Re Donnelly

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

John Donnelly

2016 IIROC 23

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

Heard: June 8, 2016
Decision: June 8, 2016
Reasons: June 17, 2016

Hearing Panel:
Paul M. Moore, Q.C., Chair, Guenther W.K. Kleberg, and Selwyn Kossuth
Appearances:
Natalija Popovic, Senior Enforcement Counsel
John Fabello and Rebecca Wise, Counsel for the respondent
In attendance:
John Donnelly

REASONS FOR ACCEPTANCE OF SETTLEMENT AGREEMENT

Settlement Agreement

¶ 1 The panel accepted a settlement agreement between IIROC and John Donnelly, the respondent, dated June 8, 2016. A copy of the settlement agreement is attached to these reasons. The agreed facts are set out in Part III of it.

Contravention

¶ 2 The respondent admitted to the following contravention of the IIROC Dealer Member Rules:

> "From May to November 2010, the Respondent as Branch Manager failed to adequately supervise a Registered Representative and the accounts of a client, contrary to IIROC Dealer Member Rules1300.2 and 2500."

Agreed penalty

¶ 3 The agreed penalties were: a fine of $30,000; and a suspension from acting in a supervisory capacity for one year from the date of the acceptance of the agreement. In addition, the respondent agreed to pay costs of $1500.

Prior contravention

¶ 4 In January 2010, the respondent entered into a settlement agreement with IIROC admitting to a failure to

supervise, and received a fine of $50,000 and a 45 day suspension from acting as a branch manager.

Issues considered by the panel

¶ 5 The panel determined that it had to be satisfied regarding three considerations before it could accept the settlement agreement. First, the agreed penalties had to be within an acceptable range taking into account similar cases. Secondly, the agreed penalties had to be fair and reasonable (i.e. proportional to the seriousness of the contravention and taking into consideration other relevant circumstances) and should appear to be so to members of the public and industry. Thirdly, the agreed penalties should serve as a deterrent to the respondent and to industry. To be satisfied on these three considerations required an understanding of the particular facts of the case, the circumstances of the respondent, and the impact on him of the agreed penalties.

¶ 6 The most troublesome issue was whether a lesser fine for the second contravention (occurring just months after the settlement of the prior contravention) of a similar nature to the prior contravention was an adequate deterrent to the respondent and whether it would be perceived as such by industry.

Importance of the settlement process

¶ 7 It is usually in the public interest that matters be settled where possible rather than be determined through contested hearings. The reasons for this are often that an earlier determination of a dispute is better than a later determination. Settlements are usually less expensive than contested litigation, and there is less congestion in the dispute settling system when matters are taken out of the system through settlements. Finally, where both parties agree, the result is often more palatable to the parties and society than in a contested hearing where the winner takes all.

¶ 8 For these reasons, a panel considering the acceptance of a settlement agreement will try to reach a determination of acceptance. It will recognize that settlements are often hotly debated with much compromise and give-and-take between the parties in order to reach an acceptable position agreeable to both parties. Furthermore, the panel will recognize that it is not privy to all the facts and the motivations and considerations that each of the parties have in coming to a solution of the dispute that is agreeable to them.

Role of the panel

¶ 9 A panel considering whether to accept a settlement agreement and its agreed penalties is in a different position than a panel determining an appropriate penalty in a contested hearing.

¶ 10 Each needs to consider precedents and the law and, most importantly, the particular facts and circumstances of the case, including the particular circumstances of the specific respondent.

¶ 11 However, unlike a panel in a contested hearing that must set the actual penalties that appear appropriate to it, a panel in a hearing to consider a settlement agreement has only two options under IIROC rules: to accept the agreed settlement with its penalties because the panel agrees that the penalties are acceptable, or to reject the agreed settlement because the agreed penalties are not acceptable or because the panel has not been given enough information for it to come to a determination that the agreed penalties are acceptable.

¶ 12 A panel considering whether to accept a settlement agreement cannot substitute for the agreed penalties those penalties that it might prefer to have in the circumstances. However, the parties can always be invited by the panel to provide additional information that the panel believes it needs in order to come to a favourable decision; and the parties may choose to provide it. Or indeed, the parties may agree to changes in the agreed penalties to meet what the panel believes is required for an acceptance, in order to avoid a rejection by the panel. But the panel cannot impose a change unilaterally.

¶ 13 In the final analysis, a panel will accept a settlement agreement where it is in the public interest to do so, as will almost always be the case where the panel is satisfied regarding the three considerations mentioned above under "*Issues considered by the panel"*.

Pre-hearing conference

¶ 14 The parties advised us that there was a lengthy pre-hearing conference in this matter before a pre-hearing officer (a retired judge) that, in the parties' view, almost amounted to an arbitration. It was a robust process. The parties went into the pre-hearing conference with widely divergent views on several aspects of this matter and were far apart. The parties advised us that the pre-hearing officer was privy to all of the relevant facts, including the facts relating to the prior contravention. He made several recommendations that led to agreement. He was consulted about, and viewed positively, the wording of the statements in paragraphs 61 and 62 of the settlement agreement which state:

> "61.The Respondent acknowledges that but for the fact that he is approaching retirement and has ongoing health issues the monetary penalty would have been greater."
>
> "62. The Respondent acknowledges that but for the fact that he has not acted as a Branch Manager for approximately four years the term of suspension would have been longer."

¶ 15 Nevertheless, it is the panel, and not the pre-hearing officer, who in our case must decide on the acceptability of the settlement agreement.

The Rules

¶ 16 IIROC Dealer Member Rule 1300.2 sets out requirements for the supervision of accounts, including the designation of a supervisor to ensure that the handling of client business is within the bounds of ethical conduct, consistent with just and equitable principles of trade and not detrimental to the interests of the securities industry. Rule 2500 sets out extensive minimum standards for retail customer account supervision. It was some of these minimum standards that were contravened in the prior and the second contraventions.

Comparing and contrasting the two contraventions

¶ 17 Counsel for the respondent submitted that although the prior contravention and the second contravention dealt with the respondent's supervisory activities and deficiencies as a branch manager on two separate occasions with two different employers, his activities and deficiencies in question on each occasion were really as different as apples and oranges.

¶ 18 The prior contravention involved the supervision of two scheming registered representatives and a multitude of their clients over a year prior to 2005. There was, relatively speaking, little attention paid by the respondent to his supervisory duties in that case.

¶ 19 In the second contravention, the respondent behaved quite differently. In his counsel's view, the prior settlement, with its agreed penalties, served as a wake-up call to him. He was very active and responsive in his activities in the second situation. Counsel led us through the positive steps the respondent took in supervising, as set out in the settlement agreement paragraphs 20 to 23, 25 to 29 and others.

¶ 20 The second contravention was an isolated case, with one registered representative with one client. It covered a much shorter period of time: four months. The client praised the registered representative on more than one occasion. The respondent knew that the client was aware of the frequent trading. The close personal, as opposed to purely professional, relationship with the client was not made known to the respondent and there were no red flags of possible undue influence of the registered representative over the client.

¶ 21 The respondent reacted to several red flags. For example, he reduced margin allowed to the client. He tried to arrange a meeting directly with the client and the registered representative towards the end of the period, but the meeting never happened because the registered representative and the client left Raymond James Ltd for another dealer.

¶ 22 In the respondent's counsel's view the second contravention was a borderline contravention compared to the prior one.

Personal factors relevant to impact of the penalties on the respondent

¶ 23 The respondent is almost 70 years of age and has not worked as a branch manager for the past four

years. His prospects of serving in a senior management position in the future are not good. He is approaching retirement. We were advised that his income prior to 2010 was significantly greater than it is now. Accordingly, the monetary penalty in the prior settlement represented a significantly lesser percentage of his income at that time than the monetary penalty in the second settlement does of his current income. Indeed, on an after-tax basis the difference is even more significant. His retirement savings are unlikely to grow much further and will be impacted by the monetary penalty. We learned about the respondent's health issues that are relevant in assessing the impact of the agreed penalties on the respondent.

¶ 24 Furthermore, the one year suspension in the second settlement is more severe than the 45 day suspension in the first settlement.

Deterrence

¶ 25 In *Rotstein (Re)*, 2014 IIROC 34, the hearing panel accepting the settlement agreement considered by it said, at paragraph 8, quoting from IIROC's Dealer Member Disciplinary Guidelines:

> "A prior disciplinary history may highlight a concern about individual or specific deterrence, an important objective of the disciplinary process and the need to impose progressively escalating sanctions on repeat offenders."

¶ 26 All considered, we accepted that the agreed penalties in the second settlement agreement will have a greater impact on the respondent than the penalties in the prior settlement agreement had on him at the time of the prior settlement, and that in light of all the circumstances examined above the agreed penalties in the second settlement agreement do serve as an adequate deterrent to him and, therefore, to industry.

Precedents

¶ 27 We reviewed 12 precedent cases submitted by the parties and compared the agreed penalties in the settlement agreement before us with the range of penalties in the cases. In doing this we also reviewed the unique facts and circumstances of each case and compared and contrasted them with the unique facts and circumstance of the settlement agreement before us.

¶ 28 Because no case has the same facts and circumstances, it is an art, not a science, (adjusting for particular facts and circumstances) to determine an acceptable range for penalties in a situation like the one before us. However, we were comfortable that the agreed penalties were within an acceptable range.

Fair and Reasonable

¶ 29 What is fair and reasonable will depend to a large degree on the particular facts and circumstances of a matter. Where both parties to a settlement agreement are represented by counsel, and have the means to undergo a contested hearing, but have reached a settlement, it is unlikely that a panel would ever conclude that the settlement was unfair and not reasonable.

Conclusion

¶ 30 We concluded that the agreed penalties were within an acceptable range based on precedents, would serve as a specific and general deterrent, and were fair and reasonable. We concluded that the settlement agreement was in the public interest and, therefore, we accepted it.

Dated at Toronto this 17th day of June, 2016.

Paul M. Moore

Guenther W.K. Kleberg

Selwyn Kossuth

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff ("Staff") and the Respondent, John Donnelly, ("the Respondent") 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 John Donnelly.

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 contravention of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:

> From May to November 2010, the Respondent as Branch Manager failed to adequately supervise a Registered Representative and the accounts of a client, contrary to IIROC Dealer Member Rules 1300.2 and 2500.

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

   (a) A fine of $30,000; and

   (c) A suspension from acting in a supervisory capacity for one year from the date of the acceptance of this agreement.

7. The Respondent agrees to pay costs to IIROC in the sum of $1,500.

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 as Branch Manager was responsible for the supervision of the activity in the client accounts of Registered Representative Probhash Mondal ("Mondal") including the period from February 2009 to November 2010, at which time Mondal left the firm.

10. Between February and April 2009 Mondal opened seven margin accounts for his client AM. At that time, AM was approximately 51 years of age, unemployed, and recently widowed. AM invested approximately $2 million, representing the majority of her net worth and consisting of proceeds of a life insurance policy. The Respondent approved the account application forms for all accounts for this client.

11. From May to November 2010, the Respondent failed to adequately supervise Mondal and the activity in AM's accounts. In particular, he failed to make inquiries to ensure that the short selling and concentration in a single-stock that occurred in this client's accounts were suitable for the client.

12. In April 2015 Mondal was disciplined by IIROC. He admitted to making unsuitable recommendations, and engaging in discretionary trading while at another firm, in the accounts of AM. Mondal agreed to a penalty that included a five year suspension from registration and a fine of $100,000.

B. Registration History

13. At all material times, the Respondent was employed as a Branch Manager at Raymond James Ltd. ("RJ") and started working there in 2005. The Respondent has been a registrant of the Investment Dealers' Association, the predecessor to IIROC, in various capacities since 1979. The Respondent is currently Senior Vice President and a Registered Representative at RJ, but has not acted as a Branch Manager since approximately 2012. In 2010 the Respondent entered into a Settlement Agreement with IIROC admitting to a failure to supervise; and received a fine of $50,000 and a 45 day suspension from acting as a Branch Manager.

C. Respondent Approves Margin Account Applications

14. Between February 23rd and April 2nd, 2009 seven accounts were opened for AM, all of which were margin accounts (the "Accounts").

15. The Respondent approved AM's applications to open the Accounts. The New Client Application ("NCAF") relating to the Accounts reflected that AM was approximately 51 years of age, unemployed, and recently widowed. AM placed approximately $2 million into the Accounts, representing the majority of her net worth and consisting of proceeds of a life insurance policy. No additional funds were subsequently deposited into the Accounts.

16. The NCAF for AM's Accounts characterized her financial situation as follows:

- She had liquid assets valued at $2.4 million
- She had fixed assets valued at $600,000
- Her investment knowledge was "limited"
- Her investment objective was "growth"; and
- Her risk tolerance was 80% low risk, 10% medium risk, and 10% high risk.

17. On May 21, 2009, AM wrote a letter to the Respondent complimenting Mondal on his handling of her Accounts.

D. Respondent Approves Updates to Risk Tolerance and Account Objectives

18. A few days after the first four accounts were opened in February 2009, and after trading in the accounts had already commenced, Mondal sent an email to the Respondent advising that he had proposed a portfolio for AM consisting of $1.6 million in corporate bonds, $200,000 in a managed money portfolio and $200,000 in a stock portfolio. Mondal sought to confirm the appropriate risk profile for the proposed portfolio.

19. The Respondent provided the firm's head office with Mondal's email and inquired as to what risk profile would be necessary to support the portfolio Mondal had proposed. In response compliance staff indicated the risk level should be "*no less than medium risk*".

20. The Respondent then advised Mondal that in order for AM to invest in the proposed asset allocation, her risk tolerances would need to be updated from the original 80% low risk, 10% medium risk, and 10 % high risk, to 5% low risk, 60% medium risk, and 35% high risk. However, the Respondent directed Mondal to ensure that AM was given the *"…option to stay with or rebalance to her original objectives*."

21. On or about March 11, 2009, Mondal submitted an updated NCAF for one of the margin accounts which reflected that AM's risk tolerance had been changed to 5% low risk, 60% medium risk and 35% high risk.

22. To address the Respondent's requirement that the AM be given the option to stay with her original objectives, Mondal made a notation on the update that: *"Client understands & is aware of the risks inherent in purchasing & holding corporate bonds & further understands the current risk categorization does not apply*."

23. After discussing the changes with Mondal, the Respondent made a notation on the update indicating that: "*Client declined the option to rebalance*." Once updated, the risk tolerances for this account remained unchanged until the closure of the account in December 2010.

24. In April 2009, the Respondent was copied on a series of e-mail correspondence in respect of AM's Accounts as follows:

- The firm's head office compliance staff advised Mondal that the short term trading in AM's account was not in keeping with her 80% low risk investment objectives for all but one of her accounts.
- Compliance staff asked Mondal whether AM understood the risk associated with her trading and whether she would be updating her objectives accordingly.
- Mondal advised that AM was aware of the risks and that Mondal had *"repeatedly advised her as to the risks of short term trading"*.
- Mondal advised that he had canvassed the issue with AM *"numerous times"* and AM had *"firmly advised"* that she was comfortable with the trading, which she said represented only 5% of her total assets.
- Mondal also advised that AM had updated the risk tolerances on one of her accounts, as described above, to 5% low risk, 60% medium risk and 35% high risk.
- Compliance staff advised Mondal that if AM wished to continue to pursue this type of trading, she would need to update her other accounts to reflect the new risk tolerance and investment objectives.

25. On or about May 4, 2009, Mondal submitted a single page NCAF update for five of AM's Accounts to reflect the following:

a. in respect of two accounts, AM's investment objectives were 100% speculative and risk tolerance was 100% high risk;

b. in respect of one account, AM's investment objective was 100% growth and risk tolerance was 100% high risk; and

c. in respect of two accounts, AM's investment objectives were 50% growth and 50% speculative, and risk tolerance was 30% medium risk and 70% high risk.

26. Though it was firm policy to permit changes to account objectives for an existing account using a single page form, the Respondent did not approve the single page update and required Mondal to have the client sign a new NCAF for the Accounts.

27. He asked Mondal to ensure that the client confirmed in writing that (i) all accounts were being updated to reflect her true objectives, (ii) the client did not wish to rebalance to her original objectives, (iii) the client was comfortable with speculative trading and (iv) Mondal had explained all risks related to trading.

28. On or about May 5, 2009 Mondal submitted a new NCAF for six of AM's Accounts to reflect risk tolerance of 100% high risk, good investment knowledge and investment objectives of 50% growth and 50% speculative. AM signed the new NCAF.

29. To address the Respondent's requirement that AM provide the confirmations described above, Mondal made a notation on the NCAF form indicating: *"All accounts are being updated in order to reflect the clients' true objectives. The client does not wish to re-balance to the original objectives. Client is also comfortable with speculative trading. I have also explained all risks related to trading.*"

30. While the February 23, 2009 NCAF reflected that AM had investment experience with only T-Bills and GICs, the new NCAF of May 5, 2009 reflected that this client had investment experience in strip bonds, income trusts, common shares, preferred shares, new issues and venture investments.

31. However there is no evidence that the Respondent questioned the significant change in investment experience for this client over the approximate intervening two month period.

32. Notwithstanding the May 2009 updated NCAF, the changes made to the NCAF did not reflect the client's true investor profile.

33. A summary of the NCAF information and updates is found at Appendix A to this Notice of Hearing.

E. Trading Activity in the Accounts

i. Increase in Equities Holdings

34. Notwithstanding Mondal's original February 2009 proposal for a 90% corporate bond portfolio for AM, by May 2010 the Accounts held approximately 5% bonds. By November 2010 there were no bonds remaining in the Accounts.

35. In July 2009 Donnelly specifically queried Mondal about AM's sale of her bond portfolio. Mondal advised Donnelly that AM had made a profit on the bonds and had decided to liquidate. Following this discussion, Donnelly made a notation on his daily commission report as follows: "*Discussed [with] Probash. All [bond sales were] unsolicited. Client had made money and wanted to go to cash."*

36. By November 2010, this decrease in bond holdings came with a corresponding increase in, equity holdings to 100% in the Accounts.

37. The equities traded in the Accounts were for the most part shares in well capitalized, blue chip issuers.

ii. Single Stock Concentration and Large Debit Balance

38. Between January 2010 and May 2010, AM bought and sold large positions of Bank of America ("BAC") shares on more than one occasion at a profit. However, from May to November 2010 the activity in AM's Accounts reflected a significant increase in concentration of BAC shares, a significant use of margin, and a large debit balance, as reflected below:

2010	**Market value**	**Debit balance** (000s)	**Equity** (cash + securities) (millions)	**Concentration of BAC as %**	**Number of shares of BAC**	**BAC Share price**	**Market value of BAC** (000s)
April	1.9	93	2.0	18	20,000	17.83	360
May	2.4M	-517	1.8	35	40,000	15.74	650
June	2.6M	-1.02M	1.6	65	70,000	14.37	1.0M
July	2.5M	-833	1.7	67	80,000	14.04	1.1M
August	2.1M	-737	1.4	73	80,000	12.45	1.0M
September	1.9M	-355	1.5	70	80,000	13.11	1.0M
October	2.1M	-693	1.4	65	80,000	11.44	930
November	2.0M	-607	1.4	64	80,000	10.95	900

39. Throughout June to November 2010 the concentration of BAC shares in the Accounts ranged from a minimum of 64%, to a high of 73%.

40. AM's Accounts had a large debit balance which hit a high of $2.2 million in mid-August, 2010.

41. The Respondent wrote to Mondal on August 16, 2010 noting that the "*…debit increased by $1.2 million last week. It must be reduced immediately below its previous level.*" The Respondent was tracking debit balances in excess of $100,000 in client accounts (including those of AM) through a weekly debt levels report which he helped devise with the credit department of the firm and that he implemented for the branch.

42. Further, in or about August 2010 the Respondent made a notation on the daily commission run for Mondal indicating that following a meeting with him he had directed Mondal to "*…have the margin exposure reduced significantly from the $1.8MM - $2.4MM level down to a maximum of 1/3 to 1/2 of equity*."

43. By September 2010 the debit was reduced by approximately 85% to $355,000.

44. There is no evidence that the Respondent specifically queried Mondal about the concentration in BAC shares, and no further evidence of queries related to AM's margin exposure or debit balance. This despite the fact that the debit balance increased in October and November and the concentration of BAC remained high.

iii. Frequent Short Term Trading

45. Mondal used the proceeds from the sale of bonds in the Accounts to engage in frequent short term trading of equities.

46. There were over 115 transactions in August 2010, and over 165 transactions in September 2010. The majority of these trades were marked "unsolicited".

47. During the material time, in at least 80% of the transactions in AM's Accounts equity securities were held for fewer than 10 days and approximately half of those were bought and sold on the same day. The frequent short term trading resulted in an annualized turnover ratio of at least 13 in the Accounts, and was not consistent with this client's true investor profile, although as set out above AM had signed the May 2009 NCAF indicating otherwise.

48. The frequent short term trading in AM's Accounts was identified by the firm's head office compliance staff on or about June 3, 2010 when a compliance officer questioned Mondal, via email copied to the Respondent's delegate, why AM's account had a "*…pattern of buying large concentrated positions…only a few days before selling…*".

49. As there had been no response to the June inquiry, on August 2, 2010 head office compliance staff sent a follow up email, and copied the Respondent. On August 3, 2010, Mondal advised compliance that AM was an active trader, that she held significant assets outside the firm, and that the account in question held her risk capital.

50. There is no evidence that the Respondent queried Mondal about the short term trading.

51. In an email dated October 14, 2010, which Mondal sent to the Respondent in November 2010, AM acknowledged that she was monitoring her account on line, that she was "trading a lot" but complained that certain of her trade instructions were not being executed.

iv. Short Selling

52. In addition to the frequent short term trading detailed above, by May 2010 AM was short selling securities in the Accounts.

53. By November 2010 she had executed approximately 45 short sales, approximately 20 of which occurred in September 2010 alone.

54. There is no evidence that the Respondent queried Mondal about the short selling in the Accounts. This

activity was not consistent with this client's true investor profile, despite the information on AM's May 2009 NCAF and October 14, 2010 email, as set out above.

F. The Respondent's Failure to Adequately Supervise

55. Throughout the currency of AM's Accounts, the Respondent reviewed trades in AM's accounts 88 times; and other than the one inquiry regarding the sale of AM's bond portfolio in July 2009, the Respondent was otherwise satisfied the trades were consistent with AM's risk profile, and considered his review closed.

56. However, for the period from May to November 2010, and notwithstanding the queries made by head office set out above, the Respondent failed to adequately supervise Mondal and the Accounts at the branch level in that there is no evidence of any directives or inquiries regarding short term trading, short-selling and the concentration of BAC shares, the quantity of which doubled in a two month period from May to July, 2010.

57. On or about November 26, 2010 the Respondent agreed to meet with Mondal and AM however the meeting did not take place as Mondal and AM did not attend as scheduled. Shortly thereafter, Mondal resigned from Raymond James and AM moved her accounts to another Dealer Member firm.

G. Losses and Interest

58. While the Accounts were initially profitable from May to November 2010 the Accounts had sustained unrealized losses of approximately $390,000, a substantial proportion of which was attributable to the concentrated position in BAC shares.

59. The dollar value of purchases for the Accounts during this time period was in excess of $30 million.

60. As a consequence of the large debit balances, in the period from May to November 2010 AM was charged approximately $37,000 in interest.

H. Respondent's Current Status

61. The Respondent acknowledges that but for the fact that he is approaching retirement and has ongoing health issues the monetary penalty would have been greater.

62. The Respondent further acknowledges that but for the fact that he has not acted as a Branch Manager for approximately four years the term of suspension would have been longer.

IV. TERMS OF SETTLEMENT

63. 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.

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

65. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

66. 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.

67. 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.

68. 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.

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

70. 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.

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

72. 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 Toronto in the Province of Ontario, this 7th day of June, 2016.

"Witness" _____ **"John Donnelly"** _____

Witness **Respondent**

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this 8th day of June, 2016

"Witness" _____ **"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 8th day of June, 2016, by the following Hearing Panel:

"Paul Moore"

Per: Paul Moore_____

Panel Chair

"Guenther Kleberg"

Per: Guenther Kleberg_____

Panel Member

"Selwyn Kossuth"

Per: Selwyn Kossuth_____

Panel Member

Summary of NCAF Information and Updates

NCAF Information for Margin Accounts	**Date 2009**	**Employment**	**Annual Income**	**Net Worth**	**Risk Tolerance**	**Account Objectives**	**Investment Knowledge**
First in CDN$	Feb.23	Homemaker	$100,000 From investments	$3 million	80% low 10% med 10% high	100% Growth	Limited

Update	Mar.12* No further updates	Not indicated	Not indicated	Not indicated	5% low 60% med 35% high	Not indicated	Not indicated

Second in US$	Feb. 23	Homemaker	$100,000 From investments	$3 million	80% low 10% med 10% high	100% Growth	Limited
Third in CDN$	Feb. 24	Not Employed Student or Homemaker	$100,000 From investments	$3 million	80%low 10% med 10% high	100% Growth	Limited
Fourth in US$	Feb. 24	Not Employed Student or Homemaker	$100,000 From investments	$3 million	80%low 10% med 10% high	100% Growth	Limited
Fifth in CDN$	April 2	Not Employed Student or Homemaker	$100,000 From investments	$3 million	80%low 10% med 10% high	100% Growth	Limited
Sixth in US$	Feb. 23	Homemaker	100,000 From Investments	$3 million	80%low 10% med 10% high	100% Growth	Limited
Seventh in CDN$	Feb. 23	Homemaker	100,000 From Investments	$3 million	80%low 10% med 10% high	100% Growth	Limited

Update [Six Accounts]	May 5	Homemaker	$100,000 From investments	$2.7million	100% high	50% Growth 50% Speculative	Good