

Re Chiu

IN THE MATTER OF:

**The Rules of the Investment Industry Regulatory Organization of
Canada (IIROC)**

and

The By-Laws of the Investment Dealers Association of Canada

and

Wayne Wing Fat Chiu

2013 IIROC 55

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

Heard: November 26, 2013
Decision: November 26, 2013

Hearing Panel:

Leon Getz, Q.C, Chair, Brian Field and Chris Lay

Appearances:

Lorne Herlin for the Investment Industry Regulatory Organization of Canada

H. Rod Anderson for Wayne Wing Fat Chiu

REASONS FOR DECISION ON SETTLEMENT AGREEMENT

Introduction

¶ 1 We were constituted as a panel to consider, pursuant to Rule 20.36 of the Dealer Member Rules of the Investment Industry Regulatory Organization of Canada (“IIROC”), whether to accept a settlement agreement dated November 26, 2013 (the “Settlement Agreement”) that has been negotiated between IIROC’s Enforcement Department and Wayne Wing Fat Chiu. At the conclusion of the hearing held for this purpose in Vancouver, B.C. on November 26, 2013, and after considering the submissions of counsel, the terms of the Settlement Agreement and the applicable principles, we accepted it.

¶ 2 These are our reasons for doing so.

The Settlement Agreement

¶ 3 The Settlement Agreement is annexed to this Decision. It contains a summary of the underlying facts and an acknowledgement by Mr. Chiu that between 2006 and 2010, he failed to use due diligence to ensure that certain orders that he placed for the accounts of a client, C, were suitable for her, and that in so doing he acted in breach of IIROC Dealer Member Rule 1300. 1 (q) and the predecessor provision of the Regulations of the Investment Dealers Association.

¶ 4 The Settlement Agreement also contains Mr. Chiu’s agreement that he will:

- (a) pay a fine of \$20,000;

- (b) disgorge \$2,000 representing commissions on the transactions in issue;
- (c) be suspended from approval in any registered capacity for a period of 30 days, commencing on December 1, 2013;
- (d) be subject to a six month period of close supervision commencing on completion of his suspension;
- (e) before September 1, 2014 complete the Conduct and Practices Handbook Course; and
- (f) pay IIROC \$3,000 on account of the costs it has incurred in connection with this matter.

The material facts

¶ 5 The essential material facts are these. Mr. Chiu has worked in the securities industry since 1995. He has no disciplinary history. His client C's investment objectives were 100% moderate growth and her risk tolerance level was medium. Between June 2006 and March 2007 Mr. Chiu purchased approximately \$124,000 worth of shares of Groundstar Resources Limited, a high risk security, for her accounts. In addition, he subsequently also purchased other high risk securities for her accounts. As of February 28, 2011 the aggregate market value of the Groundstar shares purchased had fallen to approximately \$43,500.¹ In March 2011 C moved her accounts to another investment dealer.

¶ 6 Mr. Chiu acknowledges in the Settlement Agreement both that the Groundstar shares (and the others) were high risk securities and that their purchase was not suitable for C.

The governing principles applicable to a decision to accept or reject a settlement

¶ 7 The applicable principles are set out in paragraphs 9 and 10 of the decision in *Re Deutsche Bank Securities Ltd.* 2013 IIROC 07, as follows:

9 It is clear from jurisprudence emanating from the courts and from Hearing Panels of IIROC, Investment Dealers Association and the Mutual Fund Dealers Association, that our task is not to decide whether, in this case, we would have arrived at the same decision as that reached by the parties. Rather, our duty is to determine whether the penalty is a reasonable one and that it meets the objectives of the disciplinary process which are to maintain the integrity of the investment industry. We cite from the recent decision of the Hearing Panel in *Re CIBC World Markets Inc.*, [2011] IIROC No. 38:

13 Finally, hearing panels will not lightly interfere with a negotiated settlement. As was said in *Re Milewski*, [1999] IDACD No. 17,

... 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.

14 Or, as put by Winkler J. (albeit in another context) in *Gilbert v. CIBC*, [2004] O.J. 4260:

There is a presumption of fairness when a proposed class settlement negotiated at arms length ... is presented to the court for approval. A court will only reject a proposed settlement when it finds that the settlement does not fall within a range of reasonableness.

The test to be applied is whether the settlement is fair and reasonable ... This allows for a range of possible results and there is no perfect settlement. Settlement

¹ Mr. Chiu also purchased other high risk securities for C's accounts. The details are set out in Schedule A to the Settlement Agreement. It is not necessary to recount them here.

is a product of compromise, which by definition, necessitates give and take.

15 In our view, the settlement, negotiated as it was by the parties assisted by capable counsel, does not clearly fall “outside a range of appropriateness” and it should therefore be, and was, accepted by the panel.

10 We share the opinion expressed by the hearing panel in *Re Vorstadt*, [2012] IIROC that the settlement process is an important one which should be “encouraged and supported”.

¶ 8 Counsel referred us to several reported cases – *Re Carinci*, 2013 IIROC 49; *Re Chrabalowski*, 2011 IIROC 49; *Re Hanna*, 2012 IIROC 71; and *Re Young*, 2010 IIROC 34 – with facts similar to those here in which the hearing panels accepted settlement agreements providing for disciplinary consequences comparable to those provided for in the Settlement Agreement. Little is to be gained from a minute parsing of the facts and dispositions involved in those cases, and those here. While there are, to be sure, differences between those cases and this, we are satisfied that there is a sufficient similarity to warrant the conclusion that they represent the “range of reasonableness” applicable here.

¶ 9 We are satisfied, accordingly, that we should accept the Settlement Agreement and we do so.

DATED AT VANCOUVER as of November 26, 2013

Brian Field

Chris Lay

Leon Getz, Q.C., Chair

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff and the Respondent, Wayne Wing Fat Chiu, 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 Chiu.
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 the IDA to carry out its regulatory functions.
4. Chiu consents to be subject to the jurisdiction of IIROC.
5. The Investigation discloses matters for which Chiu 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 Chiu jointly recommend that the Hearing Panel accept this Settlement Agreement.
7. For purposes of this Settlement Agreement, Chiu admits to the following contraventions of IIROC Dealer Member Rules, Guidelines, IDA By-Laws, Regulations or Policies:
 - a) Between 2006 and 2010, Chiu failed to use due diligence to ensure that the orders that he placed for the accounts of his client C were suitable for her, contrary to IIROC Dealer Member Rule 1300.1(q) (IDA Regulation 1300.1(q) prior to June 1, 2008).
8. Staff and Chiu agree to the following terms of settlement:

- a) payment of a \$20,000 fine;
 - b) payment of \$2,000 which represents disgorgement of his commissions for the transactions at issue;
 - c) a suspension from approval in any registered capacity for a period of 30 days beginning on December 1, 2013;
 - d) upon completion of the suspension, a 6 month period of close supervision; and
 - e) successful completion of the *Conduct and Practices Handbook Course* by September 1, 2014.
9. Chiu agrees to pay costs to IIROC in the sum of \$3,000.

III. STATEMENT OF FACTS

(i) 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.

(ii) Factual Background

Overview

11. C's investment objectives were 100% moderate growth and her risk tolerance level was medium. From June 2006 to March 2007, Chiu purchased \$123,780 worth of shares of one high risk security, Groundstar Resources Limited (Groundstar), for C's accounts. In addition, Chiu also purchased other high risk securities for C's accounts. The purchase of these high risk securities was not suitable for C given her investment objectives and risk tolerance.

The Respondent

12. Chiu has worked in the securities industry since 1995. At all material times he worked as a registered representative at Canaccord Genuity Corp.'s head office in Vancouver. He currently works as a registered representative at Wolverton Securities Ltd. in Vancouver.
13. Chiu has no prior disciplinary history.

The Client

14. In or around 2001, C and Chiu met. C then decided to open up a Registered Retirement Savings Account (the RRSP Account) and a margin account (the Margin Account) at Canaccord.
15. As a result, on or about February 2, 2001, C completed an Account Information Form that indicated that:
- C was 49 years old;
 - she worked as a postal clerk;
 - her estimated net total worth was \$150,000;
 - her approximate annual income from all sources was \$40,000;
 - her investment objectives were 100% moderate growth; and
 - her risk tolerance was medium risk.
16. As set out in the Account Information Form, C's investment experience:
- was extensive for mutual funds;
 - was moderate for common shares, preferred shares, bonds, money market, new issues, and venture situations; and

- was none for options and commodities/futures.

17. Chiu signed the Account Information Form on or around February 2, 2001, and at all material times he was the registered representative who was responsible for the RRSP Account and the Margin Account.

Holdings in the RRSP Account from February 2001 to May 2006

18. From the opening of the RRSP Account until May 2004, the RRSP account either held no or a small percentage of high risk securities.
19. From June 2004 to May 2006, the RRSP Account did not hold any high risk securities.
20. As of May 31, 2006, the market value of the holdings in the RRSP Account was approximately \$79,924.

Holdings in the Margin Account from February 2001 to May 2006

21. From the opening of the Margin Account until May 2006, the Margin Account did not hold any high risk securities.
22. As of May 31, 2006, the market value of the holdings in the Margin Account was approximately \$79,523.

Groundstar

23. C's friend J informed her that Chiu had purchased shares of Groundstar for J. The shares of Groundstar are listed on the TSX Venture Exchange and it is a junior oil exploration company. The shares of Groundstar are a high risk security.
24. In or around June 2006, C telephoned Chiu to discuss Groundstar. Chiu, among other things, informed C that Groundstar was an oil stock and the company was based in Calgary.

Purchase of Groundstar Shares

25. Between June 2006 and March 2007:
- 30,200 shares of Groundstar were purchased for the RRSP Account at a cost of approximately \$44,586; and
 - 68,500 shares of Groundstar were purchased for the Margin Account. at a cost of approximately \$79,194.
26. The Groundstar shares represented a high percentage of the holdings in the RRSP Account and the Margin Account.

Purchase of Other High Risk Securities

27. As set out in Schedule "A" between January 2007 and November 2010, Chiu also purchased other high risk resource-based securities for the RRSP Account and for the Margin Account.

Unrealized Losses in Accounts

28. As of February 28, 2011, the 30,200 shares of Groundstar that were held in the RRSP Account had a market value of \$13,288. The purchase price of the shares was \$44,586.
29. Further, as of February 28, 2011, the 68,500 shares of Groundstar that were held in the Margin Account had a market value of \$30,140. The purchase price of the shares was \$79,194.
30. Ultimately in or around March 2011, C transferred all of the assets in the RRSP Account and the Margin Account, including all of the above noted Groundstar shares, to another Dealer Member.
31. By way of a July 11, 2011 letter, C complained to Canaccord that Chiu had mishandled her accounts.
32. C's financial and personal circumstances changed significantly from the time she opened the RRSP Account and the Margin Account in February 2001. In particular, in 2009, C retired early from her postal clerk position at Canada Post Corporation.

Unsuitable Investments

33. The above noted purchases of high risk securities were not suitable for C because her investment objectives were 100% moderate growth and her risk tolerance level was medium.

IV. TERMS OF SETTLEMENT

34. 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*.
35. The Settlement Agreement is subject to acceptance by the Hearing Panel.
36. The Settlement Agreement shall become effective and binding upon Chiu and Staff as of the date of its acceptance by the Hearing Panel.
37. 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.
38. If the Hearing Panel accepts the Settlement Agreement, Chiu waives his right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
39. If the Hearing Panel rejects the Settlement Agreement, Staff and Chiu may enter into another settlement agreement; or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.
40. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
41. Staff and Chiu 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.
42. Unless otherwise stated, any monetary penalties and costs imposed upon Chiu are payable immediately upon the effective date of the Settlement Agreement.
43. 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.
44. This Settlement Agreement may be signed in counterparts.

AGREED TO by the Respondent, Wayne Wing Fat Chiu at the City of Vancouver in the Province of British Columbia, this 22nd day of November, 2013.

“Owais Ahmed”

Witness

“Wayne Chiu”

Respondent

AGREED TO by Staff at the City of Vancouver in the Province of British Columbia, this 22nd day of November, 2013.

“Shannon Mathieson”

Witness

“Lorne Herlin”

Lorne Herlin

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

ACCEPTED at the City of Vancouver in the Province of British Columbia,
 this 26th day of November, 2013, by the following Hearing Panel:

Per: “Leon Getz”

Panel Chair

Per: “Brian Field”

Panel Member

Per: “Chris Lay”

Panel Member

Schedule “A”

High Risk Securities (Other than Groundstar)

Date	Account	Security	Price per Share	Total Cost (including commission)
January 4, 2007	Margin	AGF China Focus Class FE	\$19.36	\$795.96
January 5, 2007	Margin	AGF China Focus Class FE	\$19.69	\$795.96
January 5, 2007	RRSP	AGF China Focus Class FE	\$19.69	\$375.50
January 16, 2007	Margin	Mag Silver Corporation	\$7.60	\$8,455.00
January 22, 2007	Margin	AGF China Focus Class FE	\$18.90	\$5,273.86
January 30, 2007	RRSP	AGF China Focus Class FE	\$19.15	\$208.02
May 2, 2007	Margin	AGF China Focus Class FE	\$ 18.54	\$60.47
October 15, 2009	RRSP	MacKenzie Focus Far East Class DSC	\$14.76	\$14,275.04
August 18, 2010	RRSP	Consolidated Thompson Iron Mines Ltd.	\$8.47	\$11,385.00
August 19, 2010	RRSP	Lake Shore Gold Corp.	\$3.58	\$8,659.00
November 29, 2010	RRSP	Energizer Resources Inc.	\$0.52	\$9,826.00

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