sum of \$10,000 on account of costs.

DATED as of February 3rd, 2015.

Michael F. C. Radcliffe, Q.C., Chair

Alan McLaughlin

Claude Tetrault

## **SETTLEMENT AGREEMENT**

### **I. INTRODUCTION**

1. IIROC Enforcement Staff (“Staff”) and the Respondent, Sunday Bamidele Opaleke, 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 Sunday Bamidele Opaleke.
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:

- a. Between approximately 2006 and 2012, the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to three (3) clients, contrary to IIROC Rule 1300.1(a) [IDA Regulation 1300.1(a) prior to June 1, 2008];
  - b. Between approximately 2007 and 2012, the Respondent made investment recommendations that were not suitable for three (3) clients, contrary to IIROC Rule 1300.1(q) [IDA Regulation 1300.1(q) prior to June 1, 2008];
  - c. Between approximately 2006 and 2011, the Respondent made discretionary trades in the accounts of three (3) clients without first having the accounts approved and accepted as discretionary accounts, contrary to IIROC Dealer Member Rules 1300.4 and 1300.5 [IDA Regulation 1300.4 and 1300.5 prior to June 1, 2008];
  - d. Between approximately 2007 and 2012, the Respondent engaged in unauthorized trading with respect to one (1) client and thereby engaged in conduct unbecoming or detrimental to the public interest contrary to IIROC Dealer Member Rule 29.1 [IDA By-Law 29.1 prior to June 1, 2008];
  - e. In or about July, 2011, the Respondent offered to personally guarantee results through undisclosed compensation to one client, contrary to IIROC Dealer Member Rule 29.1.
6. Staff and the Respondent agrees to the following terms of settlement:
- a) Fine in the amount of \$85,000;
  - b) Suspension from registration with IIROC in any capacity for a period of 1 year.

7. The Respondent agrees to pay costs to IIROC in the sum of \$10,000.

### **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**

9. The Respondent Sunday Bamidele Opaleke (“Opaleke”) was a Registered Representative (“RR”) responsible for the accounts of four clients – SH; JB; RM and JR.
10. Opaleke failed to know three of his clients, who were retired and/or vulnerable with limited incomes and little investment knowledge. He also failed to ensure that his recommendations were suitable for these clients as he recommended almost no low risk securities.
11. In the case of two of these vulnerable clients, Opaleke recommended significant use of margin. The use of margin, which was over 40% of market value of the accounts for extended periods of time, was not suitable for these clients in the circumstances.
12. In addition, he engaged in discretionary trading in the accounts of three clients, and engaged in unauthorized trading in one client account.
13. Opaleke also offered to personally guarantee results through undisclosed compensation to one client.

#### **Registration History**

14. Opaleke joined Edward Jones in 1998 and at all material times he was employed with Edward Jones in a sub-branch in Winnipeg, Manitoba.
15. Opaleke was the only RR on site at his sub-branch, and he was supported by an assistant who handled administrative duties.

16. Opaleke did not have the authority to conduct discretionary trades in any client accounts.
17. On April 17, 2012, Edward Jones terminated his employment. He has not worked in a registered capacity since that date.

## **Client - SH**

### Failure to Know Your Client

18. SH first opened accounts with Opaleke in 1998. She suffers from permanent physical disability and poor short-term memory as a result of a 1996 motor vehicle accident. She is not able to work due to her disability, and her income consists of disability benefit payments, and spousal support payments from her ex-husband.
19. In 2008, SH sold her home in Winnipeg and moved into a cottage outside the city in order to improve her financial position. She received net proceeds from the sale of approximately \$144,000.
20. In January, 2009, the net sale proceeds were deposited with Opaleke, as SH was looking to Opaleke for advice and direction concerning the investment of these funds. Her objective was to earn 6% per annum while protecting the principal as she needed to rely on these funds in the future for income.
21. A February 2009 client account update form for her primary account, the Canadian Margin account, states that SH was 44 years old with "limited" investment knowledge. Her stated annual income was \$21,000, and she had net liquid assets of \$175,000. In effect, nearly her entire net worth was comprised of the proceeds from the sale of her home.
22. Her stated risk tolerance and investment objective parameters were 5%-95%-0% (low-medium-high); with investment objectives of cash 5%; income 59%; growth/income 20%; growth 1%; aggressive 0%; aggressive income 15%.
23. In August, 2011, her account was updated to risk tolerance of 0%-51%-49% (low-medium-high); and investment objectives of cash 0%; income 28%; growth/income 23%; growth 0%; aggressive 34%; aggressive income 15%.
24. From at least February, 2009 onward, the stated parameters permitted too much risk and were inconsistent with the client's true financial situation, investment knowledge, investment objectives and risk tolerance.
25. As such, they were not appropriate for a vulnerable client with limited income and investment knowledge, who intended to rely on her investments for income.

### Suitability

26. Between June, 2007 and June, 2011, the total average balance in her accounts was \$129,293.
27. The securities recommended to SH by Opaleke were nearly all medium risk preferred shares and equity mutual funds. On average, approximately 5% of her holdings were in low risk, fixed income securities.
28. During the relevant period of approximately January, 2007 to October, 2011, SH's account earned a profit of \$8,242, a gain of 5%. During the same period, the S&P/TSX Composite Total Return Index increased 7.3% and a DEX Universe Bond Index fund returned 27.3%.
29. The lack of low risk, income-producing securities was too aggressive for a client who could not work, had limited investment knowledge, and was focused on capital preservation.
30. As such, the recommended securities were not suitable for the client in light of her employment status, investment knowledge, and financial circumstances.

### Discretionary Trading

31. In an email dated February 10, 2012 in response to a query from the Edward Jones compliance

department, Opaleke stated that SH gave him “verbal trading authorization” to execute trades when he was unable to contact her.

32. In subsequent emails to his compliance department on February 13 and 14, 2012, Opaleke identified seven (7) specific trades in her account between June, 2006 and October, 2011 that he had executed without obtaining her prior authorization.
33. In an interview with Staff conducted on January 22 and 31, 2013, Opaleke advised Staff that although he did not have specific prior authorization for the seven trades, he had executed these trades pursuant to a “verbal authorization agreement” with SH which permitted him to sell securities at his discretion.
34. Although Opaleke did not have discretionary authority over any of SH’s accounts, and the accounts were not approved as discretionary, Opaleke conducted the seven trades in SH’s account at his discretion.

## **Client – JB**

### Failure to Know Your Client

35. JB was a 57 year old registered nurse when she first opened an account with Opaleke in or about June, 2004.
36. JB intended to rely on her investments when she retired, and her primary concern was having sufficient money for retirement. She was a single parent with very limited investment knowledge and she also needed money to help her son and daughter financially.
37. Between 2004 and 2012, JB held a total of four accounts – a Canadian margin account; a US margin account; an RRSP; and a TFSA. Most of the trading activity was carried out in the Canadian and US margin accounts. However, the majority of JB’s holdings were in her Canadian margin and RRSP accounts.
38. The June, 2004 NCAF for the Canadian margin account and the RRSP account states that she had an annual income of \$56,000, and net liquid assets of \$175,000. Her risk tolerance parameters were 25%-70%-5% (low – medium – high) and her investment objectives were 5% cash; 20% income; 45% growth and income; 25% growth; 5% aggressive; and 0% aggressive income. At the time, she was 57 years old.
39. An April, 2006 update for the Canadian margin account changed the risk tolerance parameters to 4%-83%-13% (low-medium-high) and the investment objectives to 0% cash; 4% income; 46% growth and income; 37% growth; 13% aggressive; and 0% aggressive income.
40. A May, 2006 NCAF update for the RRSP account changed the risk tolerance parameters to 4%-83%-13% (low-medium-high) and the investment objectives to 0% cash; 4% income; 38% growth and income; 45% growth; 13% aggressive; and 0% aggressive income.
41. The September, 2007 NCAF update for the Canadian margin account states that she had an annual income of \$56,000, and net liquid assets of \$ 175,000. Her risk tolerance parameters were 3%-73%-24% (low – medium – high) and her investment objectives were 0% cash; 3% income; 48% growth and income; 25% growth; 24% aggressive; and 0% aggressive income. At the time, she was 60 years old.
42. Despite her pending retirement, the level of risk in JB’s accounts actually increased over time.
43. JB retired in 2008, but returned to work on a casual basis in 2010.
44. From at least April, 2006 onward, the stated parameters permitted too much risk and were inconsistent with the client’s true financial situation, investment knowledge, investment objectives and risk tolerance.
45. As such, they were not appropriate for a vulnerable client with limited investment knowledge, who intended to rely on her investments for income.

### Suitability

46. Between June, 2007 and December, 2011, the total average balance in her accounts was \$182,645.
47. The securities recommended to JB by Opaleke were nearly all medium risk issuers and equity mutual funds. Less than 5% of her combined holdings in the Canadian margin and RRSP accounts were in low risk, fixed income securities.
48. In addition, although JB did not know what margin was, or how it worked, there was a significant use of margin in the Canadian and US margin accounts.
49. During the time period of January, 2007 to April, 2012, the level of margin in the Canadian margin account ranged from 41% to 48% of the market value in 29 of the 64 months.
50. Between January, 2007 and April, 2012, the four accounts sustained total losses of \$91,853, which is 40.3% of the net amount invested. During the same period, the S&P/TSX Composite Total Return Index increased 9.5% and a DEX Universe Bond Index fund returned 29.8%.
51. The lack of low risk, income producing securities was too aggressive for a client who was a vulnerable senior with limited investment knowledge, and who intended to rely on her investments in retirement.
52. In addition, the recommended use of a high degree of leverage through margin was not at all suitable for JB as it significantly increased the level of risk and resulting losses in her accounts.
53. As such, the recommended securities, in combination with the high use of margin, were not suitable for the client in light of her age, employment status, investment knowledge, and financial circumstances.

### **Unauthorized Trading**

54. JB travelled outside of the country on vacation numerous times per year and was not available to be contacted during those periods.
55. Between 2007 and 2012, 32 trades were conducted in her RRSP account during time periods when she was out of the country. Only 5 of these 32 trades are documented by file notes suggesting contact with JB.
56. Opaleke executed 27 trades in JB's RRSP account without first obtaining her prior authorization.

### **Client - RM**

#### Failure to Know Your Client

57. RM, a sales and marketing representative, was 57 years old when she first opened accounts with Opaleke in 2002.
58. She held a Canadian margin account, an RRSP account and a TFSA with Opaleke.
59. A March, 2006 NCAF for her RRSP account states that she had moderate investment knowledge, an annual income of \$40,000, and net liquid assets of \$75,000; with risk tolerance parameters of 12%-68%-20% (low – medium – high) and investment objectives of 0% cash – 12% income – 43% growth/income; 25% growth; 20% aggressive; and 0% aggressive income.
60. A July, 2008 NCAF for her Canadian margin account provides the same income and liquid asset particulars as the RRSP account. It states that she had risk tolerance parameters of 0% -72% - 28% (low – medium – high), and investment objectives of 0% cash ; 0% income– 59% growth/income; 13% growth; 28% aggressive; and 0% aggressive income.
61. RM had limited investment knowledge and assets. She was seeking low risk investments as she needed to rely on her investments in retirement.
62. Now 67 years old, RM continues to work as a sales representative earning \$40,000 per year.

63. From at least March, 2006 onward, the stated risk parameters permitted too much risk and were inconsistent with the client's true financial situation, investment knowledge, investment objectives and risk tolerance.
64. As such, they were not appropriate for a senior client with limited investment knowledge, who intended to rely on her investments for income.

#### Suitability

65. Between June, 2008 and December, 2011, the total average balance in her three accounts was \$57,844.
66. The securities recommended to RM by Opaleke were nearly all medium risk issuers and equity mutual funds. Between 5% and 11% of her holdings in RRSP account were in low risk, fixed income securities. There were no low risk securities in her Canadian margin account.
67. In addition, there was a significant use of margin in the Canadian margin accounts.
68. During the period of July, 2008 to April, 2012, the level of margin in the Canadian margin account ranged from 35% to 48% of the market value for 19 of the 47 months.
69. Between January, 2008 and April, 2012, RM had total losses of \$6,310, or 7.74% of the net amount invested. During the same period, the S&P/TSX Composite Total Return Index increased 5.8% and a DEX Universe Bond Index fund returned 26%.
70. Losses were approximately \$2,573 (9.1%) in the Canadian margin account and \$2,648 (6.1%) in the RRSP account.
71. The absence of low risk, income-producing securities was too aggressive for a client who was a vulnerable senior with limited investment knowledge, and who intended to rely on her investments in retirement.
72. In addition, the recommended use of a high degree of leverage through margin was not at all suitable for RM as it significantly increased the level of risk, and resulting losses, in her accounts.
73. As such, the recommended securities, in combination with the high use of margin, were not suitable for the client in light of her age, employment status, investment knowledge, and financial circumstances.

#### Discretionary Trading

74. Between January, 2008 and April, 2012, Opaleke executed 70 trades in the RRSP account. Opaleke's electronic notes indicate that he obtained RM's authorization for 14 trades during this period.
75. Between January, 2008 and April, 2012, Opaleke executed 25 trades in the Canadian margin account. Opaleke's electronic notes indicate that he obtained RM's authorization for 3 of the trades during this period.
76. RM states that she was never contacted by Opaleke in advance of any trades in her accounts.
77. Opaleke's electronic notes do not contain any references to contacts with RM during this period.
78. During the material time, Opaleke executed trades in RM's accounts without confirming the details of all trades with RM prior to their execution.

#### **Client - JR**

79. JR is RM's 42 year old daughter and also Opaleke's client. She held both a Canadian margin account and a TFSA.

#### Discretionary Trading

80. According to a 2011 NCAF for her Canadian margin account, she has liquid assets of \$100,000 and an annual income of \$40,000. Her investment experience is described as "moderate".

81. Between January, 2008 and April, 2012, Opaleke executed 143 trades in her account. Opaleke's electronic notes indicate that he obtained JR's authorization for 17 of the trades during this period.
82. JR states that she was only ever contacted by Opaleke once in advance of a trade in her account, and this occurred approximately 1 month before he was terminated by Edward Jones.
83. Opaleke's electronic notes do not contain any references to contacts with JR during this period.
84. During the material time, Opaleke executed trades in JR's accounts without confirming the details of all trades with JR prior to their execution.

#### Conduct Unbecoming

85. On or about July 11, 2011, Opaleke advised JR that he would ensure that she achieved at least a 7% return in her TFSA. At the time, the TFSA held a balance of approximately \$4,300.
86. In a handwritten statement dated July 11, 2011 above Opaleke's signature on an Edward Jones account statement of the same date, it states:

"I will refund the difference between amount invested and market value if below amount invested when security is sold or redeemed"

87. JR did not receive any compensation from Opaleke.
88. The offer to compensate the client JR by personally offering compensation to guarantee results without the knowledge and approval of his firm constitutes conduct unbecoming.

#### **IV. TERMS OF SETTLEMENT**

89. 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.
90. The Settlement Agreement is subject to acceptance by the Hearing Panel.
91. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
92. 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.
93. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her/its right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
94. 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.
95. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
96. 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.
97. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
98. 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 Winnipeg in the Province of Manitoba, this 6<sup>th</sup> day of October,

2014.

“Witness”

**Witness**

“Sunday Opaleke”

**Respondent**

**AGREED TO** by Staff at the City of Winnipeg in the Province of Manitoba, this 6<sup>th</sup> day of October, 2014.

“Witness”

**Witness**

“David McLellan”

**David McLellan**

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

**ACCEPTED** at the City of Winnipeg in the Province of Manitoba, this 6<sup>th</sup> day of October, 2014, by the following  
Hearing Panel:

Per: “Michael Radcliffe”

**Panel Chair**

Per: “Alan McLaughlin”

Panel Member

Per: “Claude Tetrault”

Panel Member

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