

# Re Smith

IN THE MATTER OF:

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

**and**

**Peter Michael Smith**

2014 IIROC 16

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

Heard: April 9, 2014  
Decision: April 9, 2014

**Hearing Panel:**

Mr. Frederick Webber (chair), Mr. Richard Austin and Ms. Debbie Archer

**Appearances:**

Ms. Diana Iannetta, Enforcement Counsel

Mr. Peter Michael Smith, Respondent in person

Mr. Jeff Larry, Counsel for the Respondent

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## DECISION AND REASONS

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### Settlement Agreement

¶ 1 As a result of a Settlement Agreement between IIROC and the Respondent which is attached to these reasons, a Settlement Hearing was conducted on April 9th, 2014 in Toronto pursuant to the IROC Dealer Member Rules.

¶ 2 The Hearing Panel received and considered oral submissions from IIROC counsel and Respondent's counsel with reference to the IIROC Settlement Book containing the Settlement Agreement, Dealer Member Rule 29.1, the IIROC Dealer Member Disciplinary Sanction Guidelines, and relevant decisions of previous hearing panels. Counsel for both IIROC and the Respondent accepted and agreed the contents of the IIROC Settlement Book were relevant and fair. The Panel also received written submissions from IIROC. Respondent's counsel advised the Panel that he agreed in substance with the IIROC submissions.

### Contravention and Sanctions

¶ 3 The contravention alleged by IIROC and admitted by the Respondent is set out in the Settlement Agreement and is:

Between June, 2010 and April, 2012 the Respondent executed unauthorized trades in the accounts of two of his clients, contrary to IIROC Dealer Member Rule 29.1.

¶ 4 IIROC and the Respondent agreed to the following terms of settlement as set out in the Settlement Agreement :

- (a) A suspension from approval in any registered capacity with IIROC for a period of two years, beginning April 12, 2012;

- (b) A fine of \$50,000;
- (c) A requirement that the Respondent successfully complete the Conduct and Practices Handbook (CPH) no later than June 30, 2014; and
- (d) A requirement that the Respondent be placed under close supervision for a period of one year upon re-approval.

¶ 5 The Respondent also agreed to pay costs to IIROC in the sum of \$3000.

### **Facts**

¶ 6 The salient facts are set out in the Settlement Agreement and need not be repeated in these reasons. In summary:

Over the course of two years, the Respondent purchased and sold securities in the account of his client, AB, without any prior authorization from AB. AB lived in Florida for part of the year and his account correspondence was delivered to his Canadian address. Only when he returned to Canada after an extended absence did he realize that trades had been processed in his account without his knowledge.

The Respondent also made an unauthorized purchase in the account of a second client, CD, during the same period.

### **Acceptance of Settlement Agreement**

¶ 7 Under IIROC Rule 20.36, at the conclusion of a settlement hearing, the Panel may either accept or reject the recommended sanctions. As set out in numerous prior decisions, the settlement will be accepted provided that it falls within ‘a reasonable range of appropriateness’. As stated in Re Martens, 2013 LNIROC 40, contained in IIROC’s Settlement Book:

The panel must determine whether the proposed sanction “strikes a reasonable balance between fairness to the Respondent... but at the same time encouraging the prevention of a repetition of the offence; and the need to protect the investing public, the industry membership, the integrity of the disciplinary process, and the integrity of the securities markets.”

The panel should not reject the penalties set out in the Settlement Agreement unless they “clearly fall outside a reasonable range of appropriateness”, given the conduct of the Respondent.

The rationale behind this approach is that the panel should be cognizant of the settlement process and should not interfere in a negotiated settlement by substituting its discretion for that of the parties.

### **Determining the Reasonable Range**

¶ 8 This Panel agrees with the principles from these cases and has followed them in this case. The “reasonable range” is generally informed by reference to the Disciplinary Sanction Guidelines (“the Guidelines”), precedent cases and what the panel views as the public interest.

¶ 9 The parties have agreed that the proposed settlement and sanctions included therein fall within the reasonable range of appropriateness, are in the public interest and achieve the objectives of specific and general deterrence.

### **The Reasonable Range-the Guidelines**

¶ 10 The panel agrees that the proposed penalties are consistent with the Guidelines which are published by IIROC to reflect industry understandings and expectations.

¶ 11 The following key considerations outlined in the Guidelines have been taken into account by this panel in determining whether the proposed sanctions are appropriate.

#### **Harm to the Clients**

¶ 12 CD suffered no financial loss as the firm reimbursed him, and AB suffered only minor financial loss

(and there was no evidence that such losses were caused by the Respondent's misconduct). However the clients suffered harm in that trades were conducted in their accounts, using their money, without their authorization. Unauthorized trading is the type of conduct that strikes at the very heart of the relationship between RR and client and undermines the trust that is vital to that relationship.

Blameworthiness

¶ 13 The Respondent's conduct was intentional, no others were involved and there was no claim of reliance on others.

Enrichment

¶ 14 Although the Respondent earned commissions, they were not of a significant amount and there is no evidence that the commissions motivated the Respondent's actions.

Prior Disciplinary Record

¶ 15 The Respondent has a prior disciplinary record, a settlement agreement in 2002 related to conduct between 1988 and 1994.

Responsibility, Acknowledgment and Remorse

¶ 16 The Respondent has admitted that his conduct was in breach of the Rules. His admissions in the Settlement Agreement and his cooperation with IIROC saved IIROC the trouble and expense of a protracted investigation and lengthy hearing.

Unauthorized Trading Guidelines

¶ 17 The Guidelines set out specific considerations when unauthorized trading is at issue:

- i. Number of unauthorized trades- in this case there were 50 trades for one client, which is a considerable number;
- ii. Underlying reasons for the unauthorized trades-there is no evidence of churning or the trades being done for personal gain;
- iii. Number of clients affected- only 2 clients were involved;
- iv. Length of time of the trading- with respect to AB, the trading took place over almost 2 years;
- v. Suitability of the unauthorized trades-there is no admission that the trades were unsuitable;
- vi. Magnitude of client losses-there is no evidence of large losses by AB and CD had his unauthorized trade cancelled by the firm.

Aggravating and Mitigating Factors

¶ 18 Aggravating factors include:

- i. a large number (50) of trades for AB;
- ii. conduct over a lengthy period (2 years);
- iii. intentional conduct;
- iv. harm to clients in terms of trust and confidence in the markets and industry.

¶ 19 Mitigating factors include:

- i. cooperation by the Respondent;
- ii. acceptance of responsibility;
- iii. only 2 clients affected;
- iv. no admission that trades were unsuitable;

- v. employment terminated as a result of misconduct.

### **The Reasonable Range- Cases**

¶ 20 The IIROC Settlement Book referred the Panel to a number of cases for guidance in determining the appropriate sanctions in this case. While none of these cases is directly comparable to this case, the Panel has reviewed each of these cases from the standpoint of the specific conduct and the penalties imposed and has concluded that the sanctions agreed to in this case fall within a reasonable range of possible sanctions.

### **Timing of the Suspension Period**

¶ 21 The Settlement Agreement provides for a two year suspension commencing April 12, 2012, the date on which Canaccord Genuity Corp. terminated the Respondent's employment as a result of the misconduct at issue in this case. As the Respondent's two year absence from the industry came as a result of his conduct in this case, IIROC did not seek to extend the Respondent's time out of the industry beyond that two year period. IIROC's written submissions state that the Respondent's record and any publications regarding this case will show a two year suspension. IIROC counsel also referred the Panel to a number of cases in which a suspension had been determined to commence at the time of the respondent's departure from the industry, rather than at the time of the panel decision. See Re Bell [2005] I.D.A.C.D. No.15, Re Nott 2011 LNIIROC 26, Re Morrison [2004] I.D.A.C.D. No. 63, Re Conville 2013 IIROC 5, Re Little [2007] I.D.A.C.D. No. 24 and Re Parkinson, 2012 LNIIROC 18.

¶ 22 This Panel agrees a two year suspension commencing April 12, 2012 as provided in the Settlement Agreement, is appropriate in this case because, as stated in the IIROC written submissions, the Respondent:

- i. has cooperated with IIROC and admitted the allegations;
- ii. was terminated as a result of the conduct at issue in the case;
- iii. has advised that he has attempted to, but was unsuccessful in, regaining employment as a registered representative;
- iv. will have been out of the industry for two years; and
- v. now has a Dealer Member firm willing to hire him and undertake the supervision sought by IIROC.

and because the two year suspension coupled with the \$50,000 fine will achieve the objectives of general deterrence and specific deterrence with respect to the Respondent.

### **Conclusion and Order**

¶ 23 It is this Panel's decision that the sanctions proposed in the Settlement Agreement fall within a reasonable range of possible sanctions. Accordingly the Panel accepted the settlement proposed and signed the requested order at the conclusion of the hearing.

Dated as of the 9th day of April, 2014.

Frederick Webber - Chair

Debbie Archer - Member

Richard Austin - Member

## **SETTLEMENT AGREEMENT**

### **I. INTRODUCTION**

1. IIROC Enforcement Staff and the Respondent, Peter Michael Smith (the "Respondent" or "Smith"),

consent and agree to the settlement of this matter by way of this settlement agreement (“the Settlement Agreement”).

2. The Enforcement Department of IIROC has conducted an investigation (“the Investigation”) into the conduct of Mr. Smith.
3. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada and Market Regulation Services Inc. Pursuant to the Administrative and Regulatory Services Agreement between IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions.
4. The Respondent consents to be subject to the jurisdiction of IIROC.
5. 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**

6. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
7. The Respondent admits to the following contravention of IIROC Rules:
  - i. Between June 2010 and April 2012, the Respondent executed unauthorized trades in the accounts of two of his clients, contrary to IIROC Dealer Member Rule 29.1.
8. Staff and the Respondent agrees to the following terms of settlement:
  - a) A suspension from approval in any registered capacity with IIROC for a period of two years, beginning April 12, 2012;
  - b) A fine of \$50,000;
  - c) A requirement that the respondent successfully complete the Conduct and Practices Handbook (CPH) course by no later than June 30, 2014; and
  - d) A requirement that the respondent be placed under close supervision for a period of one year upon re-approval.
9. The Respondent agrees to pay costs to IIROC in the sum of \$3,000.

## **III. STATEMENT OF FACTS**

### **A. Acknowledgment**

10. 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.

### **B. Overview**

11. Over the course of two years the Respondent purchased and sold securities in the account of his client, AB, without any prior authorization from AB. AB lived in Florida for part of the year and his account correspondence was delivered to his Canadian address. Only when he returned home after an extended absence did he realize that trades had been processed in his account without his knowledge.
12. The Respondent also made an unauthorized purchase in the account of a second client, CD, during the same period of time.

### **B. Registration History**

13. Smith was first registered with the IDA in 1984 and became a registrant of IIROC on June 1, 2008. His recent registration history is as follows:

<b>Date</b>	<b>Dealer Member</b>	<b>Registration Category</b>
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October 1998 – April 2012	Canaccord Genuity Corp.	Senior Investment Advisor/Registered Representative
February – October 1998	C.M. Oliver & Company Ltd.	Investment Advisor
November 1995 – February 1998	Marleau, Lemire Securities Inc.	Investment Advisor

14. The conduct at issue took place while Smith was employed with Canaccord Genuity Corp. (“Canaccord”). Smith’s employment was terminated by Canaccord in April 2012 as a result of AB’s complaint. Smith has been out of the industry since that date.
15. Smith entered into a settlement agreement with staff of the Investment Dealers Association in 2002. The settlement agreement related to a client complaint which was filed with the Toronto Stock Exchange in 1995 and concerned trading which took place between 1988 and 1994. Smith admitted to failing to ensure that the acceptance of certain orders were within the bounds of good business practice and agreed to pay a \$7,000 fine and \$2,000 in costs.

### **C. Client AB**

16. AB became Smith’s client in April 2010, when AB’s previous RR left Canaccord.
17. AB was a Canadian citizen, but spent most of the year in Florida. During the material time he was away on his boat for long periods of time. He was generally accessible by cellphone during this period. Smith was aware that AB lived in Florida for part of the year.
18. AB also owned a condominium in Toronto, Ontario. The address on his Canaccord New Account Application Form (“NAAF”) was his Toronto address. However, his Florida cellphone number was also listed on the NAAF.
19. All account statements, trade confirmations and other correspondence from Canaccord went to the Toronto address. This was not at AB’s request. His previous RR had advised AB that Canaccord required a Canadian address to open an account (which was incorrect).
20. Just prior to leaving Canaccord, AB’s previous RR had asked AB, with some urgency, to complete an updated NAAF.
21. Prior to the NAAF being updated, AB’s risk tolerance as recorded on his NAAF was 80% Low-Medium risk, and 20% Medium risk. This was consistent with what AB wanted.
22. After the update, AB’s risk tolerance was 100% speculative/high risk. At no point did AB advise or instruct his previous RR to increase his risk tolerance at all, and certainly not to this extreme.
23. AB signed and returned the forms which were sent to him. AB did not realize that the forms significantly increased the risk tolerance objectives on his account at Canaccord.
24. By the time the NAAF was returned to Canaccord, the Respondent had taken over AB’s account. The Respondent signed the updated NAAF and submitted it to Canaccord for approval.
25. Although this new NAAF provided for 100% high risk, the Respondent was aware that AB wanted to have safer investments than had previously been purchased in the account.

### **The Unauthorized Trading**

26. Between June 2010 and April 2012, the Respondent and AB had sporadic contact. The Respondent phoned AB at times to discuss recommendations to purchase or sell securities.
27. In April 2012, AB returned to Toronto after a long absence. Upon arrival at his condominium he was stunned to see a stack of correspondence from Canaccord, including account statements and trade

confirmations which detailed trades which he had never discussed or authorized. AB immediately contacted Canaccord to express his concern.

28. Over 50 trades were made without any prior discussion with or authorization by AB. When he opened his account statements and the trading confirmations, AB saw securities which had been purchased in his account which he had never heard of.
29. While there were phone calls during certain months during the material time, many of these calls were very short in duration, and with insufficient time to discuss the security, quantity of the security to be purchased or sold, the price at which it was to be purchased or sold and the timing of the purchase or sale.
30. Furthermore, in some months trades occurred despite there being no record of any phone calls at all during that month.

#### **Suitability of the Unauthorized Trades**

31. In addition to being unauthorized, certain of the securities purchased were also unsuitable for AB.
32. Despite the information set out in the updated NAAF, the Respondent knew that AB was looking for more conservative investments. However, the Respondent purchased certain new issue investments which were described as being speculative or high risk investments in the prospectuses.
33. Given that the Respondent did not discuss the purchase of the securities with AB, the Respondent did not advise AB of the nature of the risks associated with investment in these securities.

#### **D. Client CD**

34. CD had been a client of the Respondent for over ten years prior to the trade at issue.
35. During that period, the Respondent would make recommendations to CD to purchase securities, including new issues, and CD would accept those recommendations and authorize the subsequent purchases.
36. In April, 2012, units of Sentry Select Primary Metals were purchased in CD's account. However, CD did not discuss this transaction with the Respondent and did not authorize this purchase.
37. Although CD had received a number of calls from the Respondent around the date of the above purchase, CD did not speak with the Respondent on any of those occasions.

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

38. 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.  
The Settlement Agreement is subject to acceptance by the Hearing Panel.
39. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
40. 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.
41. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
42. 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.
43. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
44. 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.

45. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
46. 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 \_\_\_\_\_ in the Province of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

“witness” \_\_\_\_\_

WITNESS

“Peter Smith” \_\_\_\_\_

RESPONDENT

AGREED TO by Staff at the City of \_\_Toronto\_\_\_\_\_ in the Province of \_\_Ontario\_\_\_\_\_, this \_\_\_\_9\_\_ day of \_\_\_\_April\_\_\_\_\_, 20\_\_14\_\_.

“Witness” \_\_\_\_\_

WITNESS

“Diana Iannetta” \_\_\_\_\_

DIANA IANNETTA

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

ACCEPTED at the City of \_\_\_\_\_Toronto\_\_\_\_\_ in the Province of \_Ontario\_\_\_\_\_, this \_\_\_\_9\_\_ day of \_\_\_\_April\_\_\_\_\_, 20\_\_14\_\_, by the following Hearing Panel:

Per: \_\_\_\_\_ “Frederick Webber” \_\_\_\_\_

Panel Chair

Per: \_\_\_\_\_ “Debbie Archer” \_\_\_\_\_

Panel Member

Per: \_\_\_\_\_ “Richard Austin” \_\_\_\_\_

Panel Member

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