

# Re Moon et al

IN THE MATTER OF:

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

**and**

**James Alexander Moon, Michael Edward Comeau and Mitchell  
Torch**

2017 IIROC 42

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

Heard: July 20, 2017  
Decision: July 20, 2017  
Written Reasons: August 15, 2017

## **Hearing Panel:**

Susan Lang, Chair; Charles Macfarlane; Shaine Pollock

## **Appearances:**

Rob DelFrate, Senior Enforcement Counsel

Nigel Campbell and Doug McLeod, for the Respondents

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## **REASONS FOR DECISION**

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### **INTRODUCTION**

¶ 1 Enforcement Counsel for the Investment Industry Regulatory Organization of Canada (IIROC) and the Respondents submit a Settlement Agreement for the Hearing Panel's acceptance or rejection. This application is advanced pursuant to Section 8215 of the Consolidated Enforcement, Examination and Approval Rules of IIROC. In the Agreement, the Respondents admit contraventions, primarily in 2011, regarding their failure to use due diligence in regard to qualifications of "Accredited Investors" contrary to IIROC Dealer Member Rule 1300.1(a). The Respondent Moon acknowledges two other failures: first, as the Ultimate Designated Person, to properly supervise the activities and employees of All Group Financial Services Inc. (All Group) in accordance with the prospectus exemption provisions of the Securities Act (Ontario) contrary to IIROC Dealer Member Rule 38.5 and, second, his failure to file a ComSet report and engage All Group's complaint handling procedure contrary to IIROC Dealer Member Rule 3100 and Rule 2500B.

¶ 2 The proposed settlement includes fines for the individual Respondents ranging from \$15,000 to \$35,000 as well as the payment of \$6,000 in costs collectively.

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

### **ISSUE**

¶ 4 The Hearing Panel must decide whether to accept or reject the proposed settlement as embodied in the amended Settlement Agreement negotiated between counsel. The settlement will be accepted if its proposed terms are reasonable. In determining whether the terms are reasonable, a panel will take into account the public

interest reasons for fostering settlements, including encouraging resolution and conserving resources. A panel will also be mindful that enforcement and respondents' counsel are equipped with a good knowledge of the circumstances of the case and the applicable principles. For this reason, they are well placed to recommend a fair resolution. The Hearing Panel is also aware that settlement sanctions often fall towards the lower end of an appropriate penalty because the negotiation reflects the benefits of achieving certainty and of avoiding the diverse costs of a contested hearing. See for example: *Re Milewski*, [1999] IDACD No. 17; *Re Bereskin*, [2010] IIROC 37; *Re Cavalaris*, [2017] IIROC 04.

¶ 5 Counsel in this case were able to satisfy the Panel that the settlement terms fell within the range of reasonableness.

¶ 6 The underlying facts in this case are somewhat unusual.

## CIRCUMSTANCES

¶ 7 Those facts are set out in detail in the factual background to the Settlement Agreement, which is attached to these Reasons as Appendix A. The following is a summary of that background, as supplemented during submissions.

¶ 8 All three Respondents worked with All Group, including during the relevant period between December 2010 and May 2011.

¶ 9 In January 2017, with consent, an IIROC Hearing Panel suspended All Group's IIROC membership and ordered it to cease dealing with the public. The same month, Hampton Financial Corporation (Hampton) acquired All Group's wealth management business and took on some of All Group's investment advisors.

¶ 10 Mr. Moon moved to Hampton from All Group. First registered in 1996, Mr. Moon had been All Group's Chief Executive Officer, Ultimate Designated Person as well as a Registered Representative. At Hampton, Mr. Moon is a Registered Representative only, with no supervisory responsibilities.

¶ 11 Mr. Comeau was the Vice-President, Chairman, a Supervisor and a Registered Representative with All Group. He had been registered since 1994. At Hampton, he is a Registered Representative only, with no supervisory responsibilities.

¶ 12 Mr. Torch, registered since 2000, was a Registered Representative with All Group. He moved to Aligned Capital Partners Inc. (Aligned) in November 2015 before All Group's collapse. His function at Aligned is as a Registered Representative.

¶ 13 All three facilitated client purchases of distributions exempt from the safeguards of the registration and prospectus requirements of the Securities Act pursuant to National Instrument 45-106 (Exempt Distributions). To invest in Exempt Distributions, the investor must be an "Accredited Investor". Such an investor is one who fits within the exemptions listed in NI 45-106, para 1.1. In this case, the Respondents' clients relied primarily on two exemptions, one having to do with owning more than \$1M of "financial assets" and the other relating to an investor with a defined net income before taxes in excess of \$200,000.

¶ 14 Specifically, para 1.1 exempts:

(j) an individual who, either alone or with a spouse, beneficially owns financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds \$1,000,000, [or]

(k) an individual whose net income before taxes exceeded \$200,000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse exceeded \$300,000 in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year,

¶ 15 Financial assets in para 1.1(j) are defined as:

(a) cash,

(b) securities, or

(c) a contract of insurance, a deposit or an evidence of a deposit that is not a security for the purposes of securities legislation;

¶ 16 Enforcement Counsel provided the Panel with the Companion Policy 45-106CP Prospectus and Registration Exemptions Supplement to the OSC Bulletin in force in 2009. That Policy observes in para 3.5 that the included “financial assets are generally liquid or relatively easy to liquidate. The value of a purchaser’s residence would not be included in a calculation of financial assets.” The current version of the Companion Policy provides such a residence “is not included” in such a calculation. Both versions limit the Accredited Investor exemption to investors with the requisite minimum of defined Financial Assets.

¶ 17 In the case of the purchases facilitated by the Respondents in late 2010 to mid-2011, 98 clients made 184 purchases. Of those 64 purchases just under \$1M were made by 38 clients who did not appear to be Accredited Investors. All had signed Subscription Agreements checking that they were Accredited Investors. However, their New Account Application Forms (NAAFs) did not reflect the required qualifications because they showed both less than \$1M in liquid assets and less than \$200,000 in qualifying annual income. Based on the information in the NAAF, the Respondents knew or ought to have known that the clients did not qualify as Accredited Investors.

¶ 18 After these deficiencies were identified, 20 of the 38 clients purchasing about \$630,000 in Exempt Distributions submitted updated NAAF, showing sufficient Financial Assets to qualify them as Accredited Investors. The other 18 clients did not qualify for the Exempt Distributions they purchased of about \$361,000. Of those 18, 12 would have been Accredited Investors only if the definition permitted them to include fixed assets, which it did not. The other six did not qualify as Accredited Investors even on the basis of a misinterpretation of what qualifies as a financial asset.

#### Conduct of the Individual Respondents

¶ 19 All the Respondents earned commissions on sales of the Exempt Distributions to their clients. Counsel agreed, given the state of the record keeping after the closure of All Group, that the amount of those commissions could no longer be calculated.

¶ 20 Both Mr. Moon and Mr. Comeau provided IIROC with information concerning the financial impact of the monetary sanctions relevant to their inability to pay.

¶ 21 All Respondents are in the midst of their careers, as agreed upon by counsel.

¶ 22 Based on the facts summarized below, the parties agree that all three Respondents ought to have taken reasonable steps to ensure the clients were Accredited Investors.

#### *James Alexander Moon*

¶ 23 Mr. Moon was the Registered Representative for eight clients who purchased \$304,000 of Exempt Distributions. Of those, two clients subsequently updated their NAAF, to support their qualification while four did not qualify because they included illiquid assets and two did not qualify at all. In addition, Mr. Moon was a joint Registered Representative with Mr. Comeau for four clients who purchased \$68,950 of Exempt Distributions. Two of those clients qualified with updated NAAF, one did not qualify unless illiquid assets could be included and the remaining client did not qualify on any basis.

¶ 24 Mr. Moon was also the Ultimate Designated Person responsible for supervision and compliance. The Settlement Agreement acknowledges that Mr. Moon “failed to ensure that All Group had an adequate supervisory structure to identify and verify the accredited investor status of clients.” In other words, All Group did not identify the lack of qualifications at the time. However, following its subsequent detection by IIROC staff during a routine business conduct examination, “All Group implemented additional policies and procedures to ensure that all clients who participated in an exempt distribution were properly qualified.” In other words, All Group voluntarily remedied the failure promptly after it was identified.

¶ 25 IIROC listed an additional and unrelated contravention, which was admitted to by Mr. Moon. He failed to engage All Group’s complaint handling procedure. The issue first arose in March 2012 when a client sought

tax forms from Mr. Moon regarding an investment in Sun River, one of the Exempt Distributions. Although prior Sun River investments had offered tax benefits, this one did not. The client emailed Mr. Moon in April 2012 saying how “shocked I was to learn that you misrepresented the investment in Sun River” and that Mr. Moon failed to disclose that Sun River, a U.S. company, would not qualify for tax relief. In those circumstances, the client said “this is a reportable misrepresentation and has caused me to lose confidence and respect for you as an advisor” and that he would “prefer to avoid having to report this incident to the securities commission.” Mr. Moon did not report this complaint. In May 2015, the client advised that he was registering a formal complaint with IIROC. Moon and All Group subsequently addressed the complaint.

*Michael Edward Comeau*

¶ 26 Mr. Comeau was a joint Registered Representative with Mr. Moon for the four clients described above. He also was the Registered Representative for an additional four clients who purchased \$110,690 of Exempt Distributions. Of those clients, two qualified with updated NAAFs, one did not qualify because certain assets were illiquid and the remaining client did not qualify on any basis.

¶ 27 While Mr. Comeau had supervisory responsibilities at All Group, counsel advised that his contravention is limited to an allegation concerning his responsibilities as a Registered Representative.

*Mitchell Torch*

¶ 28 Mr. Torch was the Registered Representative for 24 clients who purchased \$520,234 of Exempt Distributions. Of those clients, 16 qualified with updated NAAFs, five did not qualify because certain included assets were not liquid assets and three clients did not qualify even on any basis. Mr. Torch had no supervisory responsibilities and no disciplinary history.

## **SANCTIONS**

¶ 29 The parties have agreed to the following sanctions: Mr. Moon, a fine of \$35,000; Mr. Comeau, a fine of \$20,000 and Mr. Torch, a fine of \$15,000. The Respondents also agree to pay IIROC costs in the amount of \$6,000. All agree to pay these amounts within 30 days of the Hearing Panel’s acceptance of the Settlement Agreement.

¶ 30 Sanctions must be appropriate to the circumstances of the particular respondent and the conduct at issue. The primary purpose of sanctions is to protect the investing public, strengthen market integrity and improve standards and practices. The Hearing Panel takes guidance from the principles and factors of the IIROC Sanction Guidelines as well as the authorities referred to by counsel.

¶ 31 In particular, the Panel was referred to cases involving failure to use due diligence in ensuring client qualifications as Accredited Investors. *Igra (Re)*, 2009 IIROC 29 settled with a fine of \$10,000, a re-write of the Conduct and Practices Handbook examination and costs of \$2,500. In *Cornacchia (Re)*, 2011 IIROC 25 also involving Accredited Investor exemptions, the penalty was contested. Mr. Cornacchia mistakenly believed that real estate qualified as a Financial Asset and took no steps to verify or update the clients’ New Client Application Forms. The Hearing Panel imposed a fine of \$5,000 for each of two counts, disgorgement of \$1,768, and a re-write of the CPH examination. Finally, in *Jacobsen (Re)*, 2013 IIROC 59, both Ivan and Keith Jacobsen admitted failure to use due diligence regarding the qualifications of Accredited Investors. Keith Jacobsen agreed to a fine of \$15,000, disgorgement of commissions of \$2,096, a rewrite of the CPH and costs of \$2,500. Ivan Jacobsen’s fine was higher at \$25,000. He had an additional contravention of allowing his unregistered assistant to place client orders without being properly licensed to do so, Ivan Jacobsen agreed to a permanent prohibition from acting in a supervisory capacity.

¶ 32 The Hearing Panel accepted the resolution as falling within the range of reasonableness in the individual circumstances of the Respondents. In doing so, the Panel took into consideration that the conduct, although it involved a number of clients, took place over a limited six-month period. The contraventions of all Respondents related primarily to Exempt Distributions and Accredited Investors. This type of transaction is a niche market, although of course the Respondents, particularly Mr. Moon, ought to have been aware of its qualification requirements before recommending their clients’ participation.

¶ 33 While the Respondents failed to ensure that the clients, purchasing about \$1M of Exempt Distributions, qualified as Accredited Investors, their contraventions derived from the error of failing to ensure each of the clients was properly qualified. This was not a case of multiple instances of different types of misconduct.

¶ 34 The conduct did involve different individual levels of blameworthiness. Twenty clients qualified once they updated their NAAFs. The other 18 did not. Twelve of those 18 calculated Financial Assets as including their personal residence. The Settlement Agreement acknowledges that the Respondents relied on an “incorrect understanding” and also acknowledges they ought to have been familiar with the qualifications before recommending the Exempt Distributions. The Respondents were more reckless with respect to the remaining six clients who were unqualified on any interpretation of the criteria.

¶ 35 That said, when the problem was identified by IIROC staff, the Respondents took immediate steps to ensure there would be no repetition. As well, this case did not involve significant harm to the investing public. Counsel advised there were no client complaints in the case of the improper accreditation.

¶ 36 In considering penalty, a panel must consider relevant disciplinary records. Mr. Torch has no record. In 2003, Mr. Moon entered into a settlement agreement with the Investment Dealers Association of Canada where he admitted to an inappropriate trading strategy, improperly completing a client’s KYC information and executing client trades using timing discretion. Mr. Comeau’s discipline history disclosed a 2009 settlement with IIROC on the basis he was in a position of conflict of interest with clients who purchased securities of an issuer of which he was a shareholder. Counsel submitted that the relevance of these discipline matters was limited since they involved different misconduct and were dated. Counsel also recognized and we agree that these records are an aggravating circumstance for the panel to take into account in reviewing the global penalty.

¶ 37 Mr. Moon’s fine is and should be significantly higher to reflect two reasons in addition to his disciplinary record. First, his misconduct involved a failure of his supervisory and compliance responsibilities at All Group. Second, Mr. Moon acknowledged the additional infraction of failing to report a client complaint. In taking into account the additional misconduct regarding the complaint, the Panel is cognizant of the \$10,000 fine in Latta (Re), 2014 IIROC 05, but also recognizes that the misconduct in Latta extended beyond Mr. Moon’s failure to report a complaint to Mr. Latta’s improper settlement of a complaint, although the contraventions either delayed or deprived the client of an unbiased determination of the validity of their complaint. In Mr. Moon’s case, counsel advised that the amount of the fine was agreed upon as including an amount of \$5,000 for the contravention of not reporting the claim.

¶ 38 The Hearing Panel raised particular questions about three matters: first, the lack of a separate amount to provide for disgorgement of earned profit; second, the lack of a supervisory limitation imposed on Mr. Moon; and third, the lack of further education requirements for the Respondents. Such provisions were included in the authorities above referenced by counsel.

¶ 39 In the circumstances, we are persuaded that a separate fine for disgorgement was not reasonable in this case. Counsel agree that the state of All Group’s records did not allow for calculation of earned profit. Accordingly counsel arrived at a global amount, which they advise more than ensures that the Respondents do not financially benefit from their misconduct.

¶ 40 With respect to both supervisory limitations and the potential imposition of education requirements, the Panel was persuaded that the absence of such provisions was not unreasonable in the circumstances of this case. Mr. Moon was the only Respondent who contravened supervisory and compliance responsibilities. Six years have now passed without further incident. In addition, Mr. Moon is now under the more robust regime of compliance and supervision at Hampton. At Hampton he acts only in the capacity of a Registered Representative without supervisory responsibilities. In addition, if Mr. Moon seeks supervisory responsibilities he will be subject to the Fit and Proper Test for Approved Persons”. Under that test, IIROC staff will approach suitability on the basis of three criteria: integrity, financial solvency and competence. These criteria encompass consideration of previous disciplinary proceedings.

¶ 41 Similarly, Mr. Comeau is a Registered Representative with Hampton and Mr. Torch with Aligned. Neither have had allegations of misconduct over the past six years.

¶ 42 Finally, in considering the reasonableness of the sanctions, inability to pay is a relevant factor. The IIROC Sanction Guidelines specifically state that the burden is on the respondent to raise the issue of an inability to pay and to provide evidence of financial hardship. Senior Enforcement Counsel advises us that he is satisfied with the information provided by Mr. Moon and Mr. Comeau as to the financial impact of the monetary sanctions. In the circumstances of this case, since all factors supported a conclusion that the proposed settlement was reasonable in any event, the Hearing Panel did not pursue particulars of the Respondents' financial circumstances.

## **DECISION**

¶ 43 These reasons explain why the Panel accepted the terms of the Settlement Agreement as within the range of reasonableness.

Dated at Toronto, Ontario this 15<sup>th</sup> day of August, 2017.

Susan Lang

Charles Macfarlane

Shaine Pollock

## **APPENDIX**

### **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 James Alexander Moon (“Moon”), Michael Edward Comeau (“Comeau”) and Mitchell Torch (“Torch”) (collectively the “Respondents”).

#### **PART II – JOINT SETTLEMENT RECOMMENDATION**

2. Staff and the Respondents 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 Respondents agree with the facts as set out in Part III of this Settlement Agreement

##### **A. Overview**

4. The Respondents solicited and facilitated the purchase of securities offered pursuant to an exemption from the prospectus and registration requirements of the Securities Act. All of the clients claimed to meet one of the various thresholds to meet the accredited investor exemption requirements. However, based on the Know Your Client information collected by the Respondents and available to them at the time, 38 clients who purchased nearly \$1,000,000 of these securities did not appear to qualify as accredited investors.
5. The Respondents should have taken reasonable steps to confirm the clients' accredited status and should not have allowed these clients to participate in the distributions until they did so.
6. As registrants, the Respondents had an obligation to ensure that the exemptions were properly being relied upon. The Respondents did not question the clients' reliance on the exemptions nor did they take steps to confirm that the clients had the net financial assets or income required to rely on the exemptions.

7. As the Ultimate Designated Person for All Group Financial Services Inc. (“All Group”), Moon had a further obligation to supervise the employees of All Group and to promote compliance with the Dealer Member Rules and applicable securities laws.
8. In addition, Moon failed to properly deal with a complaint received from his client, thereby failing to ensure that the complaint was dealt with promptly and fairly and in accordance with All Group’s complaint handling procedures.

**B. Registration History**

9. All Group has been an IIROC (and formerly IDA) Dealer Member since January 2008. In January 2017, an IIROC Hearing Panel, with the consent of All Group, suspended the membership of All Group due to All Group’s ongoing and increasing financial and operating difficulties. All Group was ordered to cease dealing with the public.
10. Also in January 2017, Hampton Financial Corporation acquired the wealth management business of All Group, along with some of its advisors. As of March 1, 2017, a majority of All Group client accounts have been transferred to Hampton Securities Inc. (“Hampton”).
11. Moon was the President, Chief Executive Officer, Chief Compliance Officer, Ultimate Designated Person and a Registered Representative with All Group. He has been registered in the securities industry in various capacities since 1996. In January 2017, Moon became registered as a Registered Representative with Hampton, an IIROC Dealer Member. Moon does not have any role in the management of Hampton nor does he perform any supervisory or compliance functions.
12. Comeau was the Vice-President, Chairman, a Supervisor and a Registered Representative with All Group. He has been registered in the securities industry in various capacities since 1994. In January 2017, Comeau became registered as a Registered Representative with Hampton. Comeau does not have any role in the management of Hampton nor does he perform any supervisory or compliance functions.
13. Torch was a Registered Representative with All Group. He has been registered in that capacity with various Dealer Members since 2000. In November 2016, Torch became registered as a Registered Representative with Aligned Capital Partners Inc., an IIROC Dealer Member.

**C. The Exempt Distributions**

14. Between December 2010 and May 2011, the Respondents facilitated purchases of securities of the following issuers (collectively, the “Issuers”):
  - a. Brownstone Energy Inc.;
  - b. Mooncor Oil & Gas Corp. (“Mooncor”);
  - c. Viper Gold Ltd.;
  - d. Mustang Minerals Corp. (“Mustang Minerals”);
  - e. Morrison Laurier Mortgage Corporation (“Morrison Laurier”);
  - f. Sun River Energy Inc.; and
  - g. Hamilton Thorne Ltd.
15. Each of the Issuers distributed securities in reliance on exemptions from the registration and prospectus requirements of the Securities Act (the “Exempt Distributions”), pursuant to National Instrument 45-106 – Prospectus and Registration Exemptions (“NI 45-106”). Accordingly, to participate in an Exempt Distribution, an investor had to qualify for one of the exemptions available pursuant to NI 45-106.
16. Some of the Exempt Distributions consisted of flow through units which provided certain tax benefits to the investors upon the purchase of the shares.
17. The Respondents facilitated the participation of 98 clients in the Exempt Distributions. In total, these

clients made 184 purchases of securities of the Issuers.

18. The clients purported to rely on the accredited investor (“Accredited Investor”) exemptions outlined in NI 45-106 and were required to identify which definition of Accredited Investor they met. The clients primarily relied on the definitions set out in s. 1.1 (j) and (k) of NI45-106, which states that an Accredited Investor includes:
  - (j) an individual who, either alone or with a spouse, beneficially owns financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds \$1,000,000; (the “Net Assets Exemption”); or
  - (k) an individual whose net income before taxes exceeded \$200 000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse exceeded \$300,000 in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year, (the “Net Income Exemption”).
19. Section 1.1 of NI 45-106 defines “Financial Assets” as: (a) cash, (b) securities, or (c) a contract of insurance, a deposit or an evidence of a deposit that is not a security for the purposes of securities legislation.
20. Section 3.5 of the Companion Policy to NI 45-106 further clarifies that “financial assets” are “generally liquid or relatively easy to liquidate” and would not include the “value of a purchaser’s personal residence”.
21. Of the 184 purchases facilitated by the Respondents, 64 purchases totaling \$993,874 were made by 38 clients who did not appear to meet the qualifications of an Accredited Investor as defined in NI-45-106 based on the information outlined in their New Account Application Forms (the “NAAFs”).
22. The NAAF’s for these clients indicate that their net liquid assets prior to the date of purchase were less than \$1,000,000 and their annual income was less than \$200,000.
23. Based on the information outlined in the NAAF’s, the Respondents knew or ought to have known that these clients did not meet the thresholds required to qualify as Accredited Investors in accordance with NI 45-106. Nonetheless, the Respondents took no steps to confirm that the clients were in fact accredited and allowed these clients to participate in the Exempt Distributions.
24. Subsequent to the purchases, 20 of the 38 purchasers provided updated NAAF’s which indicate that they did in fact qualify as Accredited Investors. Their purchases of securities in the Exempt Distributions totaled over \$632,000.
25. At the time of the purchases, 12 purchasers had total net assets of over \$1,000,000, but these consisted of both “Financial Assets” as well as fixed assets. Accordingly, these clients did not meet the definition of “Accredited Investor”. Their purchases of securities in the Exempt Distributions totaled over \$295,000.
26. The remaining 6 purchasers did not have sufficient assets or income at the time to meet the definition of “Accredited Investor”. Their purchases of securities in the Exempt Distributions totaled over \$66,000.
27. Torch was the Registered Representative for 24 clients who purchased a total of \$510,234 worth of securities in the Exempt Distributions. Torch earned commissions on these purchases. Of these, 16 subsequently provided updated NAAF’s which indicated they did in fact qualify as Accredited Investors, 5 had total assets of over \$1,000,000, but did not have “Financial Assets” required to meet the definition and 3 did not have either sufficient assets or income required to meet the definition.
28. Comeau was the Registered Representative for 4 clients who purchased a total of \$110,690 worth of securities in the Exempt Distributions. Comeau earned commissions on these purchases. Of these, 2 subsequently provided updated NAAF’s which indicated they did in fact qualify as Accredited Investors,

1 had total assets of over \$1,000,000, but did not have “Financial Assets” required to meet the definition and 1 did not have either sufficient assets or income required to meet the definition.

29. Moon and Comeau were the joint Registered Representatives for 2 clients who purchased a total of \$68,950 worth of securities in the Exempt Distributions. Moon and Comeau earned commissions on these purchases. These 2 clients had total assets of over \$1,000,000, but did not have “Financial Assets” required to meet the definition.
30. Moon was the Registered Representative for 8 clients who purchased a total of \$304,000 worth of securities in the Exempt Distributions. Moon earned commissions on these purchases. Of these, 2 subsequently provided updated NAAFs which indicated they did in fact qualify as Accredited Investors, 4 had total assets of over \$1,000,000, but did not have “Financial Assets” required to meet the definition and 2 did not have either sufficient assets or income required to meet the definition.
31. Further, as the Ultimate Designated Person of All Group, Moon was responsible for the conduct of All Group and the supervision of its employees to ensure compliance with applicable securities laws.

#### **D. Samples of Non-Accredited Investors who Purchased Securities through the Exempt Distributions**

##### Client MP

32. MP became a client of All Group and Torch in December 2010. The NAAF completed at the time indicated that she had approximately \$200,000 in net liquid assets, \$1,100,000 in net fixed assets, and an annual income of \$60,000. As such, MP did not meet the net financial assets criteria outlined in s. 1.1(j) of NI 45-106.
33. Nonetheless, in December 2010, MP participated in an Exempt Distribution of Class A preferred shares of Morrison Laurier. MP invested \$20,000. In December 2010, MP invested a further \$5,000 in an Exempt Distribution of common shares of Mustang Minerals. The subscription agreements for both purchases indicate that Client A relied on the Net Assets Exemption.
34. Despite the fact that MP’s NAAF indicated that her net liquid assets were only \$200,000, neither Torch nor anyone at All Group questioned her reliance on the Net Assets Exemption nor did they take steps to confirm that she had the net financial assets required to rely on this exemption.

##### Client HM

35. HM became a client of All Group in December 2010. Comeau and Moon were the joint registered representatives for HM. The NAAF completed at the time indicated that he had approximately \$500,000 in net liquid assets, \$550,000 in net fixed assets, and an annual income of \$60,000. An updated NAAF completed in March 2011 listed identical assets and income. As such, HM did not meet the net financial assets criteria outlined in s. 1.1(j) of NI 45-106.
36. Nonetheless, in December 2010, HM participated in an Exempt Distribution of flow-through common shares of Mustang Minerals. He invested \$10,000.
37. In March 2011, HM participated in an Exempt Distribution of Units of Mooncor. In total, HM made three purchases totaling \$31,950. The subscription agreements for these purchases indicated that HM relied on the Net Assets Exemption.
38. Despite the fact that HM’s NAAF indicated in both his initial NAAF and in his updated NAAF that his net liquid assets were only \$500,000, neither Comeau, Moon nor anyone at All Group questioned his reliance on the Net Assets Exemption nor did they take steps to confirm that he had the net financial assets required to rely on this exemption.

##### Client RH

39. RH became a client of All Group and Moon in April 2008. The NAAF completed at the time indicated that he had approximately \$145,000 in net liquid assets, \$170,000 in net fixed assets, and an annual income of \$40,000. As such, RH did not meet the net financial assets criteria outlined in s. 1.1(j) of NI

45-106.

40. Nonetheless, in December 2010, RH participated in an Exempt Distribution of flow-through common shares of Mustang Minerals. RH invested \$5,000. The subscription agreement for this purchase indicated that RM relied on the Net Assets Exemption. Despite the fact that RH's NAAF indicated that his net liquid assets were only \$145,000 neither Moon nor anyone at All Group questioned his reliance on the Net Assets Exemption nor did they take steps to confirm that he had the net financial assets required to rely on this exemption.

#### Client MF

41. MF became a client of All Group and Torch in April 2008. The NAAF completed at the time indicated that she had approximately \$300,000 in net liquid assets, \$700,000 in net fixed assets, and an annual income of \$60,000. Based on this information, MF did not meet the net financial assets criteria outlined in s. 1.1(j) of NI 45-106.
42. Nonetheless, in December 2010, MF participated in an Exempt Distribution of common shares of Mustang Minerals. MF invested \$6,000. The subscription agreement for this purchase indicated that MF relied on the Net Assets Exemption. Despite the fact that MF's NAAF indicated that her net liquid assets were only \$300,000 neither Torch nor anyone at All Group questioned her reliance on the Net Assets Exemption nor did they take steps to confirm that she had the net financial assets required to rely on this exemption.
43. MF subsequently provided an update to her NAAF which indicated that she did in fact meet the requirements of NI 45-106.

#### Client BS

44. Client BS became a client of All Group and Comeau in December 2010. The NAAF completed at the time indicated that he had approximately \$350,000 in net liquid assets, \$2,000,000 in net fixed assets, and an annual income of \$49,000. Based on this information, BS did not meet the net financial assets criteria outlined in s. 1.1(j) of NI 45-106.
45. Nonetheless, in December 2010, BS participated in an Exempt Distribution of common shares of Mustang Minerals. BS invested \$10,000. In December 2010, BS invested a further \$10,000 in an Exempt Distribution of units of Viper Gold. In March 2011, BS invested a further \$4,950 in an Exempt Distribution of units of Mooncor.
46. The subscription agreement for the purchases of Mustang Minerals and Mooncor indicated that BS relied on the Net Assets Exemption. The subscription agreement for the purchase of Viper Gold indicated that BS relied on the Net Income Exemption.
47. Despite the fact that BS's NAAF indicated that his net liquid assets were only \$350,000 and that his income was only \$49,000, neither Comeau nor anyone at All Group questioned his reliance on the Net Assets Exemption or the Net Income Exemption, nor did they take steps to confirm that he had the net financial assets or income required to rely on these exemptions.
48. BS subsequently provided an update to his NAAF which indicated that he did in fact meet the requirements of NI 45-106.

#### **E. Failure to Properly Supervise Trading in Exempt Distributions**

49. As the Ultimate Designated Person for All Group, Moon was responsible for the conduct of All Group and the supervision of its employees. Moon failed to ensure that All Group had an adequate supervisory structure was in place to identify and verify the accredited investor status of clients.
50. During the relevant period, All Group did not have adequate policies and procedures to ensure that the accredited investor status of clients was verified. As a result and as outlined above, several clients participated in Exempt Distributions who were not eligible to do so. None of these transactions were

identified by the supervisory system in place at All Group at the time.

51. Following the detection of the Respondents' failure to comply with the accredited investor requirements, All Group implemented additional policies and procedures to ensure that all clients who participated in an exempt distribution were properly qualified.

#### **F. Impact of Monetary Sanctions**

52. Mr. Moon and Mr. Comeau have provided satisfactory evidence to Staff as to the financial impact of the monetary sanctions and costs.

#### **G. Handling of the Complaint of TV**

53. On March 28, 2012, a client of Moon's, TV made inquiries as to the receipt of certain tax forms he expected to receive regarding an investment in Sun River, one of the Exempt Distributions. At the time of making the investment, TV understood that there would be certain tax benefits from the Sun River investment. Although previous investments in Sun River offerings had enjoyed certain tax benefits, this particular offering did not.
54. After a brief exchange of e-mails, TV sent an e-mail to Moon on April 20, 2012 in which he reiterated how "shocked I was to learn how you misrepresented the investment in Sun River". The e-mail contained an allegation that Moon "failed to disclose to me at the time of the investment that since it was a US company it would not qualify [for tax relief] and further alleged that "this is a reportable misrepresentation and has caused me to lose confidence and respect for you as an advisor". TV indicated that he would "prefer to avoid having to report this incident to the securities commission".
55. The April 20, 2012 e-mail communication from TV constituted a written customer complaint which Moon was obliged to report to IIROC via ComSet. Moon made no such ComSet report.
56. In May, 2015 TV advised Moon that he was registering a formal complaint to IIROC, at which point IIROC became aware of the issue.
57. Moon and All Group subsequently addressed the complaint in accordance with All Group's complaint handling process.

#### **H. Conclusion**

58. The Respondents allowed 38 clients to purchase nearly \$1,000,000 in offered pursuant to an exemption from the prospectus and registration requirements of the *Securities Act*, without taking reasonable steps to confirm these clients could properly rely on the available exemptions.
59. Moon's failure to file a ComSet report and to immediately engage his dealer member's complaint handling procedure was in violation of IIROC Dealer Member Rule 3100 (Reporting and Record Keeping Requirements) and Rule 2500B (Client Complaint Handling).

### **PART IV – CONTRAVENTIONS**

60. By engaging in the conduct described above, the Respondents committed the following contraventions of IIROC's Rules:
  - a) Between December 2010 and May 2011, Moon, Comeau and Torch acted contrary to Dealer Member Rule 1300.1(a) by failing to use due diligence to ensure that certain clients qualified as "accredited investors" as defined in National Instrument 45-106, thereby facilitating their purchase of securities offered pursuant to prospectus exemptions that were not available to these clients.
  - b) Between December 2010 and May 2011, Moon, as the Ultimate Designated Person of All Group, failed to properly supervise the activities of All Group and its employees to confirm that clients qualified as accredited investors in accordance with the prospectus exemption provisions of the *Securities Act (Ontario)*, contrary to IIROC Dealer Member Rule 38.5.
  - c) In or around April 2012, Moon failed to file a ComSet report and engage All Group's complaint

handling procedure, contrary to IIROC Dealer Member Rule 3100 and Rule 2500B.

#### **PART V – TERMS OF SETTLEMENT**

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

Moon:

A fine in the amount of \$35,000

Comeau:

A fine in the amount of \$20,000

Torch:

A fine in the amount of \$15,000

62. The Respondents agree to pay costs to IIROC in the sum of \$6,000.

63. If this Settlement Agreement is accepted by the Hearing Panel, the Respondents agree to pay the amounts referred to above within 30 days of such acceptance unless otherwise agreed between Staff and the Respondents.

#### **PART VI – STAFF COMMITMENT**

64. If the Hearing Panel accepts this Settlement Agreement, Staff will not initiate any further action against the Respondents 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.

65. If the Hearing Panel accepts this Settlement Agreement and the Respondents fail to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Rule 8200 against the Respondents. 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**

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

67. 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.

68. Staff and the Respondents 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 Respondents do not appear at the settlement hearing, Staff may disclose additional relevant facts, if requested by the Hearing Panel.

69. If the Hearing Panel accepts the Settlement Agreement, the Respondents agree to waive all rights under the IIROC Rules and any applicable legislation to any further hearing, appeal and review.

70. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondents may enter into another settlement agreement or Staff may proceed to a disciplinary hearing based on the same or related allegations.

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

72. 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.

73. If this Settlement Agreement is accepted, the Respondents agree that neither they nor anyone on their behalf, will make a public statement inconsistent with this Settlement Agreement.
74. The Settlement Agreement is effective and binding upon the Respondents and Staff as of the date of its acceptance by the Hearing Panel.

**PART VIII – EXECUTION OF SETTLEMENT AGREEMENT**

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

**DATED** this “20” day of “July”, 2017.

**AGREED TO** by the Respondent James Alexander Moon at the City of “Toronto” in the Province of Ontario, this “20” day of “July”, 2017.

“Witness” \_\_\_\_\_

“James Alexander Moon” \_\_\_\_\_

**Witness**

**James Alexander Moon**

**AGREED TO** by the Respondent Michael Edward Comeau at the City of “Toronto” in the Province of Ontario, this “20” day of “July”, 2017.

“Witness” \_\_\_\_\_

“Michael Edward Comeau” \_\_\_\_\_

**Witness**

**Michael Edward Comeau**

**AGREED TO** by the Respondent Mitchell Torch at the at the City of “Toronto” in the Province of Ontario, this “20” day of “July”, 2017.

“Witness” \_\_\_\_\_

“Mitchell Torch” \_\_\_\_\_

**Witness**

**Mitchell Torch**

**AGREED TO** by Staff at the City of Toronto in the Province of Ontario, this “20” day of “July”, 2017.

“Witness” \_\_\_\_\_

“Rob DelFrate” \_\_\_\_\_

**Witness**

**Rob DelFrate**

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

The Settlement Agreement is hereby accepted this “20<sup>th</sup>” day of July, 2017 by the following Hearing Panel:

Per: “Susan Lang” \_\_\_\_\_

Panel Chair

Per: “Shaine Pollock” \_\_\_\_\_

Panel Member

Per: “Charles Macfarlane” \_\_\_\_\_

Panel Member