

Re Ford

IN THE MATTER OF:

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

and

Scott Ford

2016 IIROC 31

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

Heard: July 7, 2016

Decision: July 7, 2016

Reasons: August 26, 2016

Hearing Panel:

The Honourable Robert P. Armstrong, Q.C., Chair Mr. Richard Austin and Mr. Neil Murphy

Appearances:

Ms. Natalija Popovic, Enforcement Counsel for IIROC

Ms. Cait Sainsbury, Counsel for Respondent

REASONS FOR DECISION

I. INTRODUCTION

¶ 1 A hearing was held in Toronto on July 7, 2016 to determine whether the Hearing Panel was prepared to accept or reject the terms of a settlement pursuant to a Settlement Agreement between the Investment Industry Regulatory Organization of Canada (“IIROC”) and Scott Ford (the “Respondent”).

¶ 2 The Respondent was charged with the following contraventions of the IIROC Dealer Member, Rules, Guidelines, Regulations or Policies:

Count 1 From October 2008 to June 2014 the Respondent failed to use due diligence to learn the essential facts relative to two clients, contrary to IIROC Dealer Member Rule 1300.1(a).

Count 2 From October 2008 to June 2014 the Respondent failed to ensure that recommendations that he made for two clients were suitable for them, contrary to IIROC Dealer Member Rule 1300.1(q).

Count 3 From February 2012 to December 2013 the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to four clients and accounts accepted, contrary to IIROC Rule 1300.1(a).

¶ 3 The Respondent was registered with IIROC and its predecessor, the IDA, as a Registered Representative from December, 2002 until May, 2008 at Edward Jones; and with Raymond James Ltd. (“RJ”) from June, 2008 to January, 2015. The Respondent has been a registrant with Aligned Capital Partners Inc., an IIROC regulated firm since January, 2015.

¶ 4 The relevant facts of the alleged contraventions are set forth in paras. 14 to 40 of the Settlement Agreement which are set out as follows:

Failure to Know Clients: MB & RB

14. The Respondent opened an RRSP account for his client MB in July 2008 when she was 59 years of age. Her main source of income at this time was disability benefits following a debilitating surgical procedure in 2007.
15. The Respondent also opened an RRSP and an RESP account for his client RB, who is MB’s sister, in July 2008. RB was at that time approximately 51 years of age, employed with a municipal government, and a single parent of two teenaged children planning to attend university.
16. The Respondent updated the KYC information for each of the accounts for MB and RB in July 2009, and again for RB’s accounts in November 2013.
17. The 2008 and 2009 KYC information for MB and RB, and the 2013 update for RB, indicated as follows:

CLIENT MB ACCOUNT	2008 KYC INFORMATION	2009 UPDATE TO KYC
MB RRSP	<ul style="list-style-type: none"> - Annual income \$42,000 - Net liquid assets of \$120,000 - Net fixed assets of \$175,000 - Investment knowledge “limited” - Moderate investment experience - Primary intended use of the account was “retirement funding” 	No change
Account Objectives	<ul style="list-style-type: none"> - 100% growth 	<ul style="list-style-type: none"> - 70% growth - 30% speculative trading
Risk Tolerance	<ul style="list-style-type: none"> - 100% medium risk 	<ul style="list-style-type: none"> - 70% medium risk and - 30% high risk

CLIENT RB ACCOUNTS	2008 KYC INFORMATION	2009 UPDATE TO KYC FOR BOTH ACCOUNT	2013 UPDATE
RB RRSP & RESP	<ul style="list-style-type: none"> - Annual income \$90,000 - Net liquid assets \$100,000 - Net fixed assets \$600,000 - Investment knowledge “good” 	No change	No change

CLIENT RB ACCOUNTS	2008 KYC INFORMATION	2009 UPDATE TO KYC FOR BOTH ACCOUNT	2013 UPDATE
	<ul style="list-style-type: none"> - Moderate investment experience - Primary intended use of the RSP account was “retirement funding” and “capital appreciation” for the RESP account 		
Account Objectives Risk Tolerance	<ul style="list-style-type: none"> - 100% growth - 100% medium risk 	<ul style="list-style-type: none"> - 70% growth and - 30% speculative trading - 70% medium risk and - 30% high risk 	<u>RRSP</u> <ul style="list-style-type: none"> - 20% growth and 80% speculative trading - 20% medium risk and 80% high risk
Account Objectives Risk Tolerance			<u>RESP</u> <ul style="list-style-type: none"> - 50% growth and 50% speculative trading - 50% medium risk and 50% high risk

18. The 2009 updates to the KYC information did not reflect the true investor profiles of MB and RB; nor did the 2013 updates for RB. Specifically neither MB nor RB were comfortable with or wanted any high risk component to their respective accounts.
19. The high risk levels of 30% were too high given their personal and financial circumstances.
20. MB would turn 65 by 2014, at which time she would no longer be able to rely on disability benefits but would then be living on CPP and OAS payments.
21. As she had no private health care coverage she would have to cover out of pocket expenses for her ongoing medical services and related needs. As she was not in a position to speculate with, or tolerate any high risk in, her investments.
22. RB’s RRSP account was intended to fund her retirement and her RESP account was opened for the purposes of helping her children to attend university. As such she was unwilling to take risks with these investments.

Unsuitable Recommendations: Client MB & RB

- 23. From October 2008 to June 2014 trading activity in each of MB and RB’s accounts occurred in approximately 14 – 16 of the months within this time period. All trades in the accounts resulted from recommendations made by the Respondent to MB and RB.
- 24. For MB’s and RB’s respective accounts, the high risk holdings were in excess of the stated risk tolerances of 30%, and for several months in excess of 60%.
- 25. The account holdings were unsuitable for MB and for RB.
- 26. Further although they had historically held shares of issuers in the precious metals sector in their accounts, high levels of concentration in precious metals issues of approximately 20% for several months increased the risk level even further and exacerbated the unsuitable nature of the investments.
- 27. Over the course of 2008 – 2014 MB and RB sustained realized and unrealized losses in their accounts between approximately \$6000 – 80000 each; inclusive of DSC fees of approximately \$1,900 incurred when the accounts were moved to fee-based accounts.

Use of Fee Based Accounts: Clients MB & RB, and AC & SC

Ford’s Clients MB & RB

- 28. Prior to February 2012 the Respondent informed MB and RB that they could join their then commission based accounts into one household in order to meet the minimum dollar amount needed to open a fee-based account known at RJ as a Viridian account (“Viridian”).
- 29. He indicated that it would be less expensive for them to do so than paying commissions on a per trade basis. MB and RB were receptive to a fee based account as they felt they had been paying a lot of commissions and liked the idea of saving money.
- 30. In February 2012 the Respondent opened Viridian accounts for MB and RB and moved the assets from these clients’ RRSP and RESP accounts into the Viridian accounts.
- 31. The February 2012 KYC information for the Viridian accounts remained essentially the same as the July 2009 updated information for both MB and RB. As indicated above the Respondent made further updates to the account objectives and risk tolerance for RB’s RRSP and RESP accounts in 2013.

Ford’s Clients AC & SC

- 32. The Respondent met AC and his spouse SC in 2011 and in December 2011 he opened Viridian RRSP and LIRA accounts for AC. In January 2012 he opened Viridian RRSP and SRSP accounts for SC. Both were 40 years of age at the time with KYC information as follows:

CLIENT ACCOUNTS	2011 KYC INFORMATION
AC RRSLP & LIRA	<ul style="list-style-type: none">- Annual income \$140,000- Net liquid assets \$150,000- Net fixed assets \$500,000- Investment knowledge “good”- Moderate investment experience- Account objectives 70% growth/30% speculative trading; and- Risk tolerance 70% medium risk and 30% high risk

CLIENT ACCOUNTS	2011 KYC INFORMATION
	- Primary intended use of the RSP account “retirement funding”
SC RRSLP & SRSP	- Same as for AC except; - Annual information \$50,000

Fees Paid and Transactions Completed in Viridian Accounts

33. For the 22 month period February 2012 to December 2013 the Viridian accounts of MB, RB, AC and SC held cash for extended periods of time. In the case of SC’s RRSP account the holdings were cash for 100% of the time.
34. While AC’s fee based accounts generate interest totaling approximately \$150 over this time period, none of the other clients’ accounts received any interest payments.
35. The flat fee schedule for the Viridian accounts for these clients indicated a minimum account fee of \$1500 per year chargeable as a minimum monthly fee of \$125/month or \$375/quarter.
36. Given the volume of trading the holdings in cash in these clients’ accounts, the use of Viridian accounts resulted in fees charged to clients of approximately \$800 - \$4000, which were in excess of commissions that would have been paid in commission based accounts of approximately \$125-\$600.
37. There were two other options that the Respondent could have considered when opening Viridian accounts for these clients, namely:
 - Tiered Schedule – the fee charged would be tiered based on the type of investments held in the account. For example, equities would be charged a fee of 2.5%, cash 0.75% and fixed income 1.25%.
 - Value Fee Schedule/Reduced Trade Count – this type of account was available for clients whose accounts had very low turnover and as such a lower fee was offered in exchange for a reduced fee allotment.
38. By recommending and opening fee based Viridian accounts for these clients, Ford failed to know these clients and their expectations in terms of their investment accounts. He put them into accounts with less than optimal characteristics, resulting in the clients paying higher fees than would have otherwise been the case.
39. For the time period October 2008 to June 2014 the Respondent earned approximately \$15,000 in commissions and fees from the above noted accounts for these clients. However, the Respondent has contributed a total of \$18,040 to partial reimbursement paid to these clients.
40. The Respondent acknowledges that but for the partial reimbursement of these clients, disgorgement of profits would have formed part of the monetary penalty.

II. ANALYSIS

¶ 5 Counsel for IIROC reviewed the relevant case law in respect of penalty and submitted that the proposed remedy was reasonable in the circumstances. Counsel for the Respondent agreed with the submission that the penalty proposed was reasonable.

¶ 6 In order to exercise our discretion to accept the settlement, we must be satisfied that the agreed upon penalty is within a reasonable range. This principle was articulated in the well known case of *In The Matter of*

The Investment Dealers Association of Canada, and Edward Richard Milewski, [1999] I.D.A.C.D. No.17. In Milewski, the panel stated the following:

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

¶ 7 An administrative tribunal such as this is obligated to give serious consideration to a joint submission on penalty unless the penalty is unfit or unreasonable or contrary to the public interest. It should not be departed from unless there is good reason to do so. See *Rault v. Law Society of Saskatchewan*, [2009 SKCA 81 (CanLII)]. Counsel referred to a group of cases, which on their facts, were roughly similar to this case before us now. The penalties in each of those cases were within the same range as this case. See *Mannings (Re)* 2015, IIROC 22, *Skeleton (Re)* 2012 IIROC 46 and *Boscoe (Re)* [2005] I.D.A.C.D. No. 47.

¶ 8 We are satisfied that the proposed penalty in this case meets the test of reasonableness articulated in the Milewski and its progeny. The penalty is in accord with cases of a similar nature referred to above. We are also satisfied that the penalty appropriately takes into account the need to deter others from adopting a similar course of conduct should they be inclined to do so. We also take into account the fact that the Respondent has paid a sum of \$18,040.00 by way of reimbursement to his former clients and that he will be required to rewrite the C.P.H. and that he will be subject to strict supervision for a period of six months.

¶ 9 For the above reasons we are satisfied with the Settlement Agreement represents a fair and reasonable settlement and that the penalty imposed is appropriate and within a reasonable range. We therefore accept the Settlement Agreement as proposed.

Dated at Toronto, this 26th day of August, 2016.

Robert P. Armstrong, Chair

Richard Austin, Member

Neil Murphy, Member

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff (“Staff”) and the Respondent, Scott Douglas Ford, (“the Respondent” or “Ford”) 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”) into the conduct of Ford.
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:

Count 1 From October 2008 to June 2014 the Respondent failed to use due diligence to learn the essential facts relative to two clients, contrary to IIROC Dealer Member Rule 1300.1(a).

Count 2 From October 2008 to June 2014 the Respondent failed to ensure that recommendations that he made for two clients were suitable for them, contrary to IIROC Dealer Member Rule 1300.1 (q).

Count 3 From February 2012 to December 2013 the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to four clients and accounts accepted, contrary to IIROC Rule 1300.1(a).

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

- a) A fine of \$30,000;
- b) Re writing of the CPH; and
- c) Strict supervision for 6 months.

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

A. Overview

9. The Respondent failed to know his clients MB and RB when he updated the KYC documentation for their respective accounts to reflect a 30% high risk component when these clients did not have any tolerance or desire for high risk investments.
10. The Respondent's recommendations of high risk investments were unsuitable for his clients MB & RB given their personal and financial circumstances.
11. The holdings of these securities exceeded the high risk limits set out on the clients' KYC documents. The concentration of assets in one sector compounded the risk and exacerbated the unsuitable nature of the investments. Both clients sustained losses in their accounts.
12. In addition, the Respondent recommended that his clients MB & RB, and AC & SC, place their assets in fee based accounts. However he subsequently engaged in very little trading in these accounts, and held large cash positions for extended periods of time while the clients incurred ongoing fees.

B. Registration History

13. Ford was registered with IIROC, and its predecessor the IDA, as a Registered Representative from December 2002 until May 2008 at Edward Jones; and with Raymond James Ltd. ("RJ") from June 2008 to January 2015. Ford has been a registrant with Aligned Capital Partners Inc., an IIROC regulated firm since January 2015.

C. Failure to Know Clients: MB & RB

14. The Respondent opened an RRSP account for his client MB in July 2008 when she was 59 years of age. Her main source of income at this time was disability benefits following a debilitating surgical procedure in 2007.

15. The Respondent also opened an RRSP and an RESP account for his client RB, who is MB's sister, in July 2008. RB was at that time approximately 51 years of age, employed with a municipal government, and a single parent of two teenaged children planning to attend university.
16. The Respondent updated the KYC information for each of the accounts for MB and RB in July 2009; and again for RB's accounts in November 2013.
17. The 2008 & 2009 KYC information for MB and RB, and the 2013 update for RB, indicated as follows:

Client MB Account	2008 KYC information	2009 update to KYC
MB RRSP	-annual income \$42,000 -net liquid assets of \$120,000 -net fixed assets of \$175,000 -investment knowledge "limited" -moderate investment experience -primary intended use of the account was "retirement funding"	No change
-account objectives -risk tolerance	-100% growth 100% medium risk	-70% growth and -30% speculative trading -70% medium risk and -30% high risk

Client RB Accounts	2008 KYC information	2009 update to KYC for both accounts	2013 Update
RB RRSP & RESP	-annual income \$90,000 -net liquid assets \$100,000 -net fixed assets \$600,000 -investment knowledge "good" -moderate investment experience -primary intended use of the RSP account was "retirement funding" and "capital appreciation" for the RESP account	No change	No change
-account objectives	- 100% growth	- 70% growth and -30% speculative trading	<u>RRSP</u> -20% growth and 80% speculative

Client RB Accounts	2008 KYC information	2009 update to KYC for both accounts	2013 Update
-risk tolerance	-100% medium risk	- 70% medium risk and -30% high risk	trading -20% medium risk and -80% high risk
-account objectives			<u>RESP</u> -50% growth and 50% speculative trading
-risk tolerance			-50% medium risk and 50% high risk

18. The 2009 updates to the KYC information did not reflect the true investor profiles of MB and RB; nor did the 2013 update for RB. Specifically neither MB nor RB were comfortable with or wanted any high risk component to their respective accounts.
19. The high risk levels of 30% were too high given their personal and financial circumstances.
20. MB would turn 65 by 2014, at which time she would no longer be able to rely on disability benefits but would then be living on CPP and OAS payments.
21. As she had no private health care coverage she would have to cover out of pocket expenses for her ongoing medical services and related needs. As such she was not in a position to speculate with, or tolerate any high risk in, her investments.
22. RB's RRSP account was intended to fund her retirement and her RESP account was opened for the purposes of helping her children to attend university. As such she was unwilling to take risks with these investments.

D. Unsuitable Recommendations: Clients MB & RB

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26. Further although they had historically held shares of issuers in the precious metals sector in their accounts, high levels of concentration in precious metals issuers of approximately 20% for several months increased the risk level even further and exacerbated the unsuitable nature of the investments.
27. Over the course of 2008-2014 MB and RB sustained realized and unrealized losses in their accounts

between approximately \$6000-8000 each; inclusive of DSC fees of approximately \$1,900 incurred when the accounts were moved to fee-based accounts.

E. Use of Fee Based Accounts: Clients MB & RB, and AC & SC

Ford’s Clients MB & RB

- 28. Prior to February 2012 the Respondent informed MB and RB that they could join their then commission based accounts into one household in order to meet the minimum dollar amount needed to open a fee-based account known at RJ as a Viridian account (“Viridian”).
- 29. He indicated that it would be less expensive for them to do so than paying commissions on a per trade basis. MB and RB were receptive to a fee based account as they felt they had been paying a lot of commissions and liked the idea of saving money.
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Client Accounts	2011 KYC information
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SC RRSP & SRSP	-same as for AC except: -annual income \$50,000

Fees Paid and Transactions Completed in Viridian Accounts

- 33. For the 22 month period February 2012 to December 2013 the Viridian accounts of MB, RB, AC and SC held cash for extended periods of time. In the case of SC’s RRSP account the holdings were cash for 100% of the time.

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37. There were two other options that the Respondent could have considered when opening Viridian accounts for these clients, namely:
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38. By recommending and opening fee based Viridian accounts for these clients, Ford failed to know these clients and their expectations in terms of their investment accounts. He put them into accounts with less than optimal characteristics, resulting in the clients paying higher fees than would have otherwise been the case.
39. For the time period October 2008 to June 2014 the Respondent earned approximately \$15,000 in commissions and fees from the above noted accounts for these clients. However, the Respondent has contributed a total of \$18,040 to partial reimbursement paid to these clients.
40. The Respondent acknowledges that but for the partial reimbursement of these clients; disgorgement of profits would have formed part of the monetary penalty.

V. TERMS OF SETTLEMENT

41. 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.
42. The Settlement Agreement is subject to acceptance by the Hearing Panel.
43. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
44. 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.
45. 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.
46. 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.
47. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
48. 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.

49. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
50. 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 “Richmond Hill” in the Province of “Ontario”, this “29th” day of “June”, 2016.

“Witness”

“Scott Ford”

Witness

Scott Ford

AGREED TO by Staff at the City of Toronto, in the Province of Ontario, this “6th” day of “July”, 2016.

“Ricki Newmarch”

“Natalija Popovic”

Witness

Natalija Popovic

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 “7th” day of “July”, 2016, by the following Hearing Panel:

Per: “Robert Armstrong”

Panel Chair

Per: “Richard Austin”

Panel Member

Per: “Neil Murphy”

Panel Member

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