Re Skelton

IN THE MATTER OF:

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

and

The By-Laws of the Investment Dealers Association of Canada (IDA)

and

John Skelton

2012 IIROC 46

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

Heard: June 25, 2012, in Vancouver, BC
Written Decision: July 25, 2012

Hearing Panel:
Linda J. Murray (Chair), Brian Field, L. Karen Henderson
Appearances:
Natalija Popovic, Senior Enforcement Counsel, for IIROC
Ronald Pelletier, Counsel for the Respondent

HEARING PANEL REASONS FOR DECISION (SETTLEMENT HEARING)

Introduction

¶ 1 John Skelton (the Respondent) and the Investment Industry Regulatory Organization of Canada (IIROC) entered into a Settlement Agreement signed by the Respondent on June 18, 2012, and IIROC on June 20, 2012, pursuant to IIROC Dealer Member Rules 20.35 to 20.40 inclusive, and Rule 15 of the Dealer Member Rules of Practice and Procedure.

¶ 2 In the Settlement Agreement, the Respondent admitted that:

a. between July 2003 and December 2008, the Respondent failed to use due diligence to ensure that orders he placed for the account of his client BT were suitable for BT, contrary to IDA Regulation 1300.1(p) and IIROC Dealer Member Rule 1300.1(p); and

b. between September 2003 and December 2008, the Respondent effected discretionary trades on behalf of his client BT without having BT's prior written authorization and without the account having been designated and approved as a discretionary account by his employer Raymond James Ltd., contrary to IDA Regulations 1300.4 and 1300.5 and IIROC Dealer Member Rules 1300.4 and 1300.5.

¶ 3 Pursuant to Dealer Member Rule 20.36, a Settlement Hearing was held on June 25, 2012, to consider the Settlement Agreement. A Book of Documents was provided by IIROC to the Respondent's counsel and to the

Hearing Panel.

¶ 4 The Hearing Panel heard from counsel for the parties regarding the circumstances of the conduct, the relevant authorities, and submissions regarding the appropriateness of the proposed settlement agreement. IIROC and the Respondent jointly recommended that the Hearing Panel accept the Settlement Agreement.

¶ 5 The Hearing Panel adjourned the hearing to consider whether it was appropriate to accept the Settlement Agreement. The Hearing Panel determined unanimously to accept the Settlement Agreement and re-convened the hearing to advise the parties of its decision.

¶ 6 The Hearing Panel advised the parties that, in considering this matter and the cases that counsel referenced, we would have anticipated a period of supervision as part of the sanctions in these circumstances. However, we were advised that this had been considered and addressed as part of the negotiations between the parties. The Hearing Panel concluded that the settlement was within the reasonable range and appropriate in the circumstances.

¶ 7 In accordance with paragraph 8 of the Settlement Agreement, the Hearing Panel ordered that the Respondent:

a. pay IIROC a fine in the amount of $30,000; and

b. pay IIROC $1,000 toward the costs of the investigation and prosecution of this matter.

¶ 8 The Hearing Panel advised the parties that these written reasons would follow.

Statement of Facts, Contraventions and Terms of Settlement

¶ 9 The Settlement Agreement sets out the background and facts of this case, the contraventions admitted by the Respondent, and the agreed terms of settlement. A copy of the Settlement Agreement is attached as Schedule A. The Settlement Agreement complies with Rule 14 of the IIROC Rules of Practice and Procedure.

Submissions of Counsel

¶ 10 IIROC counsel advised the Hearing Panel that considerable time was spent negotiating the terms of the settlement and there are public interest benefits of the settlement process. The Respondent was represented by experienced counsel.

¶ 11 IIROC counsel referenced the following decisions regarding the role of the Hearing Panel in a settlement hearing:

a. *Re Milewski* [1999] I.D.A.C.D. No. 17;

b. *Re Clark* [1999] I.D.A.C.D. No. 40;

c. *Re Graydon Elliott Capital Corp.* [2007] I.D.A.C.D. No. 43; and

d. *Re Gaudet* [2010] IIROC No. 29, which referenced *Rault v. Law Society of Saskatchewan* [2009 SKCA 81].

¶ 12 In *Re Milewski* the panel noted:

> "[…] A penalty under a settlement agreement is likely to be at the low end of the spectrum in view of the fact that a settlement is negotiated, permits the Association staff to avoid the costs of a contested hearing and guarantees them a favourable result.
>
> […]
>
> […] A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of

specific settlements." (page 11)

¶ 13 In *Re Clark* the panel noted:

> "It was submitted by staff and accepted by the panel that its role under By-law 20.26 is not the same as its role under By-law 20.10 following a hearing. In considering a settlement under By-law 20.26 the panel should not simply substitute its discretion for that of staff who negotiated the settlement. The panel must be cognizant of the importance of the settlement process and should not interfere lightly in a negotiated settlement. In our view, as a result, panels must also be careful in using previous settlements as precedent. The settlement process is one of negotiation and compromise and the penalty imposed following a settlement will often be less onerous than one imposed following a hearing where similar findings are made." (page 3)

¶ 14 In *Re Graydon Elliott,* the panel noted:

> "The Panel accepts that its role under the By-laws in reviewing a Settlement Agreement is not the same as its role considering penalty following a hearing on the merits. As has been said in a number of cases, in considering a Settlement Agreement, the Panel should not simply substitute its discretion to that of Staff in negotiating the settlement. The Panel must be cognizant of the importance of the settlement process, and it should not interfere lightly in a negotiated settlement. We acknowledge that the settlement process is one of negotiation and compromise and the penalty imposed may be somewhat different than one imposed following a hearing where similar findings are made and the Panel determines the penalty." (page 2)

¶ 15 The panel in *Re Gaudet* adopted the comments of the panel in *Re Darcy Alan Higgs* (February 9, 2010 decision), regarding settlement agreements:

> "There are two broad related principles that apply in connection with a decision to accept or reject a settlement:
>
> The first is succinctly stated in the following passage from the decision in *Re Milewski* [[1999] I.D.A.C. No. 17, August 5, 1999 at page 11]:
>
> > 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.
>
> Secondly, in the recent decision of the Saskatchewan Court of Appeal in *Rault v. Law Society of Saskatchewan* [2009 SKCA 81(Can Lii)], the court cited with approval and applied to an administrative tribunal the principles applicable to joint submissions on sentencing in criminal cases described by the Alberta Court of Appeal in *R. v. G.W.C.* [2000 ABCA 333 (Can Lii], namely, that there is an obligation on the tribunal to give serious consideration to a joint submission on sentencing agreed upon by counsel unless the sentence is unfit or unreasonable; or contrary to the public interest; and it should not be departed from unless there are good or cogent reasons for doing so." (page 2)

¶ 16 In her submissions, IIROC counsel referenced the following facts and potential mitigating factors:

a. The Respondent has been a registrant in the securities industry for 40 years and has never been the subject of an IIROC disciplinary proceeding.

b. The Respondent has been employed by the same firm from 2000 to the present.

c. The Respondent accepted responsibility for his conduct and was cooperative, forthright and forthcoming throughout the investigation.

d. The conduct ended about four years ago and there have been no issues with the Respondent's

conduct since that time.

e. It does not appear that the client suffered a loss to the overall value of the account at the end of the relationship.

f. The Respondent derived little personal benefit from the conduct in question. There was no evidence of dishonesty or deceit by the Respondent.

g. At some point after September 2003, the client suggested, and the Respondent agreed, that he could place orders he deemed appropriate for the account without consulting the client prior to every trade. The Respondent used discretion with respect to the type of security, quantity, price, and/or timing of many, but not all, of the orders in the client's account.

h. In a note to the Respondent dated on or about March 25, 2008 BT, after referring to concerns of her family that the investments in the account should be less aggressive, made the following comments:

"With regret, I am going to give in to their desires – I'm too tired to argue any more with them.

I think you have done a wonderful job in keeping up my capital, and I like you so much, that I feel badly about this."

i. Although the client discussed with the Respondent transferring the account to another firm in both 2007 and early 2008, the client decided not to do so.

j. The Respondent held a positive view of the precious metals sector, particularly gold. The Respondent studied the precious metals sector very closely and was very knowledgeable in this area. Since at least 2000, the Respondent only accepted new account referrals from existing clients who were familiar with his trading strategy, and did not solicit for new clients in any other manner. In this regard, the facts of this case are somewhat unique.

¶ 17 IIROC counsel referenced the following facts and potential aggravating factors:

a. The conduct occurred over about a five year period.

b. The client was a retired widow, 85 to 90 years of age. The client is now deceased.

c. The account holdings, between July 2003 and December 2008, did not always conform to the stated investment objectives and/or risk tolerance levels set out in the client's NCAF. BT completed and signed a second NCAF on or about March 23, 2006. At that time, the Respondent reviewed the second NCAF with BT and explained to her that the changes to the stated investment objectives and risk tolerance were made in order to conform to the holdings in the account.

d. The client advised the Respondent that her family had concerns regarding the suitability of some of the investments in the account. In December 22, 2008, BT's son (with her permission), wrote a letter to the firm complaining that, given the client's age, it was inappropriate that a high percentage of the securities in the account were speculative. The client's account was ultimately transferred to another firm in February 2009.

¶ 18 Counsel for IIROC advised that IIROC was confident that the public interest will be addressed by this settlement and she made the following submissions regarding specific and general deterrence:

Specific deterrence. Four years have elapsed since the conduct with no new issues regarding the Respondent's conduct. A fine of $30,000 is a significant amount and will have an impact on the Respondent. IIROC staff is confident that the recommended penalties and participation in the regulatory process are likely to deter the Respondent from similar conduct in the future.

General deterrence. The target groups for general deterrence include current and prospective registrants. Ensuring suitability of transactions and avoiding discretionary trading are fundamental obligations of

registrants and the obligations apply even if the client acquiesces. The recommended penalties are significant and, even in the unique facts of this case, are sufficient to alert registrants to take seriously their obligations regarding suitability and unauthorized discretionary trading.

The penalties will enforce the message that, even though a registrant may have had a 40 year career, he must remain vigilant, observant, and cognizant of the obligations owed to the client, the firm, IIROC, and the public. Even where a registrant has unique expertise and does not solicit for new clients, he has a basic duty to ensure that each recommendation made for the client is suitable and in accordance with the client's investment objectives and risk factors (also known as the 'know your client rule'). A registrant has a basic obligation not to engage in discretionary trading in a client's account without prior written authorization from the client and approval of the firm. The obligation applies even where the client acquiesces.

¶ 19 Mr. Pelletier agreed with the submissions by IIROC counsel. He further commented that this has been a stressful experience for the Respondent, who was anxious to receive the decision of the panel as soon as possible.

¶ 20 IIROC counsel referred the Hearing Panel to the Dealer Member Disciplinary Sanction Guidelines, including Key Considerations When Determining Sanctions (section 3) and the specific guidelines regarding improper sales practices including unsuitable recommendations (section 3.1) and discretionary trading (section 3.6).

¶ 21 Counsel for IIROC emphasized the following in her submissions:

a. In *Re Mills* [2001] I.D.A.C.D. No. 7 (p.3) the panel commented on the purpose of general deterrence and noted that the role of a hearing panel is to "determine a penalty appropriate to the conduct and respondent before it, reflecting that its primary purpose is prevention rather than punishment".

b. With respect to the factors of harm, blameworthiness and loss to the client, firm and industry, IIROC counsel noted that at the end of the relationship, there was a 'net increase' in the client's account rather than a loss in value of overall account holdings, which losses were the case in the other precedent cases. There was no evidence of intentional manipulation or fraudulent conduct by the Respondent in this case.

c. The recommended fine takes into account the amount of the commission revenues which were minor since not all of the commissions received by the Respondent related to unsuitable or discretionary transactions.

d. The Respondent has no disciplinary history with IIROC, he accepted responsibility for his actions, cooperated with IIROC, and understands the circumstances and consequences of his conduct.

e. There was no pattern of conduct as the issues related to only one client account, which did not involve leverage or margin facilities.

f. Counsel for IIROC acknowledged the potential vulnerability of the client given her age but pointed out that the Respondent did not seek her out as a client and that age was one factor to be considered but should not be the only determinative factor.

¶ 22 IIROC counsel referred the Hearing Panel to the following cases regarding factors and range of penalties:

a. *Re Johnson* [2012] IIROC No. 19;

b. *Re Futher* [2008] IIROC No. 29;

c. *Re Shamseer* [2007] I.D.A.C.D. No. 2;

d. *Re Janiewicz* [2006] I.D.A.C.D. No. 3; and

e. *Re D'Ambrosi* [2004] I.D.A.C.D. No 54.

¶ 23 The penalties in the cases ranged from fines of $20,000 to $50,000, with varying periods of supervision and suspension conditions. IIROC and Respondent's counsel submitted that, given the facts of the cases, the proposed penalty in this matter was within the range of reasonableness and met the Guidelines and the principles of specific and general deterrence.

¶ 24 Counsel both recommended that the Hearing Panel accept the Settlement Agreement.

Panel Reasons and Decision

¶ 25 The Hearing Panel acknowledged its role in considering the Settlement Agreement under Rule 20.36 and the principles set out in *Re Milewski* and the other authorities referenced by IIROC counsel.

¶ 26 The Respondent admitted that:

a. Between July 2003 and December 2008 he failed to use due diligence to ensure that orders he placed for the account of his client BT were suitable for BT, contrary to IDA Regulation 1300.1(p) and IIROC Dealer Member Rule 1300.1(p).

b. Between September 2003 and December 2008, the Respondent effected discretionary trades on behalf of his client BT without having BT's prior written authorization and without the account having been designated and approved as a discretionary account by his employer Raymond James Ltd., contrary to IDA Regulations 1300.4 and 1300.5 and IIROC Dealer Member Rules 1300.4 and 1300.5.

¶ 27 The Hearing Panel considered a number of factors in determining whether to accept the Settlement Agreement including whether the terms of the settlement:

a. were reasonable, given the conduct of the Respondent;

b. addressed both specific and general deterrence;

c. will prevent the type of conduct described from occurring in the future;

d. will protect investors as a result of the proposed penalty; and

e. will foster confidence in the integrity of the capital markets, IIROC, and the regulatory process.

¶ 28 The Hearing Panel considered the IIROC Dealer Member Disciplinary Sanction Guidelines. The Guidelines, while not mandatory, provide an indication to members of expectations and suggest ranges of penalties that might be appropriate to particular types of cases. Counsel made helpful submissions regarding the application of the Guidelines in this case.

¶ 29 In cases involving improper sales practices, the Guidelines list other potential factors to consider:

a. For unsuitable recommendations, the factors include: (1) the extent of due diligence conducted by the registrant regarding the securities; (2) magnitude of losses attributable to the unsuitable recommendations; (3) number of clients; (4) level of sophistication of the clients; (5) existence of a pattern of unsuitable recommendations; and (6) the presence of any ulterior motive or personal gain.

   The recommended sanctions include: (1) a minimum fine of $10,000; (2) disgorgement of profits; (3) re-write of CPH; (4) a period of Close and/or Strict Supervision; and (5) a period of suspension (in most egregious cases involving elements of deception and misrepresentations).

b. For discretionary trading, the factors include: (1) number of unauthorized trades; (2) whether the client provided verbal authority; (3) underlying reason ie. personal gain; (4) number of clients; (5) period of time over which the discretionary trading took place; (6) suitability of the discretionary trades; and (7) magnitude of client losses.

   The recommended sanctions include: (1) a minimum fine of $5,000; (2) disgorgement of profits;

(3) a period of Close and/or Strict Supervision; (4) re-write of CPH; and (5) a period of suspension (in most egregious cases involving a large number of large value trades).

¶ 30 The securities industry is a business of trust and confidence. Registrants must meet significant responsibilities and play an important role in protecting investors and maintaining the integrity of the capital markets. It is important for registrants and firms to appreciate that there will be significant penalties, including significant fines, supervision conditions and perhaps suspension, as a result of disciplinary action for engaging in improper sales practices such as unsuitable recommendations and discretionary trading for client accounts.

¶ 31 The Respondent had sufficient knowledge and experience and ought to have recognized the obligations to the client, firm, IIROC, and public regarding improper sales practices. As noted by IIROC counsel, even though the Respondent has had a 40 year career with no IIROC disciplinary history, he had an obligation to remain vigilant, observant, and cognizant of his obligations as a registrant.

¶ 32 The Hearing Panel accepted the submissions of counsel, summarized in paragraphs 10 through 24 above, and notes the following:

a. In the joint submissions, counsel noted as one of the potential mitigating factors that it appeared that the client did not suffer a net loss to the value of the account overall at the end of the relationship with the Respondent. It appears that this submission was based upon the fact that the account increased about $25,000 from the amount of the original investment as of the date of the transfer of the account out to the other firm in February 2009. The Hearing Panel, in considering this issue, was unable to clearly identify this as a mitigating factor and quoted, with appreciation to our colleagues, the comments of the Hearing Panel in the *Re Johnson* decision (para 22) regarding this issue:

> "Without knowing how or over what period the $25,000 increase was calculated or whether and if so how and to what extent a more favourable result would have been attained if a different and more conventional "investment philosophy" had been adopted, we do not think that any conclusions can be drawn from the fact stated."

b. As noted, the Hearing Panel, in considering this matter and the cases that counsel referenced, would have anticipated a period of supervision as part of the sanctions in these circumstances.

¶ 33 The Respondent accepted responsibility for his conduct, cooperated with IIROC, and is unlikely to engage in similar conduct in the future. The penalties are sufficient to send a message to others that more is required and serious consequences will result from failure by registrants to comply with their obligation not to engage in improper sales practices regarding client accounts. The Hearing Panel believes that the proposed penalties will deter the Respondent and others from engaging in similar conduct, which will improve compliance by industry participants and foster confidence in the industry and the regulatory process.

¶ 34 The Hearing Panel, after careful consideration, concluded that the Settlement Agreement terms:

a. are reasonable and within the appropriate range for sanctions, given the facts and circumstances set out in the Settlement Agreement, the submissions of counsel, and the authorities cited; and

b. meet the Guidelines and the principles of specific and general deterrence.

¶ 35 For the reasons set out above, the Panel unanimously accepted the Settlement Agreement. In accordance with the terms of the Settlement Agreement, the Hearing Panel imposed the following penalties, effective on the date of the Settlement Hearing, being June 25, 2012:

a. pay IIROC a fine in the amount of $30,000; and

b. pay IIROC $1,000 toward the costs of the investigation and prosecution of this matter.

Dated July 25th, 2012

Linda J. Murray, Chair

Brian Field, Member

L. Karen Henderson, Member

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Staff of the Investment Industry Regulatory Organization of Canada (IIROC) and the Respondent, John Skelton, 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 the Respondent.

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. 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. IIROC Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.

7. The Respondent admits to the following contraventions of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:

   (a) Between July 2003 and December 2008, the Respondent failed to use due diligence to ensure that orders he placed for the account of his client BT were suitable for BT, contrary to IDA Regulation 1300.1(p) and IIROC Dealer Member Rule 1300.1(p).

   (b) Between September 2003 and December 2008, the Respondent effected discretionary trades on behalf of his client BT, without having BT's prior written authorization, and without the account having been designated and approved as a discretionary account by his employer Raymond James Ltd., contrary to
   IDA Regulations 1300.4 and 1300.5, and IIROC Dealer Member Rules 1300.4. and 1300.5.

8. Staff and the Respondent agree that the Respondent will:

   (a) pay IIROC a fine in the amount of $30,000; and

   (b) pay IIROC $1,000 towards the costs of the investigation and the prosecution of this matter.

III. STATEMENT OF FACTS

(i) Acknowledgment

9. 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

10. Between 2003 and 2008, the Respondent effected numerous trades on behalf of his client BT's investment account, without the account having been designated and approved as a discretionary

account. Moreover, some of the trades executed in the BT account were of gold and other precious metals and were not suitable for BT because of, among other things, her personal and financial circumstances.

The Respondent

11. The Respondent was first employed in the securities industry as a registered representative in 1972.

12. The Respondent has never been the subject of an IIROC discipline proceeding over his approximately 40 years as a registrant.

13. Since 2000, the Respondent has worked at the Kelowna business location of Raymond James Ltd. (formerly Goepel McDermid Inc.).

14. Since at least 2000, the Respondent has not solicited any new clients and he has only accepted new client accounts if they were referred by one of his existing clients.

15. The Respondent held a very positive view of the precious metals sector, particularly gold, and has studied and followed the sector closely.

The Client

16. BT was born in 1916. At all material times, she was a retired widow.

17. In or around January 2001, BT opened an investment account at the Kelowna business location of Raymond James Ltd. (the BT Account).

18. BT was referred to the Respondent by a long-time client of the Respondent who was also a close friend of BT's.

19. The New Client Application Form (NCAF) for the BT Account was signed by BT and indicated that she was 85 years old and that her:

- annual income was $60,000 plus;
- net worth was $600,000;
- investment knowledge was "good" (i.e. between "sophisticated" and "limited");
- risk tolerance was 90% medium and 10% high; and
- investment objectives were 40% income; 50% growth; and 10% short term trading.

20. The Respondent was the registered representative who signed the NCAF and at all material times he was the registered representative who was responsible for the BT Account.

21. At or around the time it was opened, $10,000 was deposited into the BT Account.

22. In or around June 2003, BT transferred in cash and investments (in kind) from her account at another dealer member which were then valued at approximately $500,000.

23. The Respondent did not request or obtain from BT an updated NCAF following the transfer of her portfolio from the other dealer member.

24. As of July 31, 2003 the holdings in BT Account were worth approximately $518,657.

25. Between 2003 and 2008, BT did not require any income from the BT Account and all dividends and income generated in the BT Account were reinvested.

Unsuitable Investments

26. Over the next several months starting in our about July 2003, the Respondent executed numerous transactions in the BT account which were designed to dispose of under-performing assets and to invest in other assets with greater growth potential. By 2006, approximately 50% of the BT Account was

invested in the precious metals sector, with a particular emphasis on gold-based investments.

27. All of the investments made in the BT Account were made upon the recommendation of the Respondent and included:

- mining companies with little or no earnings;
- various precious metals mutual funds; and
- leveraged and inverse exchange traded fund products that are based on total market or gold indices.

28. Prior to February 28, 2006, BT did not withdraw any funds from the BT Account and the holdings in the BT Account were worth approximately $757,444.

29. On or about March 23, 2006, BT completed and signed a second NCAF (the 2006 NCAF) which indicated that she was 90 years old and that her:

- annual income was $40,000 plus;
- net worth was $1,250,000 ($950,000 in liquid assets and $300,000 in fixed assets);
- investment knowledge was "good" (i.e. between "sophisticated" and "limited");
- risk tolerance was 55% medium and 45% high; and
- investment objectives were 60% growth and 40% speculative.

30. The Respondent reviewed the 2006 NCAF with BT and explained to her that the changes to the stated investment objectives and risk tolerance for the BT Account were made in order to conform to the holdings in the BT Account.

31. As of March 31, 2007, the holdings in the BT Account were worth approximately $861,000.

32. In April 2007, a further $113,000 in cash and securities were transferred into the BT Account from her account at another investment dealer.

33. As of April 30, 2007 the holdings in the BT Account were worth approximately $1,007,827.

34. On or about July 26, 2007, BT telephoned the Respondent and informed him that she was considering transferring the BT Account to another dealer member. The next day BT met with the Respondent and they discussed, among other things, income trusts and the taxation of various types of investment income. The Respondent asked BT whether or not she required regular income withdrawals from the account and she said no. Following their meeting, BT decided not to transfer her account and no changes were made to her portfolio or to her investment objectives.

35. On or about July 30, 2007, BT withdrew $5,000 from the BT account.

36. On or about March 14, 2008, BT met with the Respondent to review her account. As of the date of this meeting, the holdings in the BT Account were worth approximately $1,012,218. The Respondent asked BT whether she required income from the BT Account and she said no. As a result, no significant changes were made to the portfolio and the dividends and other income generated in the BT Account continued to be
re-invested.

37. On or about March 25, 2008, the Respondent received a hand-written note from BT which stated, in part:

> Dear John,
>
> My son and daughter were up here for the Easter weekend and were again going over my portfolio.
>
> They are very insistent that I have investments that are less "aggressive" and less risky.

> With regret, I am going to give in to their desires – I'm too tired to argue any more with them.
>
> I think you have done a wonderful job in keeping up my capital, and I like you so much, that I feel badly about this.

38. After receiving the letter, the Respondent spoke to BT but never received any formal transfer documents as BT subsequently elected not to transfer the BT Account.

39. On or about April 10, 2008, BT withdrew $5,000 from the BT Account.

40. As of June 30, 2008, the holdings in the BT Account were worth approximately $950,000.

41. As of September 30, 2008, the holdings in the BT Account were worth approximately $707,000.

42. In October 2008, BT withdrew $203,000 from the BT Account in order to purchase a condominium at a retirement care facility.

43. By way of a December 22, 2008 letter to Raymond James, BT's son complained that given BT's age it was inappropriate that a high percentage of the securities in the BT Account were speculative. BT later confirmed that she had given her son permission to act on her behalf.

44. As of January 31, 2009, the holdings in the BT Account were worth approximately $436,000.

45. In or around February 2009, BT transferred the BT Account to another dealer member.

46. When the BT Account was transferred out, the value of the BT Account, after taking into account the withdrawals made, had increased by approximately $25,000.

47. The concentration of approximately 50% of the investments made in the BT Account in gold and other precious metal securities was not suitable for BT given, among other things, her age and financial situation.

48. Further, between July 2003 and December 2008, the holdings in the BT Account did not always conform to the stated investment objectives and/or risk tolerance levels for the BT Account.

Discretionary Trading

49. At no point did the Respondent obtain BT's written authorization for discretionary trading, and the BT Account was never designated and approved as discretionary by Raymond James Ltd.

50. Several months after September 2003, the Respondent and BT agreed, at the suggestion of BT, that the Respondent could place orders he deemed appropriate for the BT Account without necessarily consulting with her prior to every trade. As a result, the Respondent used his discretion with respect to the type of security, quantity, price, and/or timing of many orders for the BT Account.

IV. TERMS OF SETTLEMENT

51. 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*.

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

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

54. 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.

55. 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.

56. If the Hearing Panel rejects the Settlement Agreement, IIROC Staff and the Respondent may enter into

another settlement agreement; or IIROC Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.

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

58. IIROC 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.

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

60. 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.

61. This Settlement Agreement may be signed in counterparts.

AGREED TO by the Respondent at the City of Kelowna in the Province of British Columbia, this 18th day of June, 2012.

Witness **John Skelton**

AGREED TO by IIROC Staff at the City of Vancouver in the Province of British Columbia, this 20th day of June, 2012.

Witness **Lorne Herlin**

Enforcement Counsel on behalf of IIROC Staff

ACCEPTED at the City of Vancouver in the Province of British Columbia, this 25th day of June, 2012, by the following Hearing Panel:

Per: "Linda Murray"

Panel Chair

Per: "Brian Field"

Panel Member

Per: "Karen Henderson"

Panel Member