

Re Nieswandt

IN THE MATTER OF:

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

and

Rodney Joseph Nieswandt

2018 IIROC 41

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

Heard: September 24, 2018 in Regina, Saskatchewan
Decision: November 1, 2018

Hearing Panel:

Daniel Ish, Q.C., Chair, James Ross and Eric Wray

Appearance:

David McLellan, Enforcement Counsel

No one appeared for the Respondent, Rodney Joseph Nieswandt

REASONS FOR DECISION

¶ 1 This Hearing Panel was constituted pursuant to the provisions of the Consolidated Enforcement, Procedural, Examination and Approval Rules of IIROC (the “Rules”) including, in particular, Sections 8203 and 8205.

¶ 2 The Notice of Hearing which initiated this matter is dated August 10, 2018 and states that an initial appearance was to be held on September 24, 2018 in Room 3 on the second floor of the Double Tree Hotel, 1975 Broad Street, Regina, Saskatchewan for the purpose of scheduling a hearing in order to determine whether the Respondent committed the contraventions set forth in a Statement of Allegations which accompanied the Notice of Hearing.

¶ 3 The Notice of Hearing also informed the Respondent of his obligation to serve and file a Response to the Notice of Hearing and Statement of Allegations and set forth the consequences of failing to do so in the following terms:

The Respondent must serve a Response (“Response”) to this Notice of Hearing and the Statement of Allegations dated August 10, 2018 (“Statement of Allegations”) in accordance with Section 8415 within 30 days from the effective date of service of this Notice of Hearing.

If the Respondent does not file a Response in accordance with Section 8415(1), the Initial Appearance may be immediately converted to a Hearing.

...

If the Respondent fails to serve a Response at the Hearing the Hearing Panel may, pursuant to Section 8415(4):

(a) proceed with the hearing as set out in this Notice of Hearing, without further notice to the

Respondent;

- (b) accept as proven the facts and contraventions set out by Staff in the Statement of Allegations; and
- (c) order sanctions and costs against the Respondent pursuant to Sections 8209, 8210 and 8214 and/or IIROC Dealer Member Rules 20.33 and 20.34 and/or Universal Market Integrity Rule 10.5

If the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by Staff in the Statement of Allegations, the Hearing Panel may, pursuant to Sections 8209 and 8210 and/or IIROC Dealer Member Rules 20.33 and 20.34 and/or Universal Market Integrity Rule 10.5 impose any one or more of the following sanctions:

- (a) a reprimand;
- (b) disgorgement of any amount obtained, including any loss avoided, directly or indirectly, as a result of the contravention;
- (c) a fine not exceeding the greater of:
 - (i) \$1,000,000 per contravention; and
 - (ii) an amount equal to three times the profit made or loss avoided by the person, directly or indirectly, as a result of the contravention.
- (d) suspension of the person's approval or any right or privilege associated with such approval, including access to a Marketplace, for any period of time and on any terms and conditions;
- (e) imposition of any terms or conditions on the person's continued approval or continued access to a Marketplace;
- (f) prohibition of approval in any capacity, for any period of time, including access to a Marketplace;
- (g) revocation of approval;
- (h) a permanent bar to approval in any capacity or to access to a Marketplace;
- (i) permanent bar to employment in any capacity by a Regulated Person, and
- (j) any sanction determined to be appropriate under the circumstances.

If the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by the Staff in the Statement of Allegations, the Hearing Panel may assess and order any investigation and prosecution costs determined to be appropriate and reasonable in the circumstances pursuant to Section 8214 and/or IIROC Dealer Member Rule 20.49 and/or Universal Market Integrity Rule 10.7.

THE COMMENCEMENT OF THE HEARING

¶ 4 In accordance with the information set forth in the Notice of Hearing, this Hearing Panel (the "Panel") accordingly convened at 10:00 a.m. on September 24, 2018 at the Double Tree Hotel in Regina, Saskatchewan, the place set forth in the Notice of Hearing. IIROC was in attendance and represented by Senior Enforcement Counsel David McLellan ("IIROC Counsel"). Neither the Respondent nor anyone acting on his behalf was in attendance at the appointed time and place.

¶ 5 After hearing opening statements from IIROC Counsel and a request for the Panel to proceed with the hearing of this matter on its merits, in accordance with the provisions of Section 8415 of the Rules (notice of which was provided to the Respondent in the Notice of Hearing), the Panel adjourned until shortly after 10:30 a.m. The purpose of the adjournment was to discuss and deliberate the request of IIROC Counsel to proceed with the hearing on its merits and to allow some time to pass in case the Respondent or a representative were unduly delayed in arriving at the hearing. The hearing resumed shortly after 10:30 a.m. and neither the

Respondent nor anyone acting on his behalf was in attendance.

¶ 6 The Panel determined to proceed with the hearing of the matter on its merits, pursuant to Rules 8415(4) and 8423(12), subject to IIROC establishing that the Notice of Hearing and Statement of Allegations had been properly served on the Respondent pursuant to the provisions of the Rules.

SERVICE OF NOTICE OF HEARING

¶ 7 IIROC Counsel adduced affidavit evidence which satisfied the Panel that the Respondent had been personally served with the Notice of Hearing and Statement of Allegations (together with other related material) on August 12, 2018. Further, affidavit evidence also indicated that the same material was sent to the Respondent at his last known address by Canada Post Express mail. Canada Post verified that the letter with the related documents was undeliverable.

¶ 8 The Panel was satisfied that proper service of the Notice of Hearing and Statement of Allegations had been effected on the Respondent. The Panel then proceeded to consider the matter on its merits and review the allegations set forth in the Statement of Allegations.

THE CONTRAVENTIONS

¶ 9 As noted at paragraph 3 above, if a Respondent who has been properly served with the Notice of Hearing and Statement of Allegations fails to serve and file a Response within the stipulated time limit or fails to attend at the hearing, the hearing can proceed on the initial appearance date on its merits without further notice to the Respondent. The Panel can also accept as proven the facts and contraventions alleged in the Statement of Allegations and may proceed to impose sanctions and costs as it may determine in accordance with the Rules.

¶ 10 The Panel was satisfied that no such Response had been served on IIROC or filed with the National Hearing Coordinator in accordance with the provisions of Sections 8415 and 8406 of the Rules, and that the Respondent was not in attendance at the hearing on September 24, 2018. Also, there was no one acting on behalf of the Respondent in attendance at the hearing on September 24, 2018. Accordingly, the Panel determined that, in accordance with the provisions of Sections 8415(4) and 8423(12) of the Rules, the facts and contraventions set forth in the Statement of Allegations would be accepted as proven.

¶ 11 The contraventions which the Respondent is alleged to have committed are the following:

Contravention 1

Between January, 2012 and December, 2015, the Respondent failed to use due diligence to ensure that recommendations were suitable for four clients, contrary to Dealer Member Rule 1300.1(q).

Contravention 2

Between January, 2012 and December, 2015, the Respondent conducted unauthorized trades in four client accounts, contrary to Dealer Member Rule 29.1.

Contravention 3

In July, 2011, the Respondent compensated a client for account losses, without the knowledge or approval of his Dealer Member, contrary to Dealer Member Rule 29.1.

Contravention 4

In March, 2017, the Respondent failed to cooperate with Enforcement Staff who were conducting an investigation, contrary to Section 8104 of the Consolidated Rules.

¶ 12 The Rules the Respondent is alleged to have contravened are the following:

R. 1300.1 (q)

Each Dealer Member, when recommending to a client the purchase, sale, exchange or holding of any security, shall use due diligence to ensure that the recommendation is suitable for such client based on

factors including the client's current financial situation, investment knowledge, investment objectives and time horizon, risk tolerance and the account or accounts' current investment portfolio composition and risk level.

R. 29.1¹

Members and each partner, director, officer, sales manager, branch manager, assistant or co-branch manager, registered representative, investment representative and employee of a 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 of Directors.

For the purposes of disciplinary proceedings pursuant to the By-laws, each Member shall be responsible for all acts and omissions of each partner, director, officer, sales manager, branch manager, assistant or co-branch manager, registered representative, investment representative and employee of a Member, and each of the foregoing individuals shall comply with all By-laws, Regulations and Policies required to be complied with by the Member.

R. 8104

(1) A person who receives a request made under section 8103 must comply with the request within the time specified in it.

(2) If Enforcement Staff make a request under clause 8103(1)(i) or 8103(1)(iv) to a corporation, partnership or other organization, compliance with the request may be fulfilled by an employee of the corporation, partnership or organization who is acceptable to Enforcement Staff, taking into account the employee's position and knowledge.

(3) A person must cooperate with Enforcement Staff who are conducting an investigation, and a 8100-2 Regulated Person must require its employees, partners, directors and officers to cooperate with Enforcement Staff conducting an investigation and to comply with a request made under section 8103.

(4) A person who is aware that Enforcement Staff are conducting an investigation must not conceal or destroy any record, document or thing that contains information that may be relevant to the investigation or to any subsequent proceeding relating to the subject matter of the investigation or ask or encourage another person to do so.

THE FACTS RELATED TO THE CONTRAVENTIONS

¶ 13 This Panel has determined to accept as proven, pursuant to Sections 8415(4) and 8423(12) of the Rules, the facts set forth in the Statement of Allegations. We will briefly review the particulars of the facts that we have accepted as proven.

¶ 14 The Respondent, Rodney Joseph Nieswandt, was a Registered Representative with CIBC World Markets Inc. in Regina, Saskatchewan from December 2001 until January 2016. He is not currently registered with a Dealer Member.

¶ 15 The Respondent's actions in relation to the contraventions involve a number of matters. He sold Principle Protected Notes ("PPN"), Structured Notes and Deferred Sales Charge ("DSC") mutual funds in his clients' accounts prior to maturity, thereby incurring deferred sales charges and early redemption fees. He then purchased the same types of securities; thus, generating additional fees. These transactions were not suitable for the clients. Further, many of the trades in the clients' accounts were not authorized by them and, in one case, the Respondent provided financial compensation to a client for losses incurred by the client. In addition, the Respondent failed to comply with IROC's request to attend an investigation interview and failed to cooperate

¹ Rule 29.1 was repealed in September 2016 (and replaced with Rule 1400 of the Consolidated Rules)

with these proceedings in any way.

Client FB

¶ 16 FB is a retired widow who lives in Saskatchewan. She was born in 1943. The Respondent held accounts for her for over 15 years. The accounts were a margin account, an RRSP and a RRIF. FB had a net worth of \$850,000 and an annual income of \$60,000.

¶ 17 The Respondent, between 2012 and 2015, sold 28 PPN's, Structured Notes and DSC Mutual Funds in FB's account totaling \$762,798.00. These trades incurred unnecessary charges to the client apparently for the sole benefit of the Respondent, and the transactions were not suitable for Client FB, contrary to Rule 1300.1(q). These sales were conducted prior to maturity and, as a result, FB incurred deferred sale charges and early redemption charges totaling \$10,721.00. During the same time period, between 2012 and 2015, the Respondent purchased 33 PPN's, Structured Notes and DSC Mutual Funds of the same or similar types in her accounts totaling \$1,105,000.00, which generated additional fees and commissions for the Respondent and in turn exposed Client FB to a new DSC schedule and early redemption fees. The commissions charged by the Respondent to FB's accounts in this time period were \$54,827.00. Also, during the same time period, FB's accounts suffered losses of \$18,759.00.

¶ 18 Many of the above trades were not authorized. In the 2012 to 2015 time period, the Respondent conducted 103 trades in FB's three accounts, including 23 trades in 2015. The Investigation Staff's review of electronic notes indicated no client approval for any of the trades in 2012, 2013 or 2014. In 2015, there were eight entries of client approval for trades.

¶ 19 FB said she had very infrequent communications with the Respondent in recent years and, in particular, during 2015 she received trade confirmation slips by mail for trades which she had not authorized.

Clients PH/SH

¶ 20 PH and SH are a retired couple who live in Saskatchewan. PH was born in 1942 and SH was born in 1948.

¶ 21 The couple had accounts with the Respondent for over 15 years. The Respondent handled four accounts for them: a joint margin account, a margin account for PH, an RESP account for PH and an RRSP for SH. The majority of funds and trading occurred in the joint margin account. On KYC forms for the joint margin account originally their investment knowledge was listed as "novice", and later was updated to "good" for SH.

¶ 22 In 2014, the net worth of the couple was \$1,005,000.00 and PH had an annual income of \$60,000.00 and SH had an annual income of \$69,000.00.

¶ 23 In the 2012 to 2015 period, the Respondent sold 24 PPN's, Structured Notes and DSC Mutual Funds in the joint margin account totaling \$551,017.00. These sales were conducted prior to maturity and incurred DSC fees and early redemption charges totaling \$6,324.00. During the same time period, the Respondent purchased 22 PPN's, Structured Notes and DSC Mutual Funds of the same or similar types in their account. These trades generated additional fees and commissions for the Respondent and in turn exposed the clients to a new DSC schedule and early redemption fees. Between 2012 and 2015, commissions charged to their account were \$45,156.00. During the same time period their account had a gain of \$14,963.00.

¶ 24 These transactions were not suitable for the clients, contrary to Rule 1300.1(q). The Respondent's recommendation to sell PPN's, Structured Notes and DSC Mutual Funds prior to maturity, and shortly thereafter purchase the same or similar types of security, incurred unnecessary charges to the clients for the sole benefit of the Respondent.

¶ 25 In the time period between 2012 and 2015, the Respondent executed many trades in the clients' joint account without confirming the particulars of the trades with them prior to their execution. He conducted 108 trades in the joint margin account between 2012 and 2015, including 21 trades in 2015. A review of electronic notes conducted by the Investigation Staff of IIROC indicated no evidence of client approval for the years 2012, 2013 or 2014. In 2015, there were 11 entries indicating client approval for trades.

¶ 26 PH and SH said they had very infrequent communications with the Respondent. They did not recall receiving any telephone calls from him between 2013 and 2015, and had not personally met with him in the last seven or eight years. Also, they received trade confirmation slips by mail for trades they had not authorized.

Client BL

¶ 27 BL, who was born in 1945, is a retired nurse who lives in Regina, Saskatchewan. The Respondent handled both an RRSP and a TFSA for her. On KYC forms for her accounts her investment knowledge was listed as “good”. In 2014, she had a net worth of \$475,000.00 and an annual income of \$50,000.00. The Respondent, between 2012 and 2015, sold 21 PPN’s, Structured Notes and DSC Mutual Funds in BL’s accounts totaling \$424,448.00. These sales were conducted prior to maturity; thus, they incurred DSC and early redemption charges totaling \$6,160.00. Shortly after the sales, the Respondent purchased 24 PPN’s, Structured Notes and Mutual Funds of the same or similar types in BL’s account totaling \$553,900.00. These purchases generated additional fees and commissions for the Respondent and in turn exposed the client to a new DSC schedule and early redemption fees. The commissions charged to BL between 2012 and 2015 were \$40,576.00. During the same period, BL’s account had a gain of \$18,298.00.

¶ 28 These transactions were not suitable for BL contrary to Rule 1300.1(q). The Respondent’s recommendation to sell PPNs, Structured Notes and DSC mutual funds prior to maturity, and shortly thereafter purchase the same or similar types of securities, incurred unnecessary charges to the client for the apparent sole benefit of the Respondent.

¶ 29 The Respondent, between 2012 and 2015, conducted 99 trades in BL’s accounts, including 16 trades in 2015. IIROC’s review of electronic notes indicated no client notes for approval of trades in 2012, 2013 or 2014. In 2015, there were five entries indicating client approval for trades. The Respondent executed many trades in BL’s accounts without confirming the particulars of the trades with her prior to their execution. BL does not recall ever having a telephone call from the Respondent to request her approval for trades and she received trade confirmation slips by mail for trades she had not authorized.

Client KS

¶ 30 On July 25, 2011, the Respondent provided a bank draft to Client KS in the amount of \$29,500.00. KS informed CIBC of this payment. She indicated that the purpose of the payment was to cover losses in her RRSP account as well as losses in her mother’s RRIF account. Her mother was also a client of the Respondent. In the course of an internal investigation conducted by CIBC, the Respondent acknowledged that he did make the payment to KS. The payment by the Respondent to KS in order to compensate for losses constitutes conduct unbecoming contrary to Rule 29.1.

Failure to Cooperate

¶ 31 On March 3, 2016, IIROC staff advised the Respondent that the Enforcement Department of IIROC had opened an investigation into a complaint made against him alleging unsuitable recommended trades. On January 16, 2017, IIROC staff contacted the Respondent by telephone for the purpose of scheduling an interview with him. The following day, January 17, 2017, the Respondent called IIROC staff by telephone and advised that he should only be contacted on his cell phone. He also advised that he would be out of the country until March 6, 2017, that he would contact a lawyer and that he would be in further contact with IIROC staff prior to leaving the country. The Respondent refused a request to provide IIROC staff with his personal email address.

¶ 32 The Respondent did not contact IIROC staff prior to leaving the country and failed to respond to a voice mail left on his cell phone asking him to respond on January 25, 2017. On February 21, 2017 IIROC sent a registered letter and a regular mail letter to the Respondent’s home address. In the letter, the Respondent was advised that he was required to attend an interview on March 15, 2017 at 1:00 p.m. in Regina, Saskatchewan. On March 8, 2017, the Respondent signed for the registered letter acknowledging receipt. He did not appear for the scheduled interview on March 15, 2017.

¶ 33 In addition, as outlined above, the Respondent provided no response to the Notice of Hearing or the Statement of Allegations, and he did not appear personally, or have anyone appear on his behalf, at the hearing in Regina, Saskatchewan on September 24, 2018.

SANCTIONS

¶ 34 In the hearing, after the Panel determined that the Respondent had committed the contraventions as set forth in the Statement of Allegations, IIROC Counsel proceeded to make submissions with respect to the appropriate sanctions to be imposed by reason of the contraventions. The Panel was provided with a number of prior decisions in support of its position that the appropriate penalty for the Respondent in this case should be:

- (a) A fine of \$175,000.00;
- (b) a permanent ban of registration of the Respondent in any capacity;
- (c) costs in the amount of \$10,000.00.

Numerous decisions were referred to by IIROC, copies of which were provided to the Panel.

¶ 35 IIROC Counsel also reviewed the IIROC Sanction Guidelines (February 2, 2015). Each of the principles and each of the key factors contained in the Sanction Guidelines was addressed by IIROC Counsel in the context of the four contraventions in this case. It is important to note that the IIROC Sanction Guidelines are “guidelines” and are not binding on hearing panels. As the Guidelines at page 2 state:

The determination of the appropriate sanction in any given case is discretionary and a fact-specific process. The appropriate sanction depends on the facts of a particular case and the circumstances of the conduct. Hearing panels retain the discretion to impose the sanctions they consider appropriate.

¶ 36 The Panel did take into consideration both the Sanction Guidelines and previous IIROC decisions in determining the appropriate penalty to impose on the Respondent. A brief review of the decisions with similarity to the facts before us is as follows:

- *Re Munro 2016 LNIIROC 47* – In this case, the Respondent admitted to failure to exercise due diligence to learn essential facts of his clients and to making unsuitable investments. The unsuitable investments involved unnecessary redemption fees as well as committing his clients to new DSC schedules. Later sales again incurred further redemption fees. The Hearing Panel improved a settlement agreement that imposed a \$25,000.00 fine, a requirement to successfully rewrite the Conduct and Practices Handbook exam (the “CPH exam”) within 12 months and costs of \$5,000.00.
- *Re Hashmi 2016 LNIIROC 41* – This decision dealt with a settlement agreement that was before the Panel in which the Respondent admitted that he effected multiple unauthorized trades in six client accounts, contrary to Rule 29.1. The penalties contained in the settlement agreement and approved by the Panel were a fine of \$25,000.00, a one-year suspension, a requirement that he successfully rewrite the CPH exam within twelve months, that he undergo six months’ close of supervision upon re-registration and he pay costs of \$2,500.00.
- *Re Yaskiw 2017 LNIIROC 19* – In this case, the Respondent failed to use due diligence to know his client, made unsuitable recommendations and engaged in discretionary trading. The losses incurred by clients were in excess of \$165,000.00. The penalty imposed was a fine of \$120,000.00, a two-year suspension, writing and passing the CPH exam to be eligible for reinstatement, strict supervision for 18 months upon re-entry to the investment industry and costs of \$25,000.00.
- *Re Matthews 2015 LNIIROC 2* – In this case, the Respondent made unsuitable investments, engaged in discretionary trading and excessively traded (churned) the accounts of three clients. The clients, as in many of these cases, were vulnerable clients. The penalty imposed was a fine of \$200,000.00, a five-year suspension and costs of \$20,000.00.

- *Re Gareau 2011 LNIROC 72* – The contraventions proved were a failure to know his client, failure to recommend suitable investments and selling a bond against the express wishes of a client. The Panel imposed a one-year suspension, a \$100,000.00 fine, disgorgement of commissions of \$47,383.00, a requirement to successfully complete the CPH exam prior to re-registration, strict supervision for one year subsequent to re-registration and costs of \$20,000.00.
- *Re Bush 2011 LNIROC 52* – The Respondent in this case acknowledged making three unsuitable investment recommendations in highly speculative investments, providing monthly payments to the clients without the knowledge or consent of his Dealer Member and making payments to a third client as compensation for account losses. The Panel accepted a settlement agreement and imposed a total fine in the amount of \$15,000.00 and costs of \$5,000.00.
- *Re Smith 2014 LNIROC 16* – The contraventions of the Respondent in this case involved unauthorized trading on behalf of two clients over a two-year time period. The Panel approved a settlement agreement imposing a two-year suspension, a fine of \$50,000.00, a requirement to successfully complete the CPH exam, close supervision for a period of one year upon re-registration and costs of \$3,000.00.
- *Re Latta 2014 LNIROC 5* – This case involved a settlement agreement in which the Respondent admitted to providing financial compensation to a client for losses in the client’s account without the knowledge or approval of his Dealer Member. The Panel approved a settlement agreement imposing a fine of \$10,000.00 and costs of \$2,000.00.
- *Re Yasinowski 2018 LNIROC 29* – In the settlement agreement the Respondent admitted to failure to know his client and to making unsuitable investments. The client sustained losses between 32% and 50% of their portfolios. The Panel approved a settlement that imposed a six-month suspension, close supervision for 18 months upon re-registration, a fine of \$90,000.00 and costs in the amount of \$10,000.00.
- *Re Scerbo 2017 LNIROC 57* – In this case, the Respondent did not cooperate with the investigation and did not appear for his hearing. The Panel accepted as proven that the Respondent misappropriated funds from his spouse’s RRSP account and by virtue of failing to attend the interview with IIROC Enforcement Staff the Respondent failed to cooperate with an IIROC investigation. The Panel imposed a fine of \$50,000.00 for failing to cooperate, a fine of \$420,000.00 for unauthorized withdrawal from the Respondent’s wife’s RRSP, a permanent ban and costs of \$15,000.00.
- *Re MacArthur 2017 LNIROC 29* – The Respondent failed to cooperate with an IIROC investigation by failing to provide documents and attend an interview. The Panel imposed a fine of \$50,000.00, a permanent ban on registration and costs of \$10,000.00.
- *Re Malley 2014 IIROC 29* – This case involved two Respondents who did not cooperate with the investigation and did not appear for their hearing. The Panel accepted that the Respondents committed a number of contraventions, including failure to cooperate with an IIROC investigation, failure to know their clients, making unsuitable investments, making unauthorized investments and failure to exercise supervisory responsibilities. The Panel imposed a permanent ban, a fine of \$250,000.00 and costs of \$15,000.00 for one of the respondents and a permanent ban, a fine of \$300,000 and costs of \$35,000 for the other.

¶ 37 In speaking to penalty, IIROC Counsel, as previously stated, reviewed the IIROC Sanction Guidelines. One matter he brought to our attention was sanction principle #3 which reads as follows:

3. For multiple violations, the total or cumulative sanction should appropriately reflect the totality of the misconduct.

Where there are multiple violations, the overall sanction imposed should not be excessive or

disproportionate to the gravity of the total misconduct at hand. For this reason, a global approach to sanctioning may be appropriate where the imposition of a sanction for each contravention would have the effect of imposing on the respondent a cumulative sanction that is excessive.

Depending on the facts and circumstances of a case, however, multiple contraventions may be treated individually such that a sanction is imposed for each contravention so long as the total sanction is proportionate to the overall misconduct.

In addition, numerous, similar contraventions may warrant higher sanctions, since the existence of multiple contraventions may be treated as an aggravating factor.

¶ 38 The review of the previous cases, including those listed above and other additional decisions referred to in cases, discloses that there is no set penalty for various violations because, as the Sanction Guidelines point out, each case is fact-specific and the culpability of respondents may vary considerably. Nevertheless, the cases do reveal a range of penalties with respect to certain types of conduct. For instance, the compensation of clients for account losses is a contravention that is penalized on the low end of the scale – see *Re Bush*, and *Re Latta* above. On the other end of the scale, where a permanent ban on registration is imposed, the conduct in question is more egregious. The failure to cooperate with the investigation is seen as very serious since it goes to the very core of regulation and the integrity of the securities industry. We agree with the statement in *Re Morrison 2009 IIROC 4* where at paragraph 51 the following is stated:

The securities industry is a business of trust and confidence. Approved Persons must above all conduct themselves with trustworthiness and integrity, and act in an honest and fair manner in all their dealings with the public, their clients, and the securities industry as a whole. Approved Persons have agreed to abide by and comply with the Association's By-laws, and that includes the duty to cooperate in any investigation. As was said in *Re Steward* (supra), there is a general principle that the requirement to cooperate in any investigation is fundamental to maintaining an efficient, competitive market environment, and also to maintain the integrity of the securities system and protect the public interest.

¶ 39 Further, our task is not only to take into account the various proven contraventions but we also must consider the protection of the investing public and the integrity of the IIROC process. In this respect we agree with the statement in *Re Wilson 2011 IIROC 47* where the Panel said at paragraph 26:

...the main concerns when determining an appropriate penalty are protection of the investing public, the IIROC membership, the integrity of the IIROC process, the integrity of the securities markets and prevention of a repetition of conduct of the type under consideration. As stated in the Guidelines, sanctions should be based on the particular misconduct of the respondent with an aim of general deterrence which will be achieved if a sanction strikes an appropriate balance by addressing a registrant's specific misconduct, but also being in line with industry expectations.

¶ 40 In dealing with an individual respondent, as we must do in this case, we are mindful of and agree with the global approach that is suggested in sanction principle #3 (see paragraph 37 above), which encourages panels not to simply stack multiple violations but to consider an overall sanction appropriate to the cumulative misconduct. The contraventions of the Respondent in conducting numerous unauthorized trades over a period of years, in respect to several clients, is, in our view, serious misconduct. It is not a situation of a one-off infraction; rather the evidence discloses a continuing practice of discretionary trading. Further, while we do not suggest that suitability of investments and compensation of clients is not serious, which are two other contraventions found to have been committed by the Respondent, the failure to cooperate is most serious. Perhaps, it is the most serious contravention of the four we have to consider. This, in itself, justifies a permanent ban on registration.

¶ 41 The Respondent has no prior disciplinary record. A clear record is normally a mitigating factor but in this case, given the number of years over which the infractions occurred, the Respondent's clear record prior to 2012 has no mitigating effect. Also, rather than the Respondent receiving any credit for cooperation with the investigation, the opposite is the case. He did not cooperate at all with the investigation.

DECISION

¶ 42 We have determined to impose the following sanctions on the Respondent, Rodney Joseph Nieswandt for the contravention of Dealer Member Rules 1300.1(q) and 29.1, and Consolidated Rule 8104:

- (a) A fine of \$140,000;
- (b) a permanent ban on registration in any capacity of the Respondent Rodney Joseph Nieswandt;
- (c) the Respondent to pay costs to IIROC in the amount of \$10,000.00.

Dated at Saskatoon, Saskatchewan this 1st day of November, 2018.

Daniel Ish

James Ross

Eric Wray

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