Re Sian

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Paul Sian

2017 IIROC 34

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

Heard: May 1, 2017
Decision: May 1, 2017
Reasons: June 5, 2017

Hearing Panel:
Stephen D. Gill, (Chair), Alexandra Williams and Barbara Fraser
Appearances:
Stacy Robertson, IIROC, Enforcement Counsel
Danna J. Marks, Counsel for the Respondent

REASONS FOR DECISION

BACKGROUND

¶ 1 This Panel was constituted pursuant to the Rules of the Investment Industry Regulatory Organization of Canada ("IIROC") to consider, pursuant to IIROC Dealer Member Rule 8200 which sets out IIROC's hearing processes. Rule 8203 entitled "Hearings" provides the foundation for hearings and hearing panels, and states:

> "8203(5) A hearing under this Rule must be open to the public, unless it is:
>
> (i) a settlement hearing, in which case it would be open to the public only after a settlement agreement has been accepted by the hearing panel, …"

¶ 2 Rule 8215 entitled "Settlements and Settlement Hearings" provides in subparagraph 5:

> "(5) After a settlement hearing, a hearing panel may accept or reject a settlement agreement.
>
> (6) A settlement agreement becomes effective and binding on the parties to it upon acceptance by a hearing panel.
>
> (7) If a settlement agreement is accepted by a hearing panel, any sanction imposed under it is deemed to have been imposed under this Rule."

¶ 3 In a Settlement Agreement dated the 22nd day of March, 2017, the Respondent, Paul Sian, and Enforcement Counsel on behalf of enforcement staff of IIROC executed a Settlement Agreement.

¶ 4 The Settlement Agreement, which is attached as Appendix A to these Reasons, in Part III sets out agreed

facts, in paragraphs 4 to 34. The Respondent admits that he acted contrary to Dealer Member Rule 29.1 by:

(a) failing to report his Assistant's receipt of a $750,000 gift from his client to his Dealer Member firm; and

(b) failing to report the initiation of a lawsuit against his Assistant in relation to this gift to his Dealer Member firm.

¶ 5 In contravention 2, the Respondent admits he acted contrary to Dealer Member Rule 1300.1(a) by failing to make reasonable enquiries into the circumstances surrounding a client's instruction to liquidate her account.

¶ 6 In summary the Respondent hired Brian McCullough ("McCullough") as his assistant and McCullough was a registered representative for mutual funds only. As per the agreed facts, on June 25, 2013 the client telephoned the Respondent and instructed him to liquidate her entire account which held securities worth over $900,000 at the time. The Respondent carried out his client's instructions without questioning her as to the reason for liquidating the account.

¶ 7 On or about July 5, 2013 McCullough received a Deed of Gift and a payment of $750,000 from the Respondent's client. Shortly after receiving the gift, McCullough telephoned the Respondent and told him that he had just received a gift of $750,000 from the client.

¶ 8 On July 10, 2013 McCullough deposited $660,000 into his personal trading account held at DWM SI. The Respondent signed the deposit receipt for these funds. The Respondent was the Representative of Record on the McCullough account.

¶ 9 A few days after this deposit, the Branch Manager telephoned the Respondent to inquire about the source of the funds as it was a large cash deposit into a pro account. The Respondent indicated that the funds represented a gift. The Branch Manager then asked if the funds came from a client and the Respondent replied that they did not.

¶ 10 The client passed away in January, 2014.

¶ 11 IIROC staff and the Respondent agreed to the following terms of settlement:

(a) a fine in the amount of $20,000; and

(b) $5,000 in costs.

¶ 12 It should be noted that the Respondent was fined $20,000 by his firm, which fine he has paid.

Registration History

¶ 13 The Respondent has been registered in the industry since August, 1984 and thus at all material times was highly experienced RR. From June 2004 to November 2013, he was registered as RR with DWM Securities Inc. and worked at his branch located in Powell River, BC. In November 2013 DWM SI became part of Scotia Capital Inc. under the trade name Hollis Wealth ("Scotia Capital"). The Respondent is currently registered as an RR with Scotia Capital. It should be noted that the branch manager of the Powell River sub-branch office was located in the Victoria office.

¶ 14 Brian McCullough worked as an assistant to, and under the registered representative code of the Respondent, who was the only other registered representative in the Powell River sub-branch office. The office consisted of the Respondent, Mr. McCullough, and one administrative assistant throughout the relevant period of time.

¶ 15 The role of a hearing panel at a settlement hearing considering the settlement agreement is well understood. In *Re: Deutsche Bank Securities Ltd.*, 2013 IIROC 07, the hearing panel set out its duty at a settlement hearing 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 arm's 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 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"."

¶ 16 In *Re Clark,* (1999) I.D.A.C.D. No. 40, the panel set forth its view of the role of a hearing panel considering a settlement agreement, which view we adopt:

> "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."

¶ 17 Counsel for IIROC submitted that the determination made by a settlement hearing panel under Rule 8215(5) is not to determine if the agreed upon penalties are correct, or in accordance with their particular view of the appropriate penalty, but rather whether the agreed upon penalties are not clearly outside of an acceptable range of appropriateness, after taking into account the general benefits to all parties with the settlement process. This provides the parties some significant latitude in negotiating a settlement that may take many factors into account including the time and expense of a liability hearing, and the availability and convenience of witnesses, particularly clients who may have already suffered significant losses.

¶ 18 We note that the Respondent's assistant Brian McCullough and IIROC entered into a Settlement

Agreement, which was accepted by an IIROC Settlement Hearing Panel on February 6, 2017. The Panel's Reasons have not been released. Mr. McCullough admitted the following violations:

(a) On or about July 5, 2013, Mr. McCullough accepted a gift in the amount of $750,000 from a client without knowledge and consent of his Dealer Member firm contrary to Dealer Member Rule 29.1; and

(b) On or about November 14, 2014 Mr. McCullough failed to report to his Dealer Member firm that he had been served with a Notice of Civil Claim relating to his dealings with that client contrary to Dealer Member Rule 29.1.

¶ 19 Pursuant to the Settlement Agreement, Mr. McCullough agreed to the following penalties:

(a) a fine in the amount of $80,000;

(b) suspension from any registration with IIROC for five years; and

(c) costs in the amount of $5,000.

¶ 20 The details of the Respondent's failure to report Mr. McCullough's receipt of a $750,000 gift from his client is found at paragraphs 10 to 25 of the Settlement Agreement. In submissions, counsel for IIROC submitted that the Respondent's conduct in respect of the gift and McCullough was in the nature of a "mistake" or an "error in judgment". In our view that language does not accurately describe the Respondent's role in this matter because when the branch manager asked the Respondent if the gift to McCullough was from a client, he falsely stated that it was not. This was a serious misrepresentation. This response from the Respondent in our view would have been sufficient to satisfy the branch manager that he need not make further enquiries. In our view that is what the Respondent intended in giving that false answer.

¶ 21 Counsel for IIROC referred the Panel to two IIROC cases involving the significant undisclosed gifts from clients. In *Re Little*, (2007) I.D.A.C.D. No. 24, decision June 13, 2007, the RR accepted a cheque from an elderly client in the amount of $500,000, liquidated securities in the client's account in order to cover the cheque, and then deposited the cheque into his personal bank account, without the knowledge or consent, and contrary to the internal policies of his member firm employer in violation of association By-law 29.1. Mr. Little's client at the time was a widow, with no close family and who was over the age of 90 years. Subsequently the client executed a statutory declaration and stated that she intended the cheque for $500,000 as a personal gift from her to Mr. Little, but that she hoped he would return the funds to her for her future care. The internal policies of Mr. Little's employer prohibited receipt by its employees of gifts from clients, other than gifts of a nominal value.

¶ 22 An IIROC panel found that Mr. Little's conduct was in violation of Rule 29.1; assessed a fine of $15,000 and required him to re-write the CPH course. The panel did not order a suspension but noted that he had, in effect, been in suspension as he was unable to find work in the industry for over 14 months, which is longer than a period of suspension that the panel would have considered. We note that the cheque failed to clear the RR's bank account and the RR never actually received the gift.

¶ 23 In the *Little* case, the panel noted that considering the reputation of the industry and the importance of public trust, appearances are important. They stated:

> 42 It is our view that transgressions must be looked at in the light of the reputation which the investments industry must maintain in the eyes of the public and the effect which the transgression could have upon that reputation. The public interest demands that Members of the industry, and their employees, be held to a very high standard of financial probity. They must be trusted because they handle other people's money. They must be seen to be trustworthy. If conduct could even appear to cast doubt upon that probity, then it could be detrimental to the public interest and constitute conduct unbecoming.
>
> 43 When the reputation for financial probity is involved, appearances are very important. That is recognized in both the Compliance Manual and the Guidelines of Conduct. For example,

in the Compliance Manual, the following appears as part of section 1.35:

> …[E]mployees may not accept or offer…gifts or favour or become involved in any situation or activity in which their personal interests may conflict or appear to conflict with those of the Firm or its client.
>
> [Emphasis added.]

44 In the Guidelines of Conduct, under the heading Conflicts of Interest, the following is stated:

> You must be constantly vigilant to identify conflicts of interest. Rules and procedures have been developed to help you avoid situations which might give rise to an appearance of a potential conflict of interest, whether or not such a conflict of interest actually exists.
>
> {Emphasis added.]

¶ 24 At paragraphs 49 and 50 the panel continued:

> 49 Mr. Little was not a neophyte in the investment industry. He had been in it a long time and had been very successful at it. He should have acted as a good example to others, not as an example of how not to behave.
>
> 50 It is our opinion that Mr. Little's conduct in breaching his employer's internal policies, in the particular circumstances of this case, could have had the effect of creating an appearance that he was acting other than in the best interest of his client. Such an appearance could detrimentally affect the reputation which the investment industry must have for financial probity. His conduct, therefore, was detrimental to the public interest and amounted to conduct unbecoming."

¶ 25 It should be noted that in *Re Little,* the policies and procedures of the firm required approval from the firm's compliance department for any gifts other than those of a nominal value.

¶ 26 The Panel was referred to the IIROC decision of *Re Smith,* 2013 IIROC 21, a decision of April 11, 2013. In that case, the panel was asked to accept a settlement agreement which ultimately it did. The panel found that the RR had purchased property and received substantial benefits (over $700,000 in a will) from his clients, and he failed to disclose any of the transactions to his firm. In their decision the panel found that there were a number of occasions on which one would have expected Mr. Smith to have made disclosure to his firm. In addition to the recognition of the importance of dealing appropriately with potential conflicts in the Compliance Manual and in the Guidelines of Conduct and previous decisions such as *Re Little,* supra.; Mr. Smith's firm had policies in place that required all conflicts and perceived conflicts to be disclosed to its management. Mr. Smith was required to acknowledge annually that he was aware of and complied with these policies.

¶ 27 Mr. Smith purchased property and accepted substantial benefits from his clients. In failing to disclose these transactions to his firm, he exposed himself, his firm and the investment industry to reputational damage and deprived his firm of the opportunity to investigate whether it was appropriate for him to engage in these transactions and accept substantial benefits from his clients.

¶ 28 As stated in *Re Smith,* paras. 4, 5 and 6:

> "4 Investment advisors hold a uniquely privileged position of trust in the self-regulated securities industry. As a result of their position, it is critically important to the reputation of the securities industry that investment advisors either avoid situations which may give rise to conflicts between their interests and those of their clients or ensure proper disclosure of these situations. The harm inherent in failing to do so was well described in Re: Little [2007] IDACD No. 24:
>
> > 42. It is our view that transgressions must be looked at in the light of the reputation

which the investment industry must maintain in the eyes of the public and the effect which the transgression could have upon that reputation. The public interest demands that Members of the industry, and their employees, be held to a very high standard of financial probity. They must be trusted because they handle other people's money. They must be seen to be trustworthy. If conduct could even appear to cast doubt upon that probity, then it could be detrimental to the public interest and constitute conduct unbecoming.

43. When the reputation for financial probity is involved, appearances are very important. That is recognized in both the Compliance Manual and in the Guidelines of Conduct. For example, in the Compliance Manual, the following appears as part of section 1.35:

> …[E]mployees may not accept or offer…gifts or favour or become involved in any situation or activity in which their personal interests may conflict or appear to conflict with those of the Firm or its clients. [Emphasis added.]

44. In the Guidelines of Conduct, under the heading Conflicts of Interest, the following is stated:

> You must be constantly be (sic) vigilant to identify conflicts of interest. Rules and procedures have been developed to help you avoid situations which might give rise to an appearance of a potential conflict of interest, whether or not such a conflict of interest actually exists. [Emphasis added.]

45. Taking a substantial gift from a client can do nothing other than raise a reasonable question about the propriety of the transaction.

5 In addition to the recognition of the importance of dealing appropriately with potential conflicts in the Compliance Manual and in the Guideline of Conduct and previous decisions such as Little, supra, Mr. Smith's firm had policies in place that required all conflicts and perceived conflicts to be disclosed to its management. Mr. Smith was required to acknowledge annually that he was aware of and complied with these policies.

6 Mr. Smith purchased property and accepted substantial benefits from his clients. In failing to disclose these transactions to his firm, he exposed himself, his firm and the investment industry to reputational damage and deprived his firm of the opportunity to investigate whether it was appropriate for him to engage in these transactions and accept substantial benefits from his clients."

¶ 29 As is set out in the Settlement Agreement, the Respondent was aware that Mr. McCullough, his assistant, received a gift in the amount of $750,000 from his elderly client shortly after McCullough received the gift. The Respondent's firm policies prohibited the acceptance of any gifts from clients other than those of a nominal value. The acceptance of the gift was a clear breach of the firm's policies and procedures and IIROC Rule 29.1. Mr. McCullough entered into a Settlement Agreement admitting to his conduct and an IIROC hearing panel accepted the terms of that Settlement Agreement.

¶ 30 Given the Respondent's knowledge of the substantial gift from his elderly client to his registered assistant, and his failure to report this to his branch manager, or anyone at the firm's compliance department, is a breach of IIROC Rule 29.1. Not only did the Respondent fail to report this to his branch manager, he falsely advised the branch manager that the gift to his assistant McCullough was not from a client.

¶ 31 Further, the Respondent failed to report a civil claim that was initiated against Mr. McCullough relating to the gift from his client as per paragraphs 26 to 29 of the Settlement Agreement.

¶ 32 The policy and procedures of the firm required that all employees must report to the firm whenever the employee is named in an action involving subject matter that occurred while employed with the firm. The

Respondent was aware that McCullough had been sued in relation to the validity of the gift from his client, but he did not notify his branch manager, or anyone working in the compliance department at the firm of the existence of the lawsuit. The Respondent's failure to notify his firm of the action which questioned the validity of the gift from his client to his registered assistant is a clear breach of the firm's policy and is a breach of IIROC Rule 29.1.

¶ 33 Counsel for IIROC referred the Panel to a number of cases on supervision, that is cases involving a supervisor or branch manager with IIROC. He submitted the Respondent worked in a small sub-branch office (Powell River) where the branch manager (in Victoria) was not physically present. All the clients in the office were under his broker code even though his assistant, McCullough, was also registered with IIROC and was the main client contact for a number of clients. Counsel for IIROC submitted that the Respondent's obligations were similar to some of the obligations of a supervisor or branch manager. Clearly the Respondent was not a supervisor or branch manager. However, as the Respondent was the broker of record, and McCullough was his assistant, there is a supervisory responsibility in that the Respondent was responsible for his clients and would be required to supervise any dealings that anyone else would have with his clients. Thus while it was not the same requirement as a person officially in a capacity of supervisor, clearly the Respondent is still responsible for his clients and must monitor the activity in their accounts. The Respondent's obligations were those of an RR, and he was required to truthfully report to his branch manager the source of funds in reference to his assistant's conduct. Not only did he not do that, when asked by the branch manager if McCullough's gift had come from a client, he falsely stated it did not.

¶ 34 In this case, the Respondent knew that it was his client that had made the gift to McCullough, and he learned that her account of some $900,000 had been liquidated to provide the funds. He made no enquiries of his client with respect to the liquidation of her account; in our view in these circumstances he was under a duty to make those enquiries. Had he checked McCullough's notes on file, he would have known, but he did not take that step. He was required to report the conduct to his branch manager because of his working relationship with Mr. McCullough.

¶ 35 In the Settlement Agreement, the Respondent has admitted contraventions to: the Respondent acted contrary to Dealer Member Rule 1300.1(a) by failing to make reasonable enquiries to the circumstances surrounding the client's instructions to liquidate her account. In the Settlement Agreement the Respondent has agreed to the following:

> "13. In February 2013, BT told McCullough that she wanted to gift him some money and he made of note of this on her account documentation and noted that she needed to get independent legal advice.
>
> 14. In May 2013, BT again told McCullough that she wanted to gift him some money and he made a note of this on her account documentation.
>
> 15. On June 3, 2013 BT telephoned the Respondent and indicated that she was not happy with the advice that she was getting from her lawyer regarding setting up her will and making some *inter vivos* gifts. The Respondent obtained a recommendation from another employee in the firm's Courtenay office and provided BT with that recommendation for a lawyer in Courtenay.
>
> 16. Sometime after the June 3, 2013 conversation, McCullough told the Respondent that BT had had a disagreement with her initial lawyer over the *inter vivos* gifts and concerns that the lawyer had raised about her mental competency to make these gifts.
>
> 17. Sometime after June 20, 2013, the Respondent received a telephone call from BT's original lawyer informing him that BT was resisting the suggestion that she should be examined by a doctor to assess her mental competency.
>
> 18. On June 25, 2013 BT telephoned the Respondent and instructed him to liquidate her entire account which held securities worth over $900,000. The Respondent carried out her

instructions without questioning her as to the reason for liquidating the account. He also did not speak to McCullough about this request.

19. On or about July 5, 2013 McCullough received a Deed of Gift and a payment of $750,000 from BT.

20. Shortly after receiving the payment, McCullough telephoned the Respondent and told him that he had just received a gift of $750,000 from BT.

21. On July 10, 2013 McCullough deposited $660,000 into his personal trading account held at DWM SI. The Respondent signed the deposit receipt for these funds."

¶ 36 Rule 1300.1(a) requires reasonable enquires for the acceptance of any order, and particularly an order to liquidate an account in excess of $900,000. Given the surrounding facts that the Respondent knew at the time the order was carried out, we find the failure of the Respondent to make any reasonable enquiries about the order to liquidate his client's account is a breach of IIROC Rule 1300.1(a).

¶ 37 Counsel for IIROC referred us to the cases of *Re: Kasten-Brown,* 2011 IIROC 73 and *Re Wood,* 2016 IIROC 49. In both those cases, the RR did not make any reasonable enquires to determine the investment objective or risk tolerance of the clients in relation to the proposed transaction. Counsel for IIROC submitted, and we agree, that the Respondent, given the facts that he knew with respect to his elderly client and the liquidation of her account, had to make reasonable enquiries with respect to the reasons for the liquidation of this large account by an elderly client.

¶ 38 With respect to penalty considerations, IIROC counsel referred the Panel to the Dealer Member Disciplinary Sanction Guidelines which are in place in order to assist hearing panels in determining the appropriate penalties. Counsel referred to both the aggravating factors and mitigating factors in respect to the appropriate penalty in this case.

¶ 39 In summary, the aggravating factors are:

(a) harm to his firm and the securities market – clearly on the facts of this case there was the appearance of a conflict of interest. In Re Little, the panel noted that the circumstances surrounding the acceptance of a large gift from the client would have a detrimental effect upon the investment industry's reputation for financial probity. The firm's policy on receipt of gifts was clear and prohibited the gift that was received by the Respondent's registered assistant from the Respondent's client in this case.

(b) the client involved was elderly;

(c) the size of the gift was significant and should have alerted the Respondent to the need to make sure that all firm and regulatory requirements were followed and complied with;

(d) the Respondent did not provide full details about the circumstances of the gift to his assistant, when questioned by his branch manager about the large deposit by his assistant. In fact the Respondent by his false answer to the branch manager, put the branch manager off the scent.

¶ 40 In respect of mitigating factors in this case, they are as follows:

(a) the Respondent has no prior disciplinary record with IIROC;

(b) the Respondent referred the client to a lawyer for legal advice the gifts and estate issues;

(c) the Respondent has accepted his conduct was in breach of IIROC Rules and has entered into a settlement agreement;

(d) the Respondent was fined $20,000 by his firm which he has paid;

(e) the Respondent was required to re-write the CPH exam by his firm which he successfully completed in September 2015; and

(f) the Respondent did not financially benefit from the contraventions.

¶ 41 The Sanctions Guidelines refer to staff policy statements in relation to internal discipline by a Dealer Member. The staff policy states and notes that internal fines may reduce the quantum of regulatory sanctions to be sought. The agreed upon fine in this case has taken the internal fine assessed against the Respondent by the firm into account.

¶ 42 IIROC counsel submitted, and we agree, that the agreed upon penalty in this case sends an appropriate message that registrants will be held to a high degree of integrity in all financial matters with clients regardless of whether any undue influence or deleterious conduct was involved. The industry and the firm, through their policies, provide that the mere appearance of any impropriety, or conflict involving financial matters between the client and the registrant will be severely sanctioned. The unique and privileged position of investment advisors demands no less.

¶ 43 Having considered the facts set forth in the Settlement Agreement, the Disciplinary Sanctions Guidelines, and all the aggravating and mitigating circumstances, and the fact of the Settlement Agreement, it is our view that the agreed upon penalties of a fine of $20,000 is a reasonable one, and one that meets the objectives of the disciplinary process which are to maintain the integrity of the investment industry. In our view the penalty set forth in the Settlement Agreement is within the reasonable range, taking into account the settlement process and the fact that the parties have agreed.

¶ 44 The Hearing Panel therefore approved and signed the Settlement Agreement at the conclusion of the hearing on May 1, 2017.

Dated at Vancouver, British Columbia this 5th day of June, 2017.

This Decision may be signed in counterpart.

Barbara Fraser

Panel Member

Alexandra Williams

Panel Member

Stephen D. Gill

Chair

APPRENDIX A

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 Paul Sian ("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. These Particulars relate to the period of time from February 2013 to July 2015 while the Respondent was a Registered Representative at the Powell River branch of DWM Securities Inc., which later became a branch of Scotia Capital Inc. operating under the tradename, Hollis Wealth.

5. The Respondent hired Brian McCullough ("McCullough") as his Assistant. McCullough was a Registered Representative for Mutual Funds only. The Respondent was aware of several red flags regarding the liquidation of an elderly client's account. He failed to make reasonable inquiries of the client or of McCullough who was the main client contact for this client and was also a friend of the client.

6. The Respondent eventually became aware that McCullough had received a gift in the amount of $750,000 from this client whose account had been liquidated to pay for the gift. The policies and procedures of the Respondent's Dealer Member firm prohibited acceptance of any gifts from clients other than those of nominal value. Upon learning of the gift, the Respondent did not report this activity to his Dealer Member firm.

7. McCullough was served in the Powell River office with a Notice of Civil Claim on or about November 14, 2014. The claim included allegations that McCullough had breached his professional ethics in receiving the $750,000 gift from the client. Neither McCullough nor the Respondent reported this action to their Dealer Member firm as they were required to do under its policies and procedures.

Registration History

8. The Respondent has been registered in the industry since August 1984. From June 2004 to November 2013, he was registered as Registered Representative ("RR") with DWM Securities Inc. ("DWM SI") and worked at its branch located in Powell River, B.C. In November 2013 DWM SI became part of Scotia Capital Inc. under the trade name Hollis Wealth ("Scotia Capital").

9. The Respondent is currently registered as an RR with Scotia Capital.

The $750,000 Gift from Client BT

10. The Respondent hired McCullough in June 2006 to assist him in servicing his clients at the Powell River office. The Powell River branch had only three employees: the Respondent, McCullough and an Office Assistant. The Branch Manager responsible for the Powell River Office was located in Victoria.

11. As RR, the Respondent was responsible for all of the clients of the Powell River office. All client account documentation required his signature and was processed under his RR code. McCullough was only registered to trade in mutual funds.

12. McCullough was the main client contact for about 36 of the Respondent's clients, including BT. BT was born in 1928 and first opened an account with the Respondent in 2011 as a joint account holder with her sister, who had been a client since 2006. After BT's sister passed away in 2011, BT opened her own account with Sian. McCullough had known BT and her sister since 1999 and had become a personal friend of both BT and her late sister.

13. In February 2013, BT told McCullough that she wanted to gift him some money and he made a note of this on her account documentation and noted that she needed to get independent legal advice.

14. In May 2013, BT again told McCullough that she wanted to gift him some money and he made a note of this on her account documentation.

15. On June 3, 2013 BT telephoned the Respondent and indicated that she was not happy with the advice that she was getting from her lawyer regarding setting up her will and making some *inter vivos* gifts. The Respondent obtained a recommendation from another employee in the firm's Courtenay office and

provided BT with that recommendation for a lawyer in Courtenay.

16. Sometime after the June 3, 2013 conversation, McCullough told the Respondent that BT had had a disagreement with her initial lawyer over the *inter vivos* gifts and concerns that the lawyer had raised about her mental competency to make these gifts.

17. Sometime after June 20, 2013, the Respondent received a telephone call from BT's original lawyer informing him that BT was resisting the suggestion that she should be examined by a doctor to assess her mental competency.

18. On June 25, 2013 BT telephoned the Respondent and instructed him to liquidate her entire account which held securities worth over $900,000 at the time. The Respondent carried out her instructions without questioning her as to the reason for liquidating the account. He also did not speak to McCullough about this request

19. On or about July 5, 2013 McCullough received a Deed of Gift and a payment of $750,000 from BT.

20. Shortly after receiving the payment, McCullough telephoned the Respondent and told him that he had just received a gift of $750,000 from BT.

21. On July 10, 2013, McCullough deposited $660,000 into his personal trading account held at DWM SI. The Respondent signed the deposit receipt for these funds.

22. A few days after this deposit, the Branch Manager telephoned the Respondent to inquire about the source of the funds as it was a large cash deposit into a pro account. The Respondent indicated that the funds represented a gift. The Branch Manager then asked if the funds came from a client and the Respondent replied that they did not.

23. BT passed away in January 2014.

24. At all material times, the policies and procedures of DWM SI prohibited any employee of DWM SI from accepting any gifts from clients other than those of nominal value.

25. At no time did the Respondent notify his Branch Manager or anyone working in the Compliance Department at DWM SI that McCullough had received this gift from a client.

Failure to Report Civil Claim to Firm

26. McCullough was personally served with a Notice of Civil Claim in the Powell River office on or about November 14, 2014 (the "Probate Action").

27. Shortly after he was served with the Probate Action, McCullough told the Respondent that he had been sued and that the action involved the probate of BT's estate and the validity of the gift from BT.

28. The policies and procedures of DWM SI require that all employees must report to the firm whenever the employee is named in an action involving subject matter that occurred while employed with DWM SI.

29. At no time after learning that his Assistant was named in a civil suit concerning the validity of the $750,000 gift from BT did the Respondent report the matter to his Branch Manager or to anyone working in the Compliance Department at DWM SI.

Mitigating Factors

30. On July 30, 2015, DWM SI terminated McCullough's employment citing a failure to notify DWM SI of the gift and the Probate Action.

31. The next of kin of BT brought a civil action in 2015 against the Respondent, McCullough and Scotia Capital contesting the nature and validity of the gift. The action was settled with the consent of all parties.

32. On August 24, 2015, Scotia Capital imposed an internal fine of $20,000 for the Respondent's failure to

report the gift of money received by McCullough to Scotia Capital and required the Respondent to rewrite the Conduct and Practices Handbook course within six months.

33. The Respondent successfully completed the Conduct and Practices Handbook course on September 29, 2015.

PART IV – CONTRAVENTIONS

34. By engaging in the conduct described above, the Respondent committed the following contraventions of IIROC's Rules:

Contravention 1

35. The Respondent acted contrary to Dealer Member Rule 29.1 by:

    (a) Failing to report his Assistant's receipt of a $750,000 gift from a client to his Dealer Member firm; and

    (b) Failing to report the initiation of a lawsuit against his Assistant in relation to this gift to his Dealer Member firm.

Contravention 2

36. The Respondent acted contrary to Dealer Member Rule 1300.1(a) by failing to make reasonable inquiries into the circumstances surrounding a client's instruction to liquidate her account.

PART V – TERMS OF SETTLEMENT

37. The Respondent agrees to the following sanctions and costs:

    a. Fine in the amount of $20,000; and

    b. $5,000 in costs.

38. 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

39. 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.

40. 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

41. This Settlement Agreement is conditional on acceptance by the Hearing Panel.

42. 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.

43. 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.

44. If the Hearing Panel accepts the Settlement Agreement, the Respondent agrees to waive all rights under

the IIROC Rules and any applicable legislation to any further hearing, appeal and review.

45. 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.

46. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.

47. 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.

48. If this Settlement Agreement is accepted, the Respondent agrees that neither he nor anyone on his behalf, will make a public statement inconsistent with this Settlement Agreement.

49. 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

50. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.

51. A fax or electronic copy of any signature will be treated as an original signature.

DATED this 22nd day of March, 2017.

"Witness"	"Paul Sian"
Witness	Paul Sian Respondent
"Paul Smith"	"Stacy Robertson"
Witness	Stacy Robertson Enforcement Counsel on behalf of Enforcement Staff of the Investment Industry Regulatory Organization of Canada

The Settlement Agreement is hereby accepted this 1st day of May, 2017 by the following Hearing Panel:

Per: "Stephen Gill"
Panel Chair

Per: "Barbara Fraser"
Panel Member

Per: "Alexandra Williams"
Panel Member