Re McCullough

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Brian McCullough

2017 IIROC 27

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

Heard: February 9, 2017 in Vancouver, British Columbia
Decision: February 9, 2017
Reasons: February 28, 2017

Hearing Panel:
John Rogers, Chair, Michael Johnson and Mark Redcliffe
Appearances:
Stacy Robertson, Enforcement Counsel
Julie K. Lamb and Stephen Currie, Respondent's Counsel
The Respondent was not present

REASONS FOR ACCEPTANCE OF SETTLEMENT AGREEMENT

¶ 1 At a Settlement Hearing on February 9, 2017, Staff of the Investment Industry Regulatory Organization of Canada ("IIROC") and Counsel for Brian McCullough (the "Respondent") jointly recommended that the Hearing Panel accept the attached settlement agreement agreed to by the Respondent on December 20, 2016 (the "Settlement Agreement"). The settlement agreed to by IIROC and the Respondent was effected in accordance with the provisions of Section 8215 of the IIROC Consolidated Enforcement, Examination and Approval Rules (the "Rules"), with the Settlement Hearing constituted in accordance with the provisions of Section 8203 of the Rules, and held in accordance with the Rules of Practice and Procedure as set out in Rule 8400 of the Rules.

¶ 2 The Hearing Panel received and considered oral submissions from IIROC Enforcement Counsel and the Respondent's Counsel and received and considered the IIROC Settlement Brief containing:

1. the Settlement Agreement,
2. extracts from the Rules,
3. as the contraventions referenced in the Settlement Agreement involved conduct which occurred prior to September 1, 2016, a copy of IIROC Rule 29 entitled "Business Conduct" setting out the terms of Rule 29 as the same existed as at August 31, 2016,
4. IIROC Sanction Guidelines dated February 2, 2015, and
5. selected IIROC hearing panel decisions.

TERMS OF SETTLEMENT

¶ 3 The Settlement Agreement contains the agreement of the Respondent and IIROC Staff that the Respondent acted contrary to Dealer Member Rule 29.1 as the same existed prior to September 1, 2016 ("Rule 29.1") by failing to act in accordance with the high standards of conduct required of the Respondent by Rule 29.1 by:

1. accepting a gift in the amount of $750,000 from a client on or about July 5, 2013, without the knowledge and consent of his Dealer Member firm; and
2. failing to report to his Dealer Member firm that on or about November 14, 2014 he had been served with a Notice of Civil Claim relating to his dealings with that client.

¶ 4 As a result of this contravention, the Settlement Agreement confirms that the Respondent and IIROC Staff have agreed to the following sanctions:

1. A fine in the amount of $80,000;
2. A five year suspension from registration in any capacity with IIROC; and
3. The Respondent to pay IIROC costs in the sum of $5,000.

STATEMENT OF FACTS

¶ 5 The Settlement Agreement contains certain facts agreed to by IIROC Staff and the Respondent for the purpose of the Settlement Agreement. A summary of these facts is as follows:

The Respondent

1. From June 2006 until July 31, 2015, the Respondent was registered with IIROC as a Registered Representative (Mutual Funds Only) and worked in the Powell River Sub-Branch as an assistant to, and under the Registered Representative code of, Paul Sian.
2. Mr. Sian was the only other Registered Representative in the Powell River Sub-Branch and he hired the Respondent to assist him in servicing his clients. During the relevant time, the Powell River Sub-Branch consisted of Mr. Sian, the Respondent and an administrative assistant.
3. The Branch Manager of the Powell River Sub-Branch office was located in the Victoria office.
4. For the relevant period from July 5, 2013 to November 2013, the Respondent was employed by DWM Securities Inc. ("DWM"). From November 2013 until July 31, 2015, the Respondent was employed by Scotia Capital Inc. following the acquisition of DWM by Scotia Capital Inc. which continued to operate under the trade name "Hollis Wealth".

The $750,000 Gift from Client BT

5. BT was born in 1928. She first opened an account with Mr. Sian in 2011 as a joint account holder with her sister who had been a client of Mr. Sian since 2006. Following her sister's death in 2011, BT opened her own account with Mr. Sian.
6. The Respondent had known BT and her sister since 1999. Although Mr. Sian remained the RR of record and had some limited contact wih BT, the Respondent was BT's main contact for matters relating to her account.
7. In February 2013, BT told the Respondent that she wanted to gift him some money. The Respondent made a note of this on BT's account documentation and noted, as well, that BT needed to seek independent legal advice.
8. In May 2013, BT again told the Respondent that she wanted to gift him some money and the Respondent prepared a document entitled "Considerations for Will" for BT to take to a lawyer. This document listed the Respondent as the Power of Attorney and Executor for BT's estate and set out several *inter vivos* gifts, including one to the Respondent in the amount of $750,000.
9. The Respondent did not inform Mr. Sian or anyone else at his firm that BT was taking steps to

gift a substantial portion of her assets to him, nor did he make any inquiries of anyone at his firm as to whether or not he could hold Power of Attorney for a client or act as Executor of a client's estate.

10. BT subsequently reported to the Respondent that BT had had a disagreement with her lawyer over the *inter vivos* gifts including the lawyer's concern about BT's mental competency to make such gifts.

11. BT spoke to Mr. Sian and sought a recommendation for another lawyer to facilitate the *inter vivos* gifts. Mr. Sian provided BT with the name of a lawyer in Courtenay, B.C.

12. On June 22, 2013, the Respondent provided a copy of BT's identification to the office assistant at the Powell River Sub-Branch office, which copy was scanned and emailed to BT's new lawyer in Courtenay, B.C.

13. On June 25, 2013, BT telephoned Mr. Sian and instructed him to liquidate her entire account which at the time held securities worth over $900,000. Without inquiring further, Mr. Sian carried out BT's instructions and, at BT's request, had the proceeds of the account sent to BT's bank account.

14. The Respondent regularly assisted BT by driving her to do errands. On July 3, 2013, the Respondent accompanied BT to her bank where she obtained a bank draft in the amount of $850,000 to fund the gift to the Respondent and gifts in smaller amounts to friends.

15. On July 5, 2013 the Respondent went to the office of BT's lawyer in Courtenay, B.C. and picked up several Deeds of Gift, including one in the amount of $750,000 made out to the Respondent. On the same date, BT gave the Respondent this Deed of Gift and a payment of $750,000. Following receipt of this gift, the Respondent telephoned Mr. Sian and told him of the gift from BT.

16. On July 10, 2013, the Respondent delivered to Mr. Sian a bank draft in the amount of $660,000 with instructions to Mr. Sian to deposit these funds into the Respondent's trading accounts at DWM. Mr. Sian made this deposit.

17. BT died in January of 2014.

18. Even though at all material times, the policies and procedures of DWM prohibited any of its employees from accepting any gifts from clients other than those of nominal value, the Respondent did not notify his Branch Manager or anyone working in the Compliance Department of DWM of the gift he had received from BT.

Failure to Report Civil Claim to Firm

19. On or about November 14, 2014, the Respondent was served with a Notice of Civil Claim issued out of the Powell River registry (the "Probate Action"). Shortly after having been served, the Respondent told Mr. Sian of this service.

20. The Probate Action contested the validity of the $750,000 gift on the basis that the Respondent was bound by his professional ethics not to profit or gain personal advantage from his clients. The Respondent as a defendant filed a response to the Probate Action on November 28, 2014.

21. The Probate Action which was brought by a family friend of BT was eventually dismissed with costs to the Respondent on March 10, 2015.

22. Following this dismissal, the next of kin of BT was appointed as administrator of her estate and as the administrator in 2015 brought a civil action against the Respondent contesting the nature and validity of the $750,000 gift to the Respondent. This action was settled with the consent of all parties.

23. Although the policies and procedures of his employer required that all employees must report to

the firm whenever the employee is named in an action involving subject matter that occurred while employed, at no time after being served personally in these two lawsuits did the Respondent notify his Branch Manager or anyone working in the Compliance Department of his firm of the actions having been commenced against him.

24. On July 30, 2015 his employer terminated the Respondent's employment citing a failure to notify his employer of either the gift or the Probate Action.

ACCEPTANCE PRINCIPLES

¶ 6 Under IIROC Rule 8215(5), at the conclusion of a settlement hearing a hearing panel may either accept or reject the proposed settlement.

¶ 7 To assist it in exercising its discretion, IIROC Staff Counsel referred the Hearing Panel to the following decisions:

- *Re Deutsche Bank Securities Ltd.* [2013] IIROC 7 (paragraph 9);
- *Re Clark* [1999] IDA 40; and
- *Re Milewski* [1999] IDA 17

¶ 8 Staff Counsel summarized the principles enunciated in these decisions as providing that in making a determination under IIROC Rule 8215(5), the hearing panel is not to determine whether or not in its opinion the penalties agreed upon in a settlement agreement are correct or in accordance with the hearing panel's particular view of the appropriate penalty, but rather whether the penalties agreed upon in the settlement agreement come within an acceptable range of appropriateness after taking into account the general benefits to all parties of the settlement process.

¶ 9 In addition, IIROC Staff Counsel referred the Hearing Panel to the following decisions involving the consideration by hearing panels of contraventions involving Rule 29.1 where the respondent registrants engaged in personal financial dealings with their clients without their firm's knowledge:

- *Re Little* [2007] I.D.A.C.D. No. 24; and
- *Re Smith* 2013 IIROC 21.

¶ 10 In *Re Little*, the hearing panel found that the respondent had violated Rule 29.1 when, without the knowledge or consent of his firm and contrary to its internal policies, he had accepted a cheque in the amount of $500,000 from a widow with no close family who was over 90 years old. The respondent proceeded to liquidate securities in the client's account in order to cover the cheque, in the process generating approximately $45,000 in deferred service charges, and then deposited the cheque in his personal bank account.

¶ 11 Subsequently, the client's bank returned the client's cheque to the respondent marked as funds not cleared, the respondent was terminated by his employer as a result of his dealings with this client, and the $45,000 in deferred service charges were returned to the client by the respondent's firm and were charged against the respondent personally.

¶ 12 Despite the fact that the client subsequently provided a statutory declaration to the effect that the $500,000 was intended to be a personal gift from her to the respondent, the hearing panel in its decision noted:

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

¶ 13 The hearing panel went on to highlight that in the investment industry when "the reputation for financial probity is involved, appearances are very important" but, noting that the respondent had already had to repay

the $45,000 in deferred service charges, imposed on the respondent a fine of $15,000.

¶ 14 A second charge against the respondent that he had become the Attorney, pursuant to a Power of Attorney for Property, and Executor of the will of this elderly client without the knowledge or consent, and contrary to the internal policies, of his employer was dismissed as the hearing panel was left in doubt on this charge as to whether the respondent's breach was a result of inadvertence or negligence. The hearing panel ruled that the benefit of this doubt must be given to the respondent and therefore dismissed the charge.

¶ 15 *Re Smith* was a settlement hearing in which the hearing panel accepted a settlement agreement whereby the respondent acknowledged that without his firm's knowledge and contrary to Rule 29.1 he had engaged in personal financial dealings with an elderly couple who were his clients

¶ 16 In this settlement agreement, the respondent acknowledged that over approximately a 6 year period he and his family had developed a close friendship with this husband and wife. During this 6 year period, the wife appointed the respondent's wife as her Power of Attorney over her affairs and the clients sold their real property to the respondent and his wife. Following the death of the husband, the wife gave to each of the respondent's children a monetary gift to assist with their university education and executed a new will in which the respondent and his family were named as a 75% beneficiary of her estate.

¶ 17 The respondent further acknowledged that during this 6 year relationship contrary to his employer's stated policies with which he annually confirmed familiarity, despite many opportunities to do so, he failed to notify his employer and to disclose these personal financial dealings, including the involvement of his wife who was, as well, employed as an unregistered office assistant by the respondent's employer.

¶ 18 The settlement agreement imposed a fine of $50,000, a 4 year suspension and costs in the amount of $5,000.

¶ 19 In accepting the settlement agreement, the hearing panel observed:

> Investment advisors hold a uniquely priviledged position of trust in the self-regulated securities industry. As a result of their position, it is critically important to the reputation of the securities industry that investment advisors either avoid situations which may give rise to conflicts between their interests and those of their clients or ensure proper disclosure of these situations.

¶ 20 In the matter at hand, the Respondent has acknowleged a 14 year relationship with a client who was, at her death, 86 years old. This relationship was sufficiently close that the client expressed a wish to grant to the Respondent a Power of Attorney over and to become the Executor of her estate, and also expressed the wish to make a $750,000 gift to the Respondent.

¶ 21 However, the Respondent has also acknowledged that the client's lawyer had a concern about the client's mental competency and, rather than taking this as a warning sign about his position in the relationship, the Respondent took steps to involve another independent lawyer. As was noted in the decisions above cited, because of their uniquely priviledged position of trust in the self-regulated securities industry, the public interest demands that registrants be held to a very high standard of probity and must not only be trusted, they must be seen to be trustworthy. This requires that a registrant avoid situations which might be seen to give rise to a conflict between their personal interests and those of their clients.

¶ 22 To ensure that both this perception and its reality is at all times extant, employers require that their registrants report to them on a timely basis any occurrence which might put this trust relationship in jeopardy.

¶ 23 The fact that the Respondent facilitated the finding of an independent lawyer outside the local community who did not appear to question the client's mental competence and the the fact that a family friend of the client went to court in the form of the Probate Action to question the Respondent's relationship with his client would surely have had an impact on this trust relationship in the Respondent's local commumity and would have adversely affected the reputation of both his firm and the investment industry in the eyes of this local community.

¶ 24 As set out in the Settlement Agreement, not only did the Respondent not report the gift for $750,000, but

he also failed to report the Probate Action. Although it is mere speculation, if the Respondent had indeed complied with his employer's reporting requirements, an independent review of the relationship might have been undertaken and the adverse effect of the Respondent's actions on the trust relationship and his firm's and the investment industry's reputation in the local community may have been avoided.

¶ 25 In considering the appropriateness of the sanctions included in the Settlement Agreement, we have considered the following aggravating factors:

1. The amount of the gift relative to the client's account;
2. The client's age and suspect mental capacity;
3. The Respondent's active role in facilitating the making of the gift;
4. The Repondent's employer's firm policy against the receipt of gifts of this size;
5. The Respondent's failure to properly notify his employer, as required, of his involvement in the legal actions against him; and
6. The reputational harm to his employer and the industry in the local community.

¶ 26 We have considered the following mitigating factors:

1. The Respondent's employment was terminated and he has not been employed in the investment industry since that date;
2. The Respondent did not have a prior disciplinary record with IIROC; and
3. The Respondent entered into the Settlement Agreement and avoided the cost of a hearing.

DECISION

¶ 27 We are satisfied as a panel that the sanctions agreed to in the Settlement Agreement, including the costs of $5,000, are within the acceptable range, and, for that reason, we find it to be in the public interest that we accept this Settlement Agreement and we so do.

Dated at Vancouver, British Columbia this 28 day of February 2017

John Rogers, Chair

Michael Johnson

Mark Redcliffe

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 Brian McCullough ("Respondent").

PART II – JOINT SETTLEMENT RECOMMENDATION

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

PART III – AGREED FACTS

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

of this Settlement Agreement.

Overview

4. These Particulars relate to the period of time from February 2013 to July 2015 while the Respondent was a Registered Representative (Mutual Funds only) at the Powell River branch of DWM Securities Inc., which later became a branch of Scotia Capital Inc.

5. The Respondent worked as an assistant to, and under the Registered Representative code of Paul Sian at the Powell River office. He received a gift in the amount of $750,000 from a client whose account was liquidated to pay for the gift. The client was elderly and the Respondent had a close personal friendship with her for several years. The policies and procedures of the Respondent's Dealer Member firm prohibited acceptance of any gifts from clients other than those of nominal value.

6. The Respondent was served in the Powell River office with a Notice of Civil Claim on or about November 14, 2014. The claim included allegations that the Respondent had breached his professional ethics in receiving the $750,000 gift from the client. The Respondent did not report the existence of this action to his Branch Manager or anyone working in the Compliance Department at DWM SI until January 2015, as he was required to do under his firm's policies and procedures.

Registration History

7. The Respondent was registered as a Registered Representative ("RR") for Mutual Funds only with DWM Securities Inc. ("DWM SI") from June 2006 to November 2013. In November 2013 DWM SI became part of Scotia Capital Inc. under the trade name Hollis Wealth ("Scotia Capital"). From November 2013 until July 2015 the Respondent was registered as an RR for Mutual Funds only with Scotia Capital. The Respondent's employment was terminated by Scotia Capital on July 31, 2015 and he has not been registered in the industry since that time.

The $750,000 Gift from Client BT

8. The Respondent was hired in June 2006 by Paul Sian ("Sian") to assist him in servicing his clients at the Powell River office.

9. BT was born in 1928 and first opened an account with Sian in 2011 as a joint account holder with her sister, who had been a client since 2006. After BT's sister passed away in 2011, BT opened her own account with Sian. The Respondent, however, had known BT and her sister since 1999. He was her main contact for matters relating to her account with Sian, although Sian remained her RR of record and had some limited contact with her.

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

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

12. Sometime in May 2013 the Respondent prepared a document titled "Considerations for Will" for BT to take to a lawyer. The document listed the Respondent as the Power of Attorney and Executor for BT's estate and also set out several inter vivos gifts including one to him in the amount of $750,000.

13. BT had a disagreement with the lawyer over the inter vivos gifts and concerns that the lawyer raised about her mental competency to make such gifts. BT reported the disagreement, including the lawyer's concerns about her mental competency, to the Respondent.

14. The Respondent did not inform Sian or anyone else at his firm that a client was taking steps to gift a substantial portion of her assets to him. The Respondent did not make any inquiries of anyone at his firm as to whether he could hold Power of Attorney for a client or act as Executor of a client's estate.

15. BT spoke to Sian and sought a recommendation for another lawyer to facilitate the inter vivos gifts. Sian provided BT with the name of a lawyer in Courtnay, B.C.

16. On June 22, 2013, the Respondent provided the Office Assistant with a copy of BT's identification, which was scanned and emailed to her lawyer in Courtnay, B.C.

17. On June 25, 2013 BT telephoned Sian and instructed him to liquidate her entire account which held securities worth over $900,000 at the time. Sian carried out her instructions without questioning her as to the reason for liquidating the account. At BT's request, the proceeds of the account were sent to her bank account.

18. On July 3, 2013, the Respondent attended at BT's bank with her while she obtained a bank draft in the amount of $850,000 to fund the gift to the Respondent and several other smaller gifts to friends. The Respondent regularly assisted BT by driving her to do errands.

19. On July 5, 2013, BT attended at her lawyer's office in Courtnay and obtained several Deeds of Gift including one in the amount of $750,000 made out to the Respondent.

20. On July 5, 2013, the Respondent received the Deed of Gift and a payment of $750,000 from BT.

21. The Respondent then telephoned Sian and told him that he had just received a gift of $750,000 from BT.

22. On July 10, 2013, the Respondent gave Sian a draft for $660,000 for deposit into the Respondent's personal trading accounts held at DWM SI. Sian personally deposited the funds.

23. BT passed away in January of 2014.

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

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

Failure to Report Civil Claim to Firm

26. The Respondent was personally served with a Notice of Civil Claim in the Powell River office on or about November 14, 2014 (the "Probate Action"). The Respondent told Sian about the Probate Action shortly after he was served with the notice of civil claim.

27. The Probate Action named the Respondent as a defendant and contested the validity of the $750,000 gift on the basis that the Respondent was bound by his professional ethics not to profit or gain personal advantage from his clients. The Respondent retained a lawyer and filed a Response to the Civil Claim on November 28, 2014.

28. The Probate Action was brought by a family friend of BT and was eventually dismissed with costs to the Respondent on March 10, 2015 and the next of kin of BT was eventually appointed as administrator of the estate.

29. After being appointed as administrator of the estate of BT, the next of kin of BT brought a civil action in 2015 contesting the nature and validity of the gift to the Respondent. That action was settled with the consent of all parties.

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

31. At no time after being personally served with the Notice of Civil Claim or after filing the Response to the Civil Action did the Respondent notify his Branch Manager or anyone working in the Compliance Department at DWM SI of the existence of the Probate Action.

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

PART IV – CONTRAVENTIONS

33. By engaging in the conduct described above, the Respondent committed the following contraventions of

IIROC's Rules:

The Respondent acted contrary to Dealer Member Rule 29.1 by:

a. On or about July 5, 2013, accepting a gift in the amount of $750,000 from a client without the knowledge and consent of his Dealer Member firm; and

b. On or about November 14, 2014, failing to report to his Dealer Member firm that he had been served with a Notice of Civil Claim relating to his dealings with that client.

PART V – TERMS OF SETTLEMENT

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

a. Fine in the amount of $80,000;

b. Suspension from any registration with IIROC for five (5) years; and

c. $5,000 in costs.

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

PART VI – STAFF COMMITMENT

36. If the Hearing Panel accepts this Settlement Agreement, Staff will not initiate any further action against the Respondent in relation to the facts set out in Part III and the contraventions in Part IV of this Settlement Agreement, subject to the provisions of paragraph 37 below.

37. If the Hearing Panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Rule 8200 against the Respondent. These proceedings may be based on, but are not limited to, the facts set out Part III of this Settlement Agreement.

PART VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT

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

39. 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.

40. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing, unless the parties agree that additional facts should be submitted at the settlement hearing. If the Respondent does not appear at the settlement hearing, Staff may disclose additional relevant facts, if requested by the Hearing Panel.

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

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

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

44. 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.

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

46. The Settlement Agreement is effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 20th day of December, 2016.

"Witness"
Witness

"Brian McCullough"
Brian McCullough
Respondent

"Witness"
Witness

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

The Settlement Agreement is hereby accepted this 9th day of February, 2017 by the following Hearing Panel:

Per: **"John Rogers"**
Panel Chair

Per: **"Michael Johnson"**
Panel Member

Per: **"Mark Redcliffe"**
Panel Member