

# Re Gravitas Securities

IN THE MATTER OF:

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

**and**

**Gravitas Securities Inc.**

2020 IIROC 05

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

Heard: January 13, 2020 in Toronto, Ontario

Decision: January 13, 2020

Reasons for Decision: February 21, 2020

## **Hearing Panel:**

Susan Lang, Chair, Selwyn Kossuth, Guenter W.K. Kleberg

## **Appearance:**

Robert DelFrate, Enforcement Counsel

Laura Paglia, for Gravitas Securities Inc.

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## **REASONS FOR ACCEPTANCE OF SETTLEMENT AGREEMENT**

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### **Acceptance of Settlement Agreement Terms**

¶ 1 Counsel for the Investment Industry Organization of Canada (IIROC) and for Gravitas Securities Inc. (Gravitas) submitted a Settlement Agreement for the consideration of the Hearing Panel. In that Agreement, the Respondent admitted contraventions of Dealer Member Rules, Sections 1300.1(o) and (p). Those Contraventions were acknowledged to have occurred between March and September 2011 in these terms: “Gravitas failed to use due diligence to ensure whether or not the acceptance of orders for [the purchase of a particular high risk security for four clients was] either within the bounds of good business or suitable”.

¶ 2 The proposed settlement involved a \$100,000 fine, the Respondent’s disgorgement of commissions and trailer fees in the amount of \$16,242, and costs in the amount of \$5,000.

¶ 3 The application to approve the settlement was brought pursuant to Sections 8215 and 8428 of the Consolidated Rules of IIROC.

¶ 4 After reviewing the Settlement Agreement, the submissions filed and hearing oral argument, the Hearing Panel accepted the terms of the Settlement Agreement for the reasons that follow.

### **Issue**

¶ 5 The Hearing Panel considered whether the terms of the proposed Settlement reflect “a reasonable

balance between fairness to the Respondent and the need to protect the investing public, the industry membership, the integrity of the discipline process, the integrity of the securities markets and prevention of a repetition of the offense”: *Re Bereskin*, [2010] IIROC 37 at para 5. A hearing panel will not reject a proposed settlement that provides reasonable deterrence unless its terms “clearly fall outside a reasonable range of appropriateness” in the context of the facts of the case and the appropriate authorities. See *Re Milewski*, [1999] IDACD No. 17 at pp 13-14. See also *Re Cavalaris*, [2017] IIROC 04 at para 19. A Hearing Panel must accept or reject a Settlement Agreement without going outside the facts set out by the parties in that Agreement. A hearing panel does not have the option of modifying the Settlement agreed upon by the parties.

### **Summary of Underlying Background**

¶ 6 The underlying factual background upon which this Hearing Panel bases its decision is set out in detail in the Settlement Agreement, which is attached to these Reasons as Appendix A. The following is a general outline of the circumstances to put in context the reasonableness of the Settlement terms.

¶ 7 Between March and September 2011, Gravitass (a Dealer Member since 2007), through its Registered Representative, Darren Sampson, accepted orders from three clients to purchase Creative Wealth Monthly Pay Trust (Creative Wealth), which was a third-party open ended unit trust.

¶ 8 Creative Wealth was a high risk, speculative exempt market security with the objective of providing unitholders with a fixed rate of return equal to 9% annually, payable monthly. Its primary assets were promissory notes issued by Cangap Merchant Capital LP (Cangap) also payable at 9% monthly. The Offering Memorandum specified that the securities were “only suitable for sophisticated investors with a high tolerance for risk ...”. Further, the securities were suitable as part of a larger portfolio “rather than as a core portfolio holding.”

¶ 9 During the 7-month period, Mr. Sampson accepted orders from three clients and recommended and accepted an order from a fourth. Mr. Sampson, unbeknownst to the Respondent at the time, was the brother-in-law of JC, who was one of the two trustees of Creative Wealth. JC was also a director of Cangap Capital Corp., the General Partner of Cangap. At the time, JC was a registered mutual fund dealing representative, an exempt market dealing representative and a certified financial planner. Previously, JC had provided a similar product offering distributions of 12% per annum to the first three clients.

¶ 10 In 2010, JC spoke to Gravitass and Gravitass agreed both to become the agent for distribution of Creative Wealth and to sponsor Mr. Sampson as a Registered Representative to facilitate the sale of Creative Wealth to JC’s existing clients.

¶ 11 Over time, the four clients invested a total of over \$750,000 in Creative Wealth. While monthly distributions were paid to the clients, in 2015, Creative Wealth reduced the rate of return from 9% to 0% and the Net Asset Value from \$10 to \$5. In 2018, a Receiver was appointed over the assets of Cangap and reported that “there is no prospect that the investors will receive the full return of their principal investments”.

¶ 12 While the particulars of the agreed facts surrounding each investor are set out in Appendix A, some further particulars are helpful to provide more context.

¶ 13 In the case of all four clients, Gravitass failed to question whether Creative Wealth was suitable in the circumstances. In brief, the first three investors became clients of Mr. Sampson at the direction of JC. These investors relied on JC’s advice about Creative Wealth and did not consult either Mr. Sampson or Gravitass.

¶ 14 The first investor, RL, had an 18-year client investment relationship with JC and had previously purchased similarly high risk debentures on his advice, including a Cangap debenture that was to pay 12% interest annually. In September 2011, RL became a client of Gravitass through Mr. Sampson. According to her

New Account Application Form (NAAP) with Gravitass, she was 71 years old, had an income of \$75,000, and net liquid and fixed assets of \$1,000,000 and \$600,000 respectively. Her high risk tolerance was stated at 50%. When RL transferred \$230,000 of her RRIF to Gravitass to buy Creative Wealth, she did so on the advice of JC without any discussion with either Gravitass or Mr. Sampson. In doing so, she signed the subscription agreement that set out some of the risks. In making the investment, RL relied on the accredited investors exemption as an individual who had net realizable financial assets before taxes of more than \$1,000,000. RL received \$77,685 in distributions from Creative Wealth. RL stated that she never met with Mr. Sampson. Gravitass had no knowledge of her other investments. In these circumstances, Mr. Sampson could not have assessed her risk tolerance or her ability to qualify as an accredited investor.

¶ 15 Since the 1990s, AM and RM had relied on JC as their financial advisor. Through JC, these investors had previously purchased approximately \$953,000 in two Cangap debentures, which paid 12% and 9% interest respectively. In March 2011, they became Gravitass' clients, but continued to rely on JC regarding Creative Wealth. At the time, both clients were seniors with incomes of \$85,000 and \$25,000 respectively, each with net liquid assets of \$400,000 and net fixed assets of \$600,000. Their NAAFs recorded their investment knowledge as good and their risk tolerance as 100% high. Between them they purchased approximately \$335,000 of Creative Wealth. In their subscription agreements, AM and RM relied on the exemption that together they owned net realizable financial assets of more than \$1,000,000. Their NAAFs did not reflect this level of liquid assets. The Respondent did not question their reliance on the exemption. In addition, the Respondent had no knowledge of and made no inquiry about their other investments and did not question the suitability of the investment. AM and RM received distributions of \$77,853.

¶ 16 The circumstances of the fourth client, who became a client of Mr. Sampson and Gravitass in March 2011, were somewhat different. This client, JO, according to his NAAF, was 44 years old, self-employed in the restaurant industry earning \$72,000 annually with net liquid assets of \$200,000 and net fixed assets of \$20,000. His investment knowledge was average and his high risk tolerance was set at 100%, with investment objectives of "Medium Term Moderate Growth". He bought \$200,000 of Creative Wealth (100% of his net liquid assets). The subscription agreement he signed relied on the "Minimum amount investment" exemption for purchases of over \$150,000. Neither Mr. Sampson nor Gravitass questioned whether this investment was appropriate given his circumstances. JO received distributions of \$5,022.02.

¶ 17 With respect to all four clients Gravitass earned commissions and trailing fees as set out in the Settlement Agreement. Seventy percent of these earnings were paid to Mr. Sampson, and Gravitass retained the other 30%.

### **Reasonableness of Agreed Sanctions**

¶ 18 The Hearing Panel concluded that the sanctions met the test of reasonableness based upon consideration of the IROC Sanction Guidelines and previous decisions in other circumstances.

¶ 19 The Sanction Guidelines are premised on the principle that sanctions are "preventative in nature and should be designed to protect the investing public, strengthen market integrity, and improve overall business standards and practices". The Guidelines set out a number of key factors.

¶ 20 One of those factors is the number, size and character of the transactions. In this case, the contraventions were restricted to four clients involving the single security of Creative Wealth. Another key factor is the time frame of the misconduct. In this case, the Settlement Agreement addressed the acquisition of these securities by the clients over a seven-month period. Counsel agreed that these circumstances did not constitute a pattern of misconduct.

¶ 21 The factor of the extent of the harm suffered is significant in this case, both collectively and for the

individual investors. The impugned investments totalled over \$750,000. While the investors received some monthly distributions, the Receiver's report leaves unclear the exact amount of their ultimate losses. Nonetheless, it seems apparent that the harm will be significant. All the clients were vulnerable given their financial and individual circumstances.

¶ 22 While the misconduct was serious with serious ramifications, Counsel submitted that conduct was primarily negligent in nature as opposed to intentional or willful or reckless. Important to this is that the sole Respondent is Gravitas. This proceeding does not involve either Mr. Sampson (who has not been registered since 2017) or JC.

¶ 23 Gravitas had compliance systems in place to review and assess all investments. Those systems simply did not identify these transactions. In considering the nature of the misconduct, the Panel accepts that this was a third-party product in which the Respondent had no proprietary interest. The Hearing Panel accepts that the contravention resulted from the failure of Gravitas' compliance systems to identify the transactions rather than from intentional or reckless misconduct on its part.

¶ 24 Although three of the four investors had earlier investments in similar products all though JC, and all four signed subscription agreements, Gravitas was obliged nonetheless to know its clients and to ensure the suitability of the investments and the exemptions for the investors.

¶ 25 Counsel referred to previous regulatory decisions in similar circumstances.

¶ 26 Two of those decisions involved Scotia Capital, *Re Scotia Capital*, 2015 IIROC 27 and 2017 IIROC 15. The 2015 Scotia Capital case related to inadequate supervisory controls regarding qualifications for prospective exemptions. In that case, which resulted in a \$500,000 fine donated to charity, the number of clients involved and the amounts invested were significantly greater than in this case. On the other hand, that sanction also reflected Scotia Capital's self-reporting and the significant remediation steps it undertook. The 2017 Scotia case involved a failure to adequately supervise a Registered Representative who made unsuitable investments in multiple client accounts. This resulted in a \$185,000 fine for Scotia Capital.

¶ 27 In *Re IPC Securities Corp.*, 2010 IIROC 24, the hearing panel imposed a fine of \$65,000 and costs of \$10,000 where that respondent admitted a supervisory failure of an advisor who facilitated the purchase of securities without ensuring that the investors qualified as accredited investors. *Re Moon at al*, 2017 IIROC 42 imposed a \$70,000 fine against three individuals who failed to use due diligence to ensure appropriate qualifications as accredited investors.

¶ 28 Finally, in *Re Edward Jones*, 2016 IIROC 42, a hearing panel imposed a \$250,000 fine for failure to properly supervise five registered representatives who made unsuitable investment recommendations for their clients.

¶ 29 Each of those cases turn on individual facts, but the cases are helpful in illustrating the broad range of appropriate sanctions.

### **Range of Penalty**

¶ 30 This Hearing Panel is satisfied that the proposed fine of \$100,000 is within the reasonable range in this case in light of the context of the agreed-upon facts and the applicable authorities. Similarly, the disgorgement of Gravitas' share of the commissions and trailer fees in the amount of \$16,242 is also reasonable to ensure that Gravitas retains none of the financial benefits it received. As well, the costs award of \$5,000 is reasonable in the context of the settlement. The parties to the Agreement were represented by counsel who negotiated a fair and reasonable settlement. In our view, the Settlement Agreement is sufficient to achieve both general and specific deterrence. It is in the public interest for this settlement to be accepted by this Panel.

## Conclusion

¶ 31 These reasons explain why the Panel accepted the terms of the proposed settlement, including the term that the amounts ordered must be paid within 30 days of the acceptance of the Settlement Agreement, unless otherwise agreed by the parties. As part of the settlement, if Gravititas fails to comply with the settlement, Staff may bring proceedings under Section 8200 based on but not limited to the facts set out in the Settlement Agreement.

Dated at Toronto this 21 day of February, 2020.

Susan Lang

Selwyn Kossuth

Guenter W.K. Kleberg

## SETTLEMENT AGREEMENT

### PART I – INTRODUCTION

1. The Investment Industry Regulatory Organization of Canada (“IIROC”) will issue a Notice of Application to announce that it will hold a settlement hearing to consider whether, pursuant to Section 8215 of the Consolidated Enforcement, Examination and Approval Rules of IIROC, a hearing panel (“Hearing Panel”) should accept the settlement agreement (“Settlement Agreement”) entered into between the staff of IIROC (“Staff”) and Gravititas Securities Inc. (“Respondent”).

### PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement in accordance with the terms and conditions set out below.

### PART III – AGREED FACTS

3. For the purposes of this Settlement Agreement, the Respondent agrees with the facts as set out in Part III of this Settlement Agreement.

## Overview

4. Between March and September 2011, the Respondent accepted orders to purchase a high risk, speculative exempt market security without either the appropriate disclosure or knowledge of the personal and financial circumstances of certain clients needed to determine whether an investment in the security was suitable for them. The requirements to know the client and ensure suitability are the fundamental duties of all registrants, which the Respondent failed to achieve in this case.

## Registration History

5. The Respondent (previously Portfolio Strategies Securities Inc.) has been a Dealer Member since 2007.
6. Darren Sampson (“Sampson”) had been registered as a Registered Representative with the Respondent from February 2011 until June 2, 2017. Sampson had previously been registered as a mutual fund salesperson from February 2010 until December 2010 and then as an Investment Representative from December 2010 until February 2011 with another Dealer Member. Sampson has not been registered in the securities industry since June 2017.

## Creative Wealth Monthly Pay Trust

7. The Creative Wealth Monthly Pay Trust (“Creative Wealth”) was an open ended unit trust established pursuant to a declaration of trust dated April 8, 2011.
8. The Respondent acted as the lead agent of the Creative Wealth offerings and the majority of investors who purchased Creative Wealth did so through accounts held at the Respondent.
9. A continuous offering was made of Creative Wealth in a separate series for each calendar year in which units of Creative Wealth were offered and sold. Units of Creative Wealth were offered and sold in 2011 at a fixed price of \$10 per unit.
10. The investment objective of Creative Wealth was to provide unitholders a fixed rate of return equal to 9% annually.
11. The primary assets held by Creative Wealth were a series of promissory notes (the “Promissory Notes”) issued by Cangap Merchant Capital LP (“Cangap”) with a fixed maturity date of December 31 in the ninth calendar year following the execution and delivery of the promissory note and bearing interest at 9% annually calculated and payable on the last day of each month. The interest rate payable on each series of the Promissory Notes was equal to the distributions payable to unitholders of Creative Wealth.
12. The Creative Wealth OM stated that Cangap had been “created to acquire a diversified portfolio of income producing businesses and lending opportunities” and that Cangap is “specialized in investing in and actively participating in the management of small to mid-sized privately held businesses”.
13. The OM further stated that the securities were “only suitable for sophisticated investors with a high tolerance for risk and seeking a targeted fixed yield over the long term. These securities are more suitable to diversify assets in a larger portfolio rather than as a core portfolio holding.”
14. During the material time, Sampson accepted orders for units of Creative Wealth from RL, AM, and RM and recommended them to JO.

### **The Role of JC**

15. JC was one of two trustees of Creative Wealth and a director of Cangap Capital Corp., the General Partner of Cangap. Until January 2012, JC had been registered as a mutual fund dealing representative and as an exempt market dealing representative. JC was also a certified financial planner for a portion of the time RL, AM, RM and JO held accounts with the Respondent. Following October 2014, the Financial Planning Standards Council issued a Letter of Admonishment to JC and suspended his right to use the Certified Financial Planner certification for a period of one year for failing to properly explain an insurance product to a client.
16. JC had previously recommended a product similar to Creative Wealth (“Cangap I”) to RL, AM and RM who received or were to receive distributions of 12% per annum.
17. In 2010, JC was referred to the Respondent and discussed establishing a distribution channel for units of Creative Wealth with the Respondent. The Respondent agreed to become the agent for Creative Wealth.
18. In addition, the Respondent agreed to sponsor Sampson’s registration as an RR in order to facilitate the sale of Creative Wealth units to existing clients of JC and to grow the Respondent’s retail distribution arm. Unbeknownst to the Respondent, Sampson was JC’s brother in law.

### **Failure to Know the Clients**

#### RL

19. RL became a client of Sampson and the Respondent in September 2011 at the direction JC. The New

Account Application Form (“NAAF”) that she states was completed on her behalf and which she signed at the time indicated the following:

- (i) she was 71 years old and was retired;
- (ii) she had an annual income of approximately \$75,000, net liquid assets of \$1,000,000 and net fixed assets of \$600,000;
- (iii) her investment knowledge was recorded as “Good”, her risk tolerance level was recorded as 50% “Medium” and 50% “High” and her investment objectives were recorded as 100% “Long Term Conservative Growth”.

- 20. Although the NAAF RL signed indicated that Sampson and RL met face to face, RL states she did not in fact ever meet with him. The sole purpose of opening an account with the Respondent was to hold Creative Wealth.
- 21. In October 2011, RL transferred approximately \$230,000 into her RRIF account at the Respondent for the purpose of purchasing Creative Wealth on the advice of JC. These were her only assets held at the Respondent.
- 22. RL was provided and signed a subscription agreement which set out some of the risks of Creative Wealth. Neither the Respondent nor Sampson discussed these risks with her.
- 23. The subscription agreement for the purchase RL signed stated she relied on the exemption available to accredited investors outlined in s. 1.1(j) of National Instrument 45-106 – Prospectus and Registration Exemptions (“NI 45-106”) which stated:
  - (j) an individual who, either alone or with a spouse, beneficially owns financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds \$1,000,000.
- 24. Although the NAAF RL signed indicated she had net liquid assets of \$1,000,000, RL states that her financial assets did not exceed \$1,000,000. As such, she states she did not qualify as an accredited investor and was prohibited from purchasing units of Creative Wealth.
- 25. RL states that JC had been her financial advisor since 1993. RL states that at all times she relied upon JC to provide her with advice regarding her financial affairs, including her investment in Creative Wealth. RL states that at the direction of JC she previously purchased:
  - i) a convertible debenture issued by a private company, A to Z Lending Corp. (the "First Debenture.") in the sum of \$103, 250; The First Debenture was to pay 12% interest annually and to initially mature on October 1, 2012, extended to September 10, 2017; and
  - ii) \$250,000 in a debenture issued by CanGap (the "Second Debenture"). The Second Debenture was to pay 12% interest annually and initially to mature on February 26, 2013, extended to February 26, 2018.
- 26. At the time of RL’s investment in Creative Wealth, the Respondent had no knowledge of these other investments, nor did it inquire as to any other investments she may have held.
- 27. Because Sampson failed to meet or discuss with RL, he could not properly assess her risk tolerance, her financial situation, or her ability to qualify as an accredited investor. Sampson did not advise the Respondent that he did not meet or discuss with RL.
- 28. RL sought no advice from the Respondent or Sampson, whom she did not consider her advisors.
- 29. The Respondent failed to question whether or not the investment in Creative Wealth was suitable for RL

based on the information provided in her NAAF and the subscription agreement, including whether she properly qualified as an accredited investor.

30. RL received distributions from Creative Wealth in the sum of \$77,684.87 from the time of her purchase until September 15, 2015.
31. The Respondent earned commissions of \$11,500 and trailer fees of approximately \$4,500 on RL's investment in Creative Wealth. Seventy percent of these commissions and fees were paid to Sampson.

#### AM and RM

32. AM and RM became clients of Sampson and the Respondent in March 2011. The NAAFs that were completed on their behalf at the time indicated the following:
  - (i) AM was 69 years old and RM was 73 years old and both were retired;
  - (ii) AM had income of \$85,000, net liquid assets of \$400,000 and net fixed assets of \$600,000;
  - (iii) RM had income of \$25,000, net liquid assets of \$400,000 and net fixed assets of \$600,000; and
  - (iv) The AM and RM's investment knowledge were recorded as "Good", their risk tolerance levels were recorded as 100% "High" and their investment objectives were recorded as 50% "Medium Term Moderate Growth" and 50% "Long Term Conservative Growth".
33. In April 2011, AM purchased \$179,000 worth of units of Creative Wealth and RM purchased \$131,000 on the advice of JC. RM subsequently purchased an additional \$24,860 on the advice of JC.
34. AM and RM were provided and signed a subscription agreement which set out some of the risks of Creative Wealth. Neither the Respondent nor Sampson discussed these risks with them.
35. The subscription agreement for each of the purchases stated that AM and RM relied on the exemption available to accredited investors outlined in s. 1.1 (j) of National Instrument 45-106 – Prospectus and Registration Exemptions ("NI 45-106") which stated:
  - (j) an individual who, either alone or with a spouse, beneficially owns financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds \$1,000,000.
36. At the time, the NAAFs for AM and RM indicated that their liquid assets did not exceed \$1,000,000. As such, they did not appear to qualify as accredited investors based on the information they provided on their NAAF and would have been ineligible to purchase units of Creative Wealth based on their NAAF. Although they were qualified to purchase exempt securities, the Respondent did not question AM and RM's reliance on this particular exemption.
37. AM and RM state that JC had been their financial advisor since the 1990s. AM and RM states that at all times they relied upon JC to provide them with advice regarding their financial affairs, including their investment in Creative Wealth. Through JC, they previously purchased:
  - i) \$ 847,149 in CanGap Lending Corp. paying 12% interest annually; and
  - ii) \$103,772.60 Can Gap Lending Corp Debenture dated March 1, 2008 paying 9% interest annually.
38. At the time of AM and RM's investment in Creative Wealth, the Respondent had no knowledge of these other investments, nor did it inquire as to any other investments they may have held. The Respondent failed to question whether or not the investment in Creative Wealth was suitable for AM or RM based

on the information provided in their NAAF and the subscription agreement, including whether they properly qualified as accredited investors.

39. AM and RM sought no advice from the Respondent or Sampson, whom they did not consider their advisors.
40. AM and RM received distributions from Creative Wealth in the sum of \$77,852.29 from the time of their purchases to September 15, 2015.
41. The Respondent earned commissions of \$16,743 and trailer fees of approximately \$7,400 on AM and RM's investment in Creative Wealth. Seventy percent of these commissions and fees were paid to Sampson.

#### JO

42. JO became a client of Sampson and the Respondent in June 2011. The NAAF that was completed at the time indicated the following:
  - (i) he was 44 years old and was self-employed in the restaurant industry;
  - (ii) he had an annual income of approximately \$72,000, net liquid assets of \$200,000 and net fixed assets of \$20,000;
  - (iii) his investment knowledge was recorded as "Average", his risk tolerance level was recorded as 100% "High" and his investment objectives were recorded as 100% "Medium Term Moderate Growth".
43. In August 2011, JO purchased \$200,000 of units of Creative Wealth. At the time, he also had approximately \$18,000 in cash with the Respondent, which was subsequently used to purchase other investments with the Respondent.
44. The subscription agreement for the purchase stated that JO relied on the "Minimum amount investment" exemption which provides an exemption for purchases of over \$150,000.
45. JO was provided and signed a subscription agreement which set out some of the risks of Creative Wealth.
46. JO's investment in Creative Wealth represented 100% of his net liquid assets as set out on his NAAF. Neither Sampson nor the Respondent questioned whether this concentration in a high risk, exempt market product was appropriate in the circumstances.
47. JO received distributions from Creative Wealth in the sum of \$5,022.02 from the time of his purchase until August 15, 2015.
48. The Respondent earned commissions of \$10,000 and trailer fees of approximately \$4,000 on JO's investment in Creative Wealth. Seventy percent of these commissions and fees were paid to Sampson.

#### **Status of Creative Wealth**

49. In October 2015, Creative Wealth advised unitholders that Creative Wealth would be implementing temporary changes, including reducing the NAV to \$5.00 per unit, from \$10.00 per unit, reducing the rate of return to unitholders from 9% per annum to 0% per annum, and suspending all redemptions for a period of no more than 24 months.
50. In November 2018, upon an application made by Creative Wealth, a receiver was appointed over the assets of CanGap. The First Report of the Court Appointed Receiver and Receiver and Manager dated December 14, 2018 indicated that there is "no prospect that the investors will receive the full return of

their principal investments.”

#### **PART IV – CONTRAVENTIONS**

51. By engaging in the conduct described above, the Respondent committed the following contraventions of IROC’s Rules:

Between March 2011 and September 2011, Gravitus failed to use due diligence to ensure whether or not the acceptance of orders for Creative Wealth for RL, RM, AM and JO were either within the bounds of good business or suitable contrary to Dealer Member Rules 1300.1 (o) and (p).

#### **PART V – TERMS OF SETTLEMENT**

52. The Respondent agrees to the following sanctions and costs:
- i) A fine in the amount of \$100,000
  - ii) Disgorgement of commissions and trailer fees in the amount of \$16,242; and
  - iii) Costs in the amount of \$5,000.
53. If this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees to pay the amounts referred to above within 30 days of such acceptance unless otherwise agreed between Staff and the Respondent.

#### **PART VI – STAFF COMMITMENT**

54. If the Hearing Panel accepts this Settlement Agreement, Staff will not initiate any further action against the Respondent in relation to the facts set out in Part III and the contraventions in Part IV of this Settlement Agreement, subject to the provisions of the paragraph below.
55. If the Hearing Panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Rule 8200 against the Respondent. These proceedings may be based on, but are not limited to, the facts set out Part III of this Settlement Agreement.

#### **PART VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT**

56. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
57. This Settlement Agreement shall be presented to a Hearing Panel at a settlement hearing in accordance with the procedures described in Sections 8215 and 8428, in addition to any other procedures that may be agreed upon between the parties.
58. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing, unless the parties agree that additional facts should be submitted at the settlement hearing. If the Respondent does not appear at the settlement hearing, Staff may disclose additional relevant facts, if requested by the Hearing Panel.
59. If the Hearing Panel accepts the Settlement Agreement, the Respondent agrees to waive all rights under the IROC Rules and any applicable legislation to any further hearing, appeal and review.
60. 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 based on the same or related allegations.
61. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has

been accepted by the Hearing Panel.

- 62. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IIROC will post a full of copy of this Settlement Agreement on the IIROC website. IIROC will also publish a summary of the facts, contraventions, and the sanctions agreed upon in this Settlement Agreement.
- 63. If this Settlement Agreement is accepted, the Respondent agrees that neither it nor anyone on its behalf, will make a public statement inconsistent with this Settlement Agreement.
- 64. The Settlement Agreement is effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

**PART VIII – EXECUTION OF SETTLEMENT AGREEMENT**

- 65. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.
- 66. A fax or electronic copy of any signature will be treated as an original signature.

**DATED** this “20<sup>th</sup>” day of “December”, 20<sup>”19”</sup>.

“Witness”

Witness

“Robert Carbonaro”

Name “ROBERT CARBONARO”

Title: “CEO”

On behalf of Gravitas Securities Inc.

“Eric Mucchi”

Witness

“Rob DelFrate”

Rob DelFrate

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

The Settlement Agreement is hereby accepted this “13<sup>th</sup>” day of “January”, 20<sup>”20”</sup> by the following Hearing Panel:

Per: “Susan Lang”

Panel Chair

Per: “Guenther Kleberg”

Panel Member

Per: “Selwyn Kossuth”

Panel Member