Re Mondal

IN THE MATTER OF:

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

and

Probhash Mondal

2015 IIROC 17

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

Heard: April 6, 2015
Written Decision: June 1, 2015

Hearing Panel:
Thomas G. Heintzman (Chair), Colleen Wright, Lou D'Souza
Appearances:
Natalija Popovic, Enforcement Counsel, IIROC
Ian Epstein, Respondents' Counsel

REASONS FOR DECISION

I. Introduction

¶ 1 These are the Reasons for Decision of the Hearing Panel arising from a Hearing held on April 6, 2015 to consider the Settlement Agreement ("Settlement Agreement") between the Staff of the Investment Industry Regulatory Organization of Canada ("IIROC") and the respondent Probhash Mondal (" Mr. Mondal" or "the Respondent").

¶ 2 In the Settlement Agreement, IIROC Staff and Mr. Mondal agreed to the Facts stated therein. IIROC Staff and Mr. Mondal jointly recommend that the Hearing Panel accept the Settlement Agreement.

¶ 3 In the Settlement Agreement, Mr. Mondal admitted to the contravention of the following IIROC Member Rules:

> Count 1: From January to November 2010, the Respondent failed to ensure that recommendations he made for his client were suitable contrary to IIROC Dealer Member Rule 1300.1(q).
>
> Count 2: From March to April 2011, the Respondent engaged in discretionary trading in the accounts of his client without first having the accounts approved and accepted as discretionary accounts, contrary to IIROC Dealer Member Rule 1300.4.

¶ 4 The Settlement Agreement provides for the following penalty to be imposed upon Mr. Mondal:

a) A 5 year suspension from registration with IIROC.

b) A total fine in the amount of $100,000 inclusive of disgorgement.

c) Payment of costs to IIROC in the sum of $ 10,000.

d) The fine and costs imposed upon the Respondent are payable on terms to be agreed upon by

IIROC and the Respondent.

II. Facts

¶ 5 The Settlement Agreement contains the following facts which were agreed to by Staff and Mr. Mondal.

A: The inception and nature of the relationship between Mr. Mondal and AM

¶ 6 Mr. Mondal first became a Registered Representative in 2005. He was then employed by Scotia Capital Inc. In 2007, he joined TD Waterhouse Canada Inc.. In 2008, he joined Raymond James Ltd. ("RJ") In 2010, he tranfereed to Macquarie Private Wealth Inc. ("MPW"). Mr. Mondal resigned from MPW in March 2012 and is no longer employed in the securities industry.

¶ 7 Mr. Mondal and the client AM met in or about December 2008. AM was then 51 years old and had recently become widowed. She was a homemaker and undertook small contract work related to interior design. She had one dependent. Her prior investment experience was the purchase of Canada Savings Bonds.

¶ 8 AM invested about $2 million with Mr. Mondal. That money was received from the proceeds of a life insurance policy on the life of her late husband. That money represented the majority of her net worth.

¶ 9 AM consulted with other investment advisors before retaining Mr. Mondal. She requested from Mr. Mondal an investment portfolio that would generate an income and stressed that capital preservation was paramount. Mr. Mondal prepared a written investment management proposal for AM. The proposal was for a conservative portfolio consisting of 90 percent bonds and 10 percent diversified equities and reflected that AM required income from the investments and that the conservation of the $2 million was important to AM.

¶ 10 Between February 2009 and November 2010, AM was Mr. Mondal's largest client account based upon the market value of AM's Accounts.

¶ 11 Over the course of time AM and Mr. Mondal's business relationship evolved into a very close personal relationship. The two communicated frequently, often several times a day, via Mr. Mondal's personal cell phone, text, and email and discussed both personal and investment matters. AM checked her paper statements and went online to view her account statements on a regular basis, sometimes several times a day.

¶ 12 At Mr. Mondal's request, on or about May 21, 2009, AM wrote a letter to his Branch Manager complimenting Mr. Mondal on his handling of her accounts. In or about December of 2009 she made him the executor of her will and designated him as the investment advisor for her estate. Mr. Mondal says that he was unaware of this appointment at that time.

B: Events between February 2009 and December 2010

¶ 13 Between February 23 and April 2, 2009, Mr. Mondal opened five accounts for AM (the "Accounts"). All the Accounts were margin accounts. There is no evidence that Mr. Mondal explained to AM the risks associated with margin accounts, but she did have the opportunity to review the New Client Account Forms ("NCAFs) before signing them, and the updates for the Accounts.

¶ 14 In the NCAFs for the accounts first opened by Mr. Mondal, AM showed her risk tolerance as being 80% low, 10% medium and 10% high risk. They showed her liquid assets to be valued at $2.4 million, her fixed assets to be $600,000, and that her investment objective was "growth". All the NCAFs prepared for AM's accounts showed her investment objective to be "growth."

¶ 15 Within three months of these accounts being opened, AM's risk tolerance was changed to 100% high risk on the NCAFs for the Accounts. As the Settlement Agreement acknowledges, this change did not reflect AM's true risk profile.

¶ 16 A few days after the first accounts were opened, Mr. Mondal sent a proposal to his Branch Manager showing the bonds that he was recommending to AM. As a result the RJ compliance department indicated that the risk level associated with the bonds should be "no less than medium risk."

¶ 17 Mr. Mondal's Branch Manager then directed him to update AM's risk tolerance to 5% low risk, 60%

medium risk, and 35% high risk in order to reflect the proposed bond purchases. He also asked Mondal to ensure that AM was given the "…opportunity to stay with or rebalance the original objectives." On or about March 11, 2009, Mondal so updated the NCAF for one of the four Accounts and noted on the update that: "Client understands & is aware of the risks inherent in purchasing & holding corporate bonds & further understands the current risk categorization does not apply." The Branch Manager's notation indicated that: "Client declined the option to rebalance."

¶ 18 AM says that she did not recall seeing the March 11, 2009 NCAF update despite her signature appearing on the update and having been given an opportunity to review it. AM also says these changes did not reflect her true investment profile.

¶ 19 In April 2009, the RJ head office compliance staff advised Mr. Mondal to update the NCAFs of the other margin accounts to reflect the new risk tolerance and investment objectives. These changes were required as short-term trading was taking place in the Accounts which was not in keeping with AMs original investment objectives or "...the client's documented 80% low risk investment objective….[and] 'limited' investment knowledge."

¶ 20 On or about May 5, 2009 Mr. Mondal updated the NCAFs for all five Accounts to reflect a risk tolerance of 100% high risk, good investment knowledge and investment objectives of 50% growth and 50% speculative. Mondal made a notation on the updated form indicating: "All accounts are being updated in order to reflect the clients' true objectives. The client does not wish to re-balance to the original objectives. Client is also comfortable with speculative trading. I have also explained all risks related to trading." Although AM's signature appears on the May 5, 2009 update, it is her evidence that the changes do not reflect her true investment profile.

¶ 21 AM relied upon Mr. Mondal's recommendations for all of the trading in the Accounts, although she did check her paper statements and went online to view her account statements on a regular basis, sometimes several times a day. Most of the trades in the Accounts were marked "unsolicited".

¶ 22 Between February 2009 and November 2010, AM withdrew $145,000 from her Accounts.

¶ 23 In the summer of 2010, Mr. Mondal understood, from a telephone conversation with AM, that she stood to inherit $10 million from a wealthy relative. However he did not update AM's NCAF at that time as he understood that she had not yet received any funds.

C: Unsuitability

¶ 24 Mr. Mondal admits that he executed trades which were unsuitable for AM for a number of reasons as detailed below.

¶ 25 Although Mr. Mondal's originally proposed a 90% bond portfolio in February 2009, by November 2010, there were no bonds remaining in the Accounts.

¶ 26 In the same period, AM's equities holdings, excluding cash, increased from approximately 16% in February 2009 to 100% of the holdings in the Accounts in November 2010.

(i) Concentration in the Accounts

¶ 27 From April to November 2010, the activity in the Accounts, coincident with Mr. Mondal's understanding that AM was to inherit $10 million, reflected a significant increase in concentration of Bank of America ("BAC") shares which was dropping in price, a significant use of margin, and a growing debit balance, all as reflected below:

2010	**Market value**	**Debit balance** (000s)	**Equity** (cash + securities) (millions)	**Concen-tration of BAC as %**	**Number of shares of BAC**	**BAC Share price**	**Market value of BAC** (000s)
April	1.9	93	2.0	18	20,000	17.83	360

May	2.4M	-517	1.8	35	40,000	15.74	650
June	2.6M	-1.02M	1.6	65	70,000	14.37	1.0M
July	2.5M	-833	1.7	67	80,000	14.04	1.1M
August	2.1M	-737	1.4	73	80,000	12.45	1.0M
September	1.9M	-355	1.5	70	80,000	13.11	1.0M
October	2.1M	-693	1.4	65	80,000	11.44	930
November	2.0M	-607	1.4	64	80,000	10.95	900

(ii) Margin and Borrowing

¶ 28 Subsequent to AM's original deposit of $2 million, no additional funds were deposited into the Accounts. In February 2009 the cash balance in the Accounts was approximately $1.6 million, but by June 2010 there was a debit balance of approximately $1 million.

¶ 29 During the same period, the significant use of margin contributed to a growing debit balance in the Accounts. By August 2010, the debit balance was $2.2 million. In response to an RJ head office query, Mr. Mondal's Branch Manager wrote to Mr. Mondal on August 16, 2010 noting that the "…debit increased by $1.2 million last week. It must be reduced immediately below its previous level." Mr. Mondal's Branch Manager made a notation following a meeting with Mr. Mondal indicating that he had directed Mr. Mondal to "…have the margin exposure reduced significantly from the $1.8MM - $2.4MM level down to a maximum of 1/3 to 1/2 of equity." By September 2010 the debit was reduced to $355,000.

¶ 30 For several weeks in June, September and October 2010, AM's debit was the highest among all clients in the branch. As a consequence of the large debit balances, in the period between February 2009 and November 2010, the Accounts were charged approximately $50,000 in interest.

(iii) Frequent Short Term Trading

¶ 31 Mr. Mondal used the proceeds from the sale of bonds in the Accounts to engage in frequent short term trading of equities. It is Mr. Mondal's evidence that he did so on AM's instructions. Commencing in March 2010, there were at least 40 transactions per month in the Accounts; there were over 115 transactions in August 2010, and over 165 transactions in September 2010. The dollar value of purchases was in excess of $43 million. The majority of these trades were marked "unsolicited".

¶ 32 In at least 80% of the transactions, equity securities were held for fewer than 10 business days and approximately half of those were bought and sold on the same day.

¶ 33 The frequent short term trading was identified by RJ head office compliance staff on or about June 3, 2010 when a compliance officer questioned why one of AM's Accounts had a "…pattern of buying large concentrated positions…only a few days before selling…"

¶ 34 In response, Mr. Mondal advised RJ compliance that AM was an active trader, that she held significant assets outside the firm, and that the account in question held her risk capital. This response coincided with Mr. Mondal's understanding relating to the inheritance; however he admits there is no documentary evidence of the inheritance.

¶ 35 The frequent short term trading resulted in an annualized turnover ratio of at least 13 in AM's Accounts.

(iv) Short Selling

¶ 36 In addition to the frequent short term trading detailed above, commencing in February 2010 Mr. Mondal began short selling shares in the Accounts. It is Mr. Mondal's evidence that he did so on AM's instructions.

¶ 37 By November 2010 he had executed approximately 45 short sales, approximately 20 of which occurred in September 2010 alone. It is Mr. Mondal's evidence that he did so on AM's instructions.

D. Losses Sustained and Commissions Earned up to December 2010

¶ 38 During the period January to November 2010, unrealized and realized losses in the Accounts totalled approximately $570,000. As at November 30, 2010, approximately $360,000 of the losses was attributable to the concentrated position in BAC shares.

¶ 39 Between January and November 2010, Mr. Mondal earned approximately $60,000 in commissions as a result of the activity in the Accounts. The Accounts represented the single largest source of all commissions earned by Mr. Mondal during this time period.

¶ 40 In this regulatory proceeding and apart from what is contained in the Settlement Agreement, Mr. Mondal has not disgorged any of those commissions nor compensated his employers or AM for the losses, unrealized and realized.

E. Events of December 2010 to September 2011: Discretionary Trading

¶ 41 In December 2010, AM transferred her investments to MPW when Mr. Mondal left RJ and moved to MPW. It is AM's evidence that she moved to MPW with Mr. Mondal as he was managing her investments and he had devised a plan with her to rebuild their value. The NCAF which she signed stated that she had excellent investment knowledge and extensive investment experience and reflected her net worth as $10 million.

¶ 42 It was therefore Mondal's belief that AM's net worth was imminently going to be considerably larger and that as a result she was willing to embark on a higher risk strategy with respect to her investments.

¶ 43 AM was on vacation out of the country from March 18 to April 27, 2011. On or about March 16, 2011 AM advised MPW that mail should not be sent to her effective March 17, 2011 and that it could resume on April 27, 2011.

¶ 44 Between March 21, 2011 and April 26, 2011, Mr. Mondal executed approximately 45 trades in AM's account at MPW on the basis of discussions that took place sometime before execution; however Mr. Mondal did not formally document the discussions.

¶ 45 In May, 2011, AM signed a Risk Acknowledgment Letter from the MPW branch manager noting that she was a wealthy investor who was conducting unsolicited high risk trading. It is AM's evidence that she signed the letter without reading it.

¶ 46 AM's accounts at MPW were closed at the prompting of the firm's compliance department in September 2011.

F: Subsequent Events

¶ 47 We were advised by counsel for the Respondent that there was litigation between AM and several of the investment dealers by whom Mr. Mondal was employed during the relevant period of time and that this litigation has been settled.

¶ 48 Mr. Mondal's counsel also advised the Hearing Panel that Mr. Mondal has left the investment industry and has no intention of returning to it. Mr. Mondal has been accepted into medical school and intends to pursue a medical career, and there are other members of his family who are doctors. Mr. Mondal's counsel advised that, while Mr. Mondal fully intends to repay the fine, he is unable to pay the sum of $100,000 to IIROC at this time and will have to pay that amount over time.

¶ 49 Mr. Mondal's counsel also advised that a permanent bar on Mr. Mondal re-entering the investment industry could have serious adverse consequences upon him in other professions. Since Mr. Mondal has no intention to re-enter the investment industry, his counsel submitted that a permanent bar is unnecessary and the collateral consequences of such an order should militate against it being made.

III. Issues and Analysis

A. Approach to the Settlement Agreement

¶ 50 The role of the Hearing Panel is to consider whether, under Rule 20.36, it should accept or reject the

Settlement which has been arrived at by IIROC Staff and the Respondent. The role of the Hearing Panel has been the subject of numerous previous decisions. That role was well put in *Re Milewski*, [1999] I.D.A.C.D. No. 17 as follows:

> "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.
>
> Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. 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.
>
> This understanding is reflected in paragraph 20.26 of the By-laws which authorizes the District Council to "accept", rather than approve, a settlement agreement. In each case a District Council must determine appropriateness, but the standards applicable to its doing so on a settlement hearing differ from those in a contested hearing. Thus, the penalties imposed under settlement agreements, while relevant to a District Council exercising its discretion to penalize, provide only limited assistance in a hearing like this one. " (underlining added)

¶ 51 Similarly, in *Re Melville*, 2014 IIROC 51, the Hearing Panel quoted from the decisions in *Re Faber*, 2014 IIROC 14:

> "9. Under the provisions of IIROC's Rule 20.36, it is open to this Hearing Panel to either accept or reject the Settlement Agreement tendered upon us by the parties. It is not a question of whether the agreed upon penalties are ones which this Panel would have imposed had the matter come before us for determination at a hearing. It is also not open to us to amend, re-write or alter the terms of the agreement reached between the parties.
>
> 10. It is however our fundamental responsibility to be satisfied that the penalties set forth in the agreement are within a reasonable range of appropriateness in the circumstances set forth in the agreed-upon statement of facts." (underlining added)

¶ 52 The decision in *Re Faber* in turn relied upon the decision in *Re Ast*, 2012 IIROC 38, which in turn referred to the other decisions. The relevant portions of the decision in *Re Ast* is as follows:

> **"13** The standard for reviewing a Settlement Agreement was well-stated in a recent Pacific District hearing, *Re Johnson* (2012 IIROC 19), where the panel stated:
>
> > 'The test applicable to a decision whether to accept or reject a settlement is well-known. Simply put, a panel should accept such an agreement unless it considers the penalty provided for clearly to fall outside a reasonable range of appropriateness.'
>
> **14** There are many similar statements. See, for example, *Re Jiwa and Hoffar* (2012 IIROC 9), which adopted an earlier IDA decision, stating: 'It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.' Another recent example is *Re Trapeze Capital* (2012 IIROC 25), where the panel states:
>
> > '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.'

15 And, finally, see the statement in *Re Rotstein and Zackheim* (2012 IIROC 27):

> 'Based upon this material it is our responsibility to review the agreement in order to satisfy ourselves that it falls within a reasonable range of appropriateness to the offence and circumstances recorded in the agreement and that there is nothing in the agreement which would be contrary to the public interest or bring the administration of the Rules of IIROC into public disrepute. If we are satisfied that the Settlement Agreement does not offend these principles then it should be accepted.' (underlining added)

¶ 53 Accordingly, the issue for the Hearing Panel is whether the Settlement Agreement falls within the reasonable range of appropriateness and in that regard reasonably addresses the public interest issues inherent in this proceeding. In considering the public interest, the public interest in the settlement process itself should be respected: *Re Vorsatadt*, 2012 IIROC, cited in *Re Melville, supra* at para 10.

B. Whether the Settlement Agreement should be accepted

¶ 54 In applying those considerations to the Settlement Agreement, we have had regard to both the IIROC Sanction Guidelines which have become effective on February 2, 2015, and the previous decisions of IIROC and its predecessor tribunals dealing with similar circumstances.

¶ 55 The IIROC Guidelines are not binding upon the Hearing Panel but they should be carefully considered because they represent an informed attempt to provide a coherent, rationale and fair set of sanction guidelines which are known to the public at large. In the IIROC Sanction Guidelines, the nine Sanction Principles for IIROC Disciplinary Proceedings in Part I lead to 21 Key Factors in Determining Sanctions in Part II.

¶ 56 Under the new IIROC Sanction Guidelines, IIROC staff will not seek a suspension of more than five years. This approach by IIROC Staff is based upon the policy that, if a longer suspension is merited, then the conduct must be so serious that a permanent ban should be ordered. Accordingly, the five year suspension contained in the Settlement Agreement is the longest that IIROC Staff would ask for. If Mr. Mondal's conduct merits a longer suspension, then in IIROC's Staff's view, Mr. Mondal should be permanently barred from participating in the investment industry.

¶ 57 IIROC's counsel submitted that when Factors 5 and 6 in the IIROC Sanction principles (which relate to whether a suspension or a permanent bar should be ordered)are applied then a suspension was justified, not a permanent bar. IIROC counsel submitted that there has been willful and/or reckless conduct by Mr. Mondal and some measure of harm to investors, and that therefore a suspension is warranted; but that the conduct did not involve harm to the integrity of the capital markets or the security industry, nor an element of criminal or quasi-criminal activity nor a permanent conclusion that Mr. Mondal cannot no longer be trusted to be honest and fair in dealings with the public. Counsel for IIROC submitted that, when judged in its totality, Mr. Mondal's conduct more properly falls within conduct which should be the subject of a lengthy suspension rather than a permanent bar.

¶ 58 IIROC's counsel also submitted that the parties had arrived at the five year suspension, and the other elements of the Settlement Agreement, by way of the settlement process and that it was very much in the public interest for that settlement process to be respected. Both parties supported the Settlement Agreement and if it is not accepted by the Hearing Panel then considerable uncertainty will arise and this proceeding will be more lengthy and costly. Counsel for IIROC strongly submitted that in these circumstances the five year suspension should be upheld as a reasonable settlement.

¶ 59 Counsel for Mr. Mondal also submitted that the Respondent's conduct should not be penalized by a permanent bar but by the lengthy suspension that has been agreed upon in the Settlement Agreement. He submitted that a permanent bar could have collateral consequences upon Mr. Mondal having nothing to do with barring him from the securities industry. He submitted that the facts and the relationship between AM and Mr. Mondal are complicated and contentious and a settlement of the proceeding on the basis of the Settlement

Agreement was fair and reasonable in the circumstances.

¶ 60 In all the circumstances, the Hearing Panel is of the view that the settlement should be accepted. When we consider the factors set forth in Part II of the IIROC Sanction Guidelines, in our view, the Settlement Agreement falls within the boundaries of reasonableness. Even if a Hearing Panel could, on the evidence that might eventually be called, view the conduct of Mr. Mondal to be serious enough to justify a permanent bar, another Hearing Panel might arrive at a different conclusion. In the result, and judged in an over-all manner, we are of the view that the Settlement Agreement falls within the range of appropriate penalties.

¶ 61 In arriving at that conclusion, we have had particular regard to the following factors in Part II of the IIROC Sanction Guidelines:

> Factors 1-3: Number, character, size, pattern, extended period of transactions. While the conduct in question occurred over several years and involved many transactions, those transactions all had their origins in the one relationship between AM and Mr. Mondal, a relationship which Mr. Mondal says caused him to undertake transactions at AM's specific knowledge and request. So, while there was an extended period of time and numerous transactions, they were based upon one fundamental factual situation.
>
> Factor 4: willful blindness, recklessness. In our view, the conduct in question was serious. It is almost inconceivable that, for a client such as AM: Mr. Mondal could engage in over 165 transactions in a single month; for an account of less than $2 million, the dollar value of purchases was in excess of $43 million; for over 80% of the transactions, equity securities were held for fewer than 10 business days and approximately half of those were bought and sold on the same day; and up to 73 percent of the portfolio was put into one stock.
>
> Factor 5-6: Harm to the marketplace or market integrity. The transactions related to one investor and did not harm the overall market.
>
> Factor 7: Vulnerability. The client AM was a very vulnerable person, a widow with no prior experience in the investment industry. On the other hand, AM did check her account statements on a regular basis, sometimes several times a day. Counsel for Mr. Mondal submits that the nature of the relationship between AM and Mr. Mondal, and the degree of knowledge and encouragement of the investments by AM may have been a very contentious issue had this matter gone to a hearing. The need for a hearing is obviated by the settlement.
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> Factors 8-9, 21: Discipline history and financial benefit. Mr. Mondal has no prior discipline history. While he did earn commissions on many transactions that went through these accounts, there was no other financial gain.
>
> Factors 10-11: Acceptance of responsibility prior to detection. There does not appear to have been any such acceptance by Mr. Mondal, but the settlement process does demonstrate a degree of acceptance of responsibility.
>
> Factor 14: Compensation. Apart from the provisions contained in the Settlement Agreement, in this regulatory proceeding Mr. Mondal has not compensated AM nor his employers for any of the losses suffered, nor has he disgorged any of the commissions he has earned.
>
> Factor 15-17, 19-20: Conduct in relation to the regulatory regime. There is no suggestion that Mr. Mondal hid his dealings from his own firm or the regulator. Indeed, the firms for which he worked were aware of the trading in the accounts, and MPW's compliance department closed them down in September 2011.

¶ 62 When we place all of those factors in the context of the full panoply of remedies available to a Hearing Panel, we cannot say that IIROC Staff acted unreasonably in agreeing to a settlement involving a 5 year suspension. Combined with a monetary penalty of $100,000, which includes disgorgement, and the other terms imposed upon Mr. Mondal in the Settlement Agreement, the settlement falls within the bounds of appropriateness.

¶ 63 In our view, the misconduct of Mr. Mondal is serious. On behalf of an inexperienced investor, he engaged in trading which was totally unsuitable for her in every respect: frequency, concentration, type of investment, discretionary trading, margin trading and short selling. While we have accepted the Settlement Agreement, we only do so on the basis that: it imposes the longest suspension proposed by the IIROC Sanction Guidelines and a substantial monetary penalty; Mr. Mondal will not be returning to the investment industry; and AM's claims against Mr. Mondal and the securities firms by whom he was employed has been settled.

¶ 64 We have also considered the previous decisions as a measure of reasonableness and appropriateness. In the previous decisions cited to us, the penalties imposed were the following (besides costs and other ancillary relief):

> *Re Jones*, 2013 IIROC 58, 2014 IIROC 15: suspension of 3 months, a fine of $48,000.
>
> *Re Biduk*, 2013 IIROC 19, 47: 10 years suspension, a fine of $10,000, disgorgement of $25,000.
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> Re Gareau, 2011 IIROC 53, 72: non-registration for 1 year, a fine of $100,000 and disgorgement of commissions of $47, 383.
>
> *Re Grieve*, [2003] I.D.A.C. D. No. 8: 10 year suspension, fine of $100,000.

¶ 65 These cases involved some circumstances that were more or less similar to the present one, and in particular unsuitable investments and discretionary trading. However, many of the details in each case were different than the present case. In each case, the sanctions hearing was not by way of settlement.

¶ 66 These decisions show that, in the case of unsuitability and discretionary trading, there may be a range of reasonable sanctions which may include varying periods of suspension and monetary penalties. Having regard to these precedents, the terms of the Settlement Agreement are not outside the bounds of reasonableness.

¶ 67 During the submissions, the panel heard in confidence some evidence relating to settlement of the litigation between AM and Mr. Mondal and the securities firms by which Mr. Mondal was employed. Accordingly, the order we have made includes a provision relating to the continued confidentiality of that evidence.

IV. Order

¶ 68 Accordingly, it is ordered that the Settlement Agreement between IIROC Staff and the Respondent be and it is hereby accepted.

¶ 69 It is ordered that Page 56, lines 1-17, Page 63, lines 6-25 and Page 64, lines 1 to 8 of the transcript of the hearing on April 6, 2015 shall remain confidential and shall not be published.

Dated at Toronto, Ontario this 1st day of June, 2015

Thomas G. Heintzman, Chair

Colleen Wright

Lou D'Souza

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff ("Staff") and the Respondent, Probhash Mondal, ("the Respondent" or "Mondal") consent and agree to the settlement of this matter by way of this agreement (the "Settlement Agreement").

2. The Enforcement Department of IIROC has conducted an investigation ("the Investigation") into the conduct of Mondal.

3. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C (the "Hearing Panel").

II. JOINT SETTLEMENT RECOMMENDATION

4. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
5. The Respondent admits to the following contraventions of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:

> **Count 1** From January to November 2010, the Respondent failed to ensure that recommendations he made for his client were suitable contrary to IIROC Dealer Member Rule 1300.1 (q).
>
> **Count 2** From March to April 2011, the Respondent engaged in discretionary trading in the accounts of his client without first having the accounts approved and accepted as discretionary accounts, contrary to IIROC Dealer Member Rule 1300.4.

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

   a) A 5 year suspension from registration with IIROC; and

   b) A total fine in the amount of $100,000 inclusive of disgorgement.

7. The Respondent agrees to pay costs to IIROC in the sum of $ 10,000. The fine and costs imposed upon the Respondent are payable on terms to be agreed upon by IIROC and the Respondent.

III. STATEMENT OF FACTS

(i) Acknowledgment

8. Staff and the Respondent agree with the facts set out in this Section III and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts.

(ii) Factual Background

A. Overview

9. Mondal met his client AM four months after she had become widowed. He actively sought to secure her business knowing, at that time, that she had approximately $2 million to invest. AM requested an investment portfolio that would generate an income and stressed that capital preservation was paramount. AM consulted with other investment advisors prior to opening accounts with Mondal.
10. Mondal opened five margin accounts for her (collectively "the Accounts") at Raymond James Ltd. ("RJ"). Within three months, AM's risk tolerance was updated from 80% low, 10% medium and 10% high risk, to 100% high risk on the New Client Application Forms ("NCAFs") for the Accounts. This change did not reflect AM's true risk profile.
11. Over the course of the 21-month period that the Accounts were held at RJ, Mondal recommended trades and engaged in trading activity in the Accounts that included a significant use of margin, frequent short term trading, short selling, a single stock concentration, and growing debit balances, all of which were unsuitable for AM.
12. Further, on approximately 45 occasions, Mondal executed discretionary trades in AM's accounts on the basis of discussions that took place some time before execution. Mondal acknowledges that the accounts had not been designated by the firm as discretionary accounts.
13. When Mondal changed firms, AM transferred her investments to the new firm; the value of the Accounts was approximately $1.5 million at that time.

B. Registration History

14. Mondal first became a Registered Representative in 2005 while employed by Scotia Capital Inc. In 2007 he was employed by TD Waterhouse Canada Inc. From 2008 to 2010 he was employed by RJ. In

2010 he transferred to Macquarie Private Wealth Inc. ("MPW"). He resigned from MPW in March 2012 and is no longer employed in the securities industry.

15. He has no prior disciplinary history with IIROC.

C. Background

16. Mondal met his client AM in or about December 2008. AM was at that time approximately 51 years of age, was a homemaker and took certain small contract work related to interior design. She had one dependent and had recently become widowed. AM invested approximately $2 million with Mondal, which was comprised of the proceeds of a life insurance policy that she received following the death of her husband. This represented the majority of her liquid net worth at the time.

17. Mondal had prepared a written proposal for AM with a conservative portfolio consisting of 90% bonds and 10% diversified equities. The proposal reflected the fact that AM required an income from the investments and that preservation of the $2 million principal was important to her.

18. Between February 2009 and November 2010, AM was Mondal's single largest client account based upon the market value of the Accounts.

D. Mondal Opens Multiple Margin Accounts

19. Between February 23rd and April 2nd, 2009 Mondal opened the five Accounts for AM, all of which were margin accounts.

20. There is no documentary evidence that Mondal explained the risks associated with the use of margin to AM; however she had an opportunity to review the NCAFs and updates for the Accounts.

21. Prior to opening the Accounts with Mondal, AM's investment experience consisted of purchasing Canada Savings Bonds. At the time AM met Mondal, she had also met with several other investment advisors to discuss how to invest her assets.

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

- She had liquid assets valued at $2.4 million;
- She had fixed assets valued at $600,000;
- Her investment knowledge was "limited";
- Her investment objective was "growth"; and
- Her risk tolerance was characterized as 80% low risk, 10% medium risk, and10% high risk.

E. Mondal Updates Risk Tolerance and Account Objectives on NCAFs

23. A few days after the first four Accounts were opened in February 2009, and after trading in the Accounts had already commenced, Mondal sent a proposal to his Branch Manager outlining the bonds that he was recommending to AM. The Branch Manager provided RJ Head Office with the proposal and RJ compliance staff indicated that the risk level associated with the bonds should be "no less than medium risk".

24. Mondal's Branch Manager then directed him to update AM's risk tolerance to 5% low risk, 60% medium risk, and 35% high risk in order to reflect the proposed bond purchases. He also asked Mondal to ensure that AM was given the "…*opportunity to stay with or rebalance the original objectives.*"

25. On or about March 11, 2009, Mondal updated the NCAF for one of the four Accounts by changing the risk tolerance to 5% low risk, 60% medium risk and 35% high risk, and made a notation on the update that: "*Client understands & is aware of the risks inherent in purchasing & holding corporate bonds & further understands the current risk categorization does not apply*." The Branch Manager's notation indicated that: "*Client declined the option to rebalance*."

26. It is AM's evidence that she did not recall seeing the March 11, 2009 NCAF update despite her signature appearing on the update and having been given an opportunity to review it. It is AM's evidence that these changes did not reflect her true investment profile.

27. In April 2009, RJ head office compliance staff advised Mondal to update the NCAFs of the remaining margin accounts to reflect the new risk tolerance and investment objectives. These changes were required as short-term trading was taking place in the Accounts which was not in keeping with AMs original investment objectives or "*...the client's documented 80% low risk investment objective….[and] 'limited' investment knowledge."*

28. On or about May 5, 2009 Mondal updated the NCAFs for all five Accounts to reflect a risk tolerance of 100% high risk, good investment knowledge and investment objectives of 50% growth and 50% speculative. Mondal made a notation on the update form indicating: "*All accounts are being updated in order to reflect the clients' true objectives. The client does not wish to re-balance to the original objectives. Client is also comfortable with speculative trading. I have also explained all risks related to trading*." Although AM's signature appears on the May 5, 2009 update, it is her evidence that the changes do not reflect her true investment profile.

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

30. When AM moved accounts to MPW, the NCAF, signed December 3, 2010 noted that she had excellent investment knowledge and extensive investment experience.

F. Client's Trust in & Reliance upon Mondal

31. Over the course of time AM and Mondal's business relationship evolved into a very close personal relationship. The two communicated frequently, often several times a day, via Mondal's personal cell phone, text, and email and discussed both personal and investment matters.

32. At Mondal's request, on or about May 21, 2009, AM wrote a letter to his Branch Manager complimenting Mondal on his handling of her Accounts. In or about December of 2009 she made him the executor of her will and designated him as the investment advisor for her estate. It is Mondal's evidence that he was unaware of this appointment at that time.

33. Most of the trades in the Accounts were marked "unsolicited".

G. Unsuitable Trading Activity

34. AM relied upon Mondal's recommendations for all of the trading in the Accounts, although she did check her paper statements and went online to view her account statements on a regular basis, sometimes several times a day.

35. As AM had advised Mondal, she required an income from her investments in order to meet her ongoing living expenses. Between February 2009 and November 2010 she made withdrawals from her Accounts totaling approximately $145,000.

36. In the summer of 2010, Mondal came to understand from a telephone conversation with AM that she stood to inherit $10 million from a wealthy relative. However he did not update AM's NCAF at that time as he understood that she had not yet received any funds.

37. Subsequent to AM moving her accounts to MPW when Mondal changed firms, she executed NCAFs that reflected her net worth as $10 million.

38. It was therefore Mondal's belief that AA's net worth was imminently going to be considerably larger and that as a result she was willing to embark on a higher risk strategy with respect to her investments.

39. Mondal admits that he executed trades which were unsuitable for AM for a number of reasons as detailed below.

i) Increase in Equity Holdings

40. Notwithstanding Mondal's original proposal for a 90% bond portfolio in February 2009, by November 2010, there were no bonds remaining in the Accounts.

41. In tandem with the decrease in bond holdings, AM's equities holdings, excluding cash, increased from approximately 16% in February 2009 to 100% of the holdings in the Accounts in November 2010.

ii) Single Stock Concentration

42. From April to November 2010, the activity in the Accounts, coincident with Mondal's understanding that AM was to inherit $10 million, reflected a significant increase in concentration of Bank of America ("BAC") shares which was dropping in price, a significant use of margin, and a growing debit balance, all as reflected below:

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

iii) Inappropriate Use of Margin

43. Subsequent to AM's original deposit of $2 million, no additional funds were deposited into the Accounts.

44. In February 2009 the cash balance in the Accounts was approximately $1.6 million, but by June 2010 there was a debit balance of approximately $1 million.

45. The significant use of margin contributed to a growing debit balance in the Accounts which hit a high of $2.2 million in August, 2010. In response to an RJ head office query, Mondal's Branch Manager wrote to Mondal on August 16, 2010 noting that the "…*debit increased by $1.2 million last week. It must be reduced immediately below its previous level*."

46. Further, Mondal's Branch Manager made a notation following a meeting with Mondal indicating that he had directed Mondal to "…*have the margin exposure reduced significantly from the $1.8MM - $2.4MM level down to a maximum of 1/3 to 1/2 of equity*." By September 2010 the debit was reduced to $355,000.

47. For several weeks in June, September and October 2010, AM's debit was the highest among all clients in the branch.

48. As a consequence of the large debit balances, in the period between February 2009 and November 2010, the Accounts were charged approximately $50,000 in interest.

iv) Frequent Short Term Trading

49. Mondal used the proceeds from the sale of bonds in the Accounts to engage in frequent short term trading of equities. It is Mondal's evidence that he did so on AM's instructions. Commencing in March 2010, there were at least 40 transactions per month in the Accounts; there were over 115 transactions in August 2010, and over 165 transactions in September 2010. The dollar value of purchases was in excess

of $43 million. The majority of these trades were marked "unsolicited".

50. In at least 80% of the transactions, equity securities were held for fewer than 10 business days and approximately half of those were bought and sold on the same day.

51. The frequent short term trading was identified by RJ head office compliance staff on or about June 3, 2010 when a compliance officer questioned why one of AM's Accounts had a "…*pattern of buying large concentrated positions…only a few days before selling*…"

52. In response, Mondal advised RJ compliance that AM was an active trader, that she held significant assets outside the firm, and that the account in question held her risk capital. This response coincided with Mondal's understanding relating to the inheritance; however he admits there is no documentary evidence of the inheritance.

53. The frequent short term trading resulted in an annualized turnover ratio of at least 13 in AM's Accounts.

vi) Short Selling

54. In addition to the frequent short term trading detailed above, commencing in February 2010Mondal began short selling shares in the Accounts. It is Mondal's evidence that he did so on AM's instructions.

55. By November 2010 he had, executed approximately 45 short sales, approximately 20 of which occurred in September 2010 alone. It is Mondal's evidence that he did so on AM's instructions.

H. Losses Sustained and Commissions Earned

56. During the period January to November 2010, unrealized and realized losses in the Accounts totaled approximately $570,000. As at November 30, 2010, approximately $360,000 of the losses was attributable to the concentrated position in BAC shares.

57. Between January and November 2010, Mondal earned approximately $60,000 in commissions as a result of the activity in the Accounts. The Accounts represented the single largest source of all commissions earned by Mondal during this time period.

I. Discretionary Trading

58. In December 2010, AM transferred her investments to MPW when Mondal left RJ. It is AM's evidence that she moved to MPW with Mondal as he was managing her investments and he had devised a plan with her to rebuild their value.

59. AM was on vacation out of the country from March 18 to April 27, 2011. On or about March 16, 2011 AM advised MPW that mail should not be sent to her effective March 17, 2011 and that it could resume on April 27, 2011.

60. Between March 21, 2011 and April 26, 2011, Mondal executed approximately 45 trades in AM's account at MPW on the basis of discussions that took place some time before execution; however Mondal did not formally document the discussions.

61. In May, 2011, AM signed a Risk Acknowledgment Letter from the MPW branch manager noting that she was a wealthy investor who was conducting unsolicited high risk trading. It is AM's evidence that she signed the letter without reading it.

62. AM's accounts at MPW were closed at the prompting of the firm's compliance department in September 2011.

IV. TERMS OF SETTLEMENT

63. This settlement is agreed upon in accordance with IIROC Dealer Member Rules 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.

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

65. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the

date of its acceptance by the Hearing Panel.

66. The Settlement Agreement will be presented to the Hearing Panel at a hearing ("the Settlement Hearing") for approval. Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.

67. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her/its right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.

68. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement; or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.

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

70. Staff and the Respondent agree that if the Hearing Panel accepts the Settlement Agreement, they, or anyone on their behalf, will not make any public statements inconsistent with the Settlement Agreement.

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

72. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

AGREED TO by the Respondent at the City of Toronto in the Province of Ontario, this 26th day of March, 2015.

"WITNESS"	**"PROBHASH MONDAL"**
Witness	**Probhash Mondal**

AGREED TO by Staff at the City of Toronto, in the Province of Ontario, this 1st day of April, 2015.

"WITNESS"	**"NATALIJA POPOVIC"**
Witness	**Natalija Popovic** Enforcement Counsel on behalf of Staff of the Investment Industry Regulatory Organization of Canada

ACCEPTED at the City of_____ in the Province of _____, this _____day of _____, 2015, by the following Hearing Panel:

Per: _____

Panel Chair

Per: _____

Panel Member

Per: _____

Panel Member

Appendix A to Settlement Agreement re: Probhash Mondal

Summary of NCAF Information and Updates

NCAF Information	Date 2009	Employment	Annual Income	Net Worth	Risk Tolerance	Account Objectives	Investment Knowledge
First Margin Account in CDN$	Feb.23	Homemaker	$100,000 From investments	$3 million	80% low 10% med 10% high	100% Growth	Limited
Update to First Account in CDN$	Mar.12	Not indicated	Not indicated	Not indicated	5% low 60% med 35% high	Not indicated	Not indicated

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

Update To all Five Margin Accounts	May 5	Homemaker	$100,000 From investments	$2.7million	100% high	50% Growth 50% Specu-lative	Good