Re Sawisky

IN THE MATTER OF:

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

and

Michael William Sawisky

2017 IIROC 28

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

Heard: August 24, 2016
Decision: August 24, 2016
Written Decision: April 28, 2017

Hearing Panel:
Linda J. Murray (Chair), Richard Carter (Barbara Fraser recused)
Appearances:
Paul Smith, Enforcement Counsel, IIROC
Wes Chan, Investigator, IIROC
Michael Sawisky, Respondent (by telephone for part of the hearing)

REASONS FOR DECISION – SETTLEMENT HEARING

Settlement Agreement

¶ 1 Michael William Sawisky (the Respondent) and the Investment Industry Regulatory Organization of Canada (IIROC) entered into a Settlement Agreement signed by the Respondent on August 4, 2016, and IIROC on August 22, 2016, pursuant to IIROC Dealer Member Rule 20.35 to 20.40 inclusive, and Rule 15 of the Dealer Member Rules of Practice and Procedure. The Settlement Agreement complies with Rule 14 of the IIROC Rules of Practice and Procedure. A copy of the Settlement Agreement is attached to these Reasons as Schedule A.

¶ 2 In the Settlement Agreement, the Respondent admitted that:

a. from September 2012 through April 2015, he failed to learn and remain informed of the essential facts related to two clients contrary to IIROC Dealer Member Rule 1300.1(a);

b. in November 2012, he failed to ensure that a security held in one client's account was suitable for that client contrary to IIROC Dealer Member Rule 1300.1(r); and

c. from September 2012 through April 2015, he failed to ensure that his recommendations to two clients were suitable for them contrary to IIROC Dealer Member Rule 1300.1(q).

¶ 3 Pursuant to Dealer Member Rule 20.36, a Settlement Hearing was held on August 24, 2016, to consider the Settlement Agreement.

¶ 4 The Panel heard from IIROC counsel regarding the circumstances of the conduct, the relevant authorities, and the appropriateness of the proposed Settlement Agreement. The Respondent attended part of

the hearing by teleconference. IIROC and the Respondent jointly recommended that the Panel accept the Settlement Agreement.

¶ 5 The Panel adjourned the hearing to consider whether it was appropriate to accept the Settlement Agreement. The two member Panel (see conflict discussion below) determined unanimously to accept the Settlement Agreement and re-convened the hearing to advise the parties of its decision, and that these written reasons would follow.

Potential Conflicts – Panel Members

¶ 6 During the course of submissions by IIROC counsel, it became apparent to Ms. Fraser and Mr. Carter that each may have had past dealings with the Respondent. The potential conflicts did not become apparent to Ms. Fraser and Mr. Carter until IIROC counsel provided the details of the Respondent's past disciplinary history and his financial difficulties during the hearing. At that point, before completion of the hearing and any deliberations, the Panel took the morning break and the two Panel members advised the Chair of their potential conflicts.

¶ 7 The circumstances of the potential conflicts were as follows:

a. Mr. Carter serves on the IIROC Registration Subcommittee. From time to time, he is called upon, as part of a panel of three, to review the financial circumstances of registrants who are subject to statutory payment orders. The Registration Subcommittee deals only with a registrant's payment order situation and typically a period of close supervision is mandated pursuant to IIROC Rules. Mr. Carter was not certain if the Respondent was among those registrants for whom Mr. Carter considered a statutory payment order as a member of the Registration Subcommittee.

b. Ms. Fraser was a former investigator with the Alberta Stock Exchange (ASE). It was possible that Ms. Fraser was the investigator for the Respondent's previous ASE disciplinary matter referenced by IIROC counsel.

¶ 8 The Panel reconvened, advised IIROC counsel of the potential conflict issues, and invited submissions. The Panel adjourned so that IIROC counsel could seek instructions, and contact the Respondent for his comments.

¶ 9 The Panel reconvened and the Respondent joined the hearing by teleconference to provide information and make submissions regarding the potential conflicts.

¶ 10 The Respondent said he could not recall dealing with Mr. Carter, nor could he recall being subject to any period of supervision by his firm regarding a statutory payment order. On that basis, the Respondent and IIROC counsel submitted that Mr. Carter did not appear to be in an actual, or perceived, conflict of interest.

¶ 11 The Respondent said he did not recall whether he dealt with Ms. Fraser during the ASE investigation. IIROC counsel submitted that, although there was no suggestion that Ms. Fraser would not bring an open mind to the matter, it appeared that she was in a perceived conflict of interest, if not an actual conflict of interest, and the best practice would be for her to recuse herself.

¶ 12 The Panel adjourned to consider the submissions of the Respondent and IIROC counsel regarding the potential conflict issues.

¶ 13 **Panel Ruling**. The hearing reconvened. The Panel advised that it concurred with the submissions by IIROC counsel and the Respondent. Mr. Carter did not have an actual or perceived conflict of interest so there was no need for him to recuse himself from the Panel. However, Ms. Fraser had at least a perceived conflict of interest. Ms. Fraser recused herself and left the hearing at that point.

¶ 14 The Chair and Mr. Carter continued the hearing as a panel of two members, as permitted by IIROC Rules. Only the Chair and Mr. Carter were involved in the deliberations and decision of this matter.

Submissions by the Respondent

¶ 15 The Respondent confirmed during the teleconference that he understood the terms and consequences of the proposed Settlement Agreement, and that he wished to complete the settlement. The Respondent advised the Panel that this was a very stressful experience and he was anxious to proceed with the settlement and put the matter behind him.

Submissions by IIROC counsel

Role of the Panel

¶ 16 IIROC counsel advised the Panel that the parties spent considerable time negotiating the terms of the settlement, and there are public interest benefits of the settlement process. The Respondent was actively engaged in the process and responsive to IIROC even after he ceased to be a registrant. The Respondent confirmed that he understood the terms and consequences of the settlement, and that he wished to conclude the settlement upon the negotiated terms.

¶ 17 IIROC counsel provided a summary of cases and referenced the following decisions regarding the role of the Hearing Panel in a settlement hearing:

a. *Re Milewski* [1999] I.D.A.C.D. No. 17;

b. *Re Clark* [1999] I.D.A.C.D. No. 40;

c. *Rault v. Law Society of Saskatchewan* [2009 SKCA 81];

d. *Re Deutsche Bank Securities Ltd.* [2013] IIROC 7;

e. *Re Wood* [2014] IIROC 50*; and*

f. *Re Donnelly* [2016] IIROC 23.

¶ 18 In *Re Milewski* the panel noted at p.11-12:

> "[…] 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.
>
> […] 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."

¶ 19 In *Re Clark* the panel noted at p.4:

> It was submitted by staff and accepted by the panel that its role under By-law 20.26 is not the same as its role under By-law 20.10 following a hearing. In considering a settlement under By-law 20.26 the panel should not simply substitute its discretion for that of staff who negotiated the settlement. The panel must be cognizant of the importance of the settlement process and should not interfere lightly in a negotiated settlement. In our view, as a result, panels must also be careful in using previous settlements as precedent. The settlement process is one of negotiation and compromise and the penalty imposed following a settlement will often be less onerous than one imposed following a hearing where similar findings are made.

¶ 20 In *Rault v. Law Society of Saskatchewan*, the Court of Appeal cited with approval, and applied to an administrative tribunal, the principles applicable to joint submissions on sentencing in criminal cases described by the Alberta Court of Appeal in *R. v. G.W.C.* [2000 ABCA 333 (Can Lii], namely, that there is an obligation on the tribunal to give serious consideration to a joint submission on sentencing agreed upon by counsel unless the sentence is unfit or unreasonable; or contrary to the public interest; and it should not be departed from

unless there are good or cogent reasons for doing so. At paragraph 19, the court noted that the hearing process can be time-consuming and there is a vested interest in ensuring that matters proceed expeditiously, given the burden of proving the allegations in complicated and protracted proceedings with the usual risks involved in those proceedings. The court added:

> If the parties negotiating compromise agreements cannot expect their efforts will be respected, there is little incentive to attempt to negotiate a resolution.

¶ 21 In *Re Deutsche Bank Securities Ltd.,* the panel made the following comments regarding its role at paragraph 9:

> It is clear from the jurisprudence…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.

¶ 22 In Re Wood, the panel noted at paragraph 18:

> Our legal system places a high value on the settlement of legal disputes. Indeed, lawyers are under a professional obligation to encourage compromise or settlement whenever it is possible to do so on a reasonable basis. Settlement not only relieves parties of the cost, risk and uncertainty that comes with litigation, but as the product of negotiation and compromise a settlement is more likely to arrive at a fair and balanced resolution of a dispute. […] a view widely shared by many Hearing Panels…an effective disciplinary regime is one that avoids unnecessary litigation whenever a reasonable outcome can be otherwise [sic] obtained through settlement.

¶ 23 In *Re Donnelly*, the panel noted at paragraphs 7 and 8:

> It is usually in the public interest that matters be settled where possible rather than be determined through contested hearings. The reasons for this are often that an earlier determination of a dispute is better than a later determination. Settlements are usually less expensive than contested litigation, and there is less congestion in the dispute settling system when matters are taken out of the system through settlements. Finally, where both parties agree, the result is often more palatable to the parties and society than in a contested hearing where the winner takes all.
>
> For these reasons, a panel considering the acceptance of a settlement agreement will try to reach a determination of acceptance. It will recognize that settlements are often hotly debated with much compromise and give-and-take between the parties in order to reach an acceptable position agreeable to both parties. Furthermore, the panel will recognize that it is not privy to all the facts and the motivations and considerations that each of the parties have in coming to a solution of the dispute that is agreeable to them.

Review of Relevant Facts

¶ 24 In his submissions, IIROC counsel referenced the following facts regarding the Respondent's admitted breaches of the IIROC Dealer Member Rules.

¶ 25 The Respondent is 62 years old, was a registrant in the securities industry since 1988, and had no previous IIROC disciplinary history.

¶ 26 The Respondent agreed to an Offer of Settlement with sanctions ($6,000 fine and two years of close supervision) imposed by the ASE in 1992. The conduct, which occurred from 1988 to 1990, related to the Respondent's failure to ensure that his recommendations to clients were appropriate. IIROC counsel noted that, although the disciplinary history was relevant, it was dated and occurred at the beginning of the Respondent's career as a Registrant.

¶ 27 The Respondent was continuously registered from 1988 to May 2016. He was employed by the same

firm, which merged with another firm in 2012.

¶ 28 From July 2015 to May 2016 the Respondent was subject to internal close supervision after his firm received complaints from the two clients referenced in the Settlement Agreement.

¶ 29 The Respondent has not been a registrant since May 2016.

¶ 30 This matter involved only two clients, TR and SM. There was no pattern of conduct by the Respondent.

a. With respect to client TR:

i. In September 2010, TR opened an RRSP account with the Respondent. At the end of 2011, at age 50, TR was laid off by her long-term employer and she received a lump sum retirement allowance. TR invested the retirement allowance, and other RRSP funds held with another registrant, in the RRSP opened by the Respondent. The RRSP funds totaled about $110,000. In addition to the RRSP funds, TR had a company pension payable at age 55, plus her home, for a total net worth of about $450,000.

ii. TR had limited investment knowledge and no experience with, or knowledge of, options trading. TR required her investments to ensure financial security until she could collect her company pension at 55. TR's New Client Application Form (NCAF) at the pre-merger firm set out her investment objectives as long term growth 45%, short term 45%, and venture speculation 10%. TR's risk tolerance was shown as moderate 90% and high 10%. TR's annual income was shown as $48,000. The Respondent admitted that the investment objectives and risk tolerances did not accurately reflect TR's investment objectives or risk tolerance.

iii. After his firm's merger in 2012, the Respondent failed to accurately update TR's NCAF. The new NCAF showed TR's investment objectives as income 45%, growth 45%, and speculative 10%. Her investment objectives were shown as medium 90% and high 10%. Although TR had no income as she had been laid off by her employer, the NCAF still showed annual income of $48,000. The Respondent admitted that the new NCAF did not accurately reflect TR's investment objectives, risk tolerance, or income.

iv. In addition, the Respondent admitted that he incorrectly noted in the post-merger NCAF that the firm held only 25% of TR's investable assets, when in fact it held 100% of TR's investable assets.

v. The Respondent recommended to TR an investment strategy that involved writing covered call options on the shares of a small number of resource-based companies in an attempt to generate transactional profits in the account. This strategy was not suitable for TR.

vi. The account held about $100,000 when it was transferred to the post-merger firm in 2012. The net loss in TR's account as of April 14, 2014, was about $16,555 (or about 17%). The Respondent earned commissions of about $3,987.

b. With respect to client SM:

i. SM, who was 61, had an investment objective of a low risk diversified portfolio to provide income during her retirement. SM had a locked-in RRSP account at the pre-merger firm with another registrant, with whom she was dissatisfied.

ii. SM's account was transferred to the post-merger firm in 2012 and the Respondent took over her account.

iii. At that time, SM's account had a value of about $90,000. One of SM's holdings when the Respondent took on the account was an investment of $17,000 in unsecured notes of a private issuer acquired through a private placement in 2010, which were set to mature in

2017.

iv. In November 2012, SM asked the Respondent about the unsecured note investment. The Respondent explained the investment to SM but he failed to advise her that the investment was not suitable for her due to its high risk.

v. In January 2013, the Respondent prepared a new NCAF and SM's locked-in RRSP was converted to a LIF account. The NCAF showed SM's income as $30,000, fixed assets of $250,000, and investable assets of $100,000. SM's investment objectives were shown as income 45%, growth 45%, and speculative 10%. SM's risk tolerance was shown as medium 90% and high 10%. The Respondent admitted that the January 2013 NCAF did not reflect SM's actual investment objectives or risk tolerance.

vi. In addition, the Respondent noted in the new NCAF that the post-merger firm held only 25% of SM's investable assets, when in fact it held most of her investable assets.

vii. The Respondent recommended to SM an investment strategy that involved a significant concentration of securities in oil and gas related companies. This strategy was not suitable for SM.

viii. Between September 2012 and April 2015, the net loss in SM's account, due to the concentration in oil and gas related investments, was about $26,700 (about 30%, exclusive of the private issuer notes).

ix. Although IIROC counsel was not able to provide a specific quantification of the loss suffered regarding the private issuer notes (which do not mature until 2017), the last known value in March 2015 was $11 (the initial investment was $75).

c. With respect to both TR and SM:

i. Each relied upon the Respondent's advice and consented to his recommendations, but did not understand them.

ii. The Respondent said he made errors in completing the NCAF documents for the two clients, but that these errors were not deliberate or meant to deceive. However, the Respondent's failure to ensure that the NCAFs for the clients were accurate impacted upon the ability of his firm to properly supervise the accounts.

iii. There was no unauthorized or discretionary trading, or margin used. There was no evidence of intentional manipulation or fraudulent conduct by the Respondent.

iv. Both TR and SM complained to the Respondent's post-merger firm. The firm reached agreements with each client to compensate them for the losses in their accounts. The Respondent paid a portion ($7,500) of the compensation to each client, based upon his limited ability to pay.

Review of Guidelines and Authorities

¶ 31 IIROC counsel referred the Panel to the Dealer Member Disciplinary Sanction Guidelines, including Key Considerations When Determining Sanctions, and IIROC Dealer Member Rule 1300 regarding suitability determinations.

¶ 32 IIROC counsel advised the Panel that no previous cases were directly on point with the Respondent's situation. The other cases involved factors such as the use of margin, unauthorized trading, misleading the client, or failing to reimburse the client. IIROC counsel pointed out that these factors were not present in this case.

¶ 33 IIROC counsel submitted that the assessment of the appropriate penalty in this case should be based upon the recent decision in *Re Husebye*, 2016 IIROC 21. IIROC counsel reviewed the details of the *Husebye* case, pointing out the similarities and differences from the Respondent's case. The *Husebye* case is discussed in

our reasons below.

Inability to Pay

¶ 34 IIROC counsel referred to IIROC Sanction Guidelines, General Principle 7, regarding inability of a Respondent to pay when considering monetary sanction. IIROC counsel advised that this was a relatively new provision (February 2015) and there were, as yet, very few cases. IIROC counsel was not able to refer the Panel to any other cases in which this issue was considered.

¶ 35 IIROC counsel advised the Panel that the Respondent provided evidence to IIROC to demonstrate that the Respondent had a bona fide inability to pay a higher fine or costs regarding this matter. The information provided to IIROC by the Respondent included tax returns, payroll documents, and other documents and information regarding his assets, liabilities, prospective income and living expenses. The information included details regarding the nature and status of other ongoing unrelated collection proceedings.

¶ 36 IIROC counsel advised that IIROC staff reviewed and verified the information and documents provided by the Respondent. IIROC staff took these circumstances into account in reaching the settlement with the Respondent.

¶ 37 IIROC counsel advised the Panel that, but for the information provided by the Respondent demonstrating his inability to pay, and the fact that the Respondent provided some of the funds paid by the firm to compensate the clients (so there was no need to address the issue of disgorgement), IIROC would have required a higher fine and the payment of costs as part of the settlement terms.

¶ 38 IIROC counsel reviewed with the Panel the details of the Respondent's financial and personal circumstances. These details are summarized in the attached Schedule B.

¶ 39 IIROC counsel submitted that due to privacy concerns, these details should not be included in the copy of the Panel's written reasons released to the public, and these details should be redacted prior to any third party receiving a copy of the transcript of the settlement hearing.

¶ 40 **Panel Ruling – Disclosure of Respondent's Personal Information**. The Panel agreed with the submissions by IIROC counsel. We direct that the details of the Respondent's financial and personal circumstances, as summarized in Schedule B and referenced in the transcript of the settlement hearing, are to be redacted prior to making the hearing transcript and this written decision available to any third party.

¶ 41 IIROC counsel submitted that the proposed penalty in this matter was reasonable given the facts, the IIROC Sanction Guidelines, the Respondent's demonstrated inability to pay a higher fine or costs, and the *Husebye* case. IIROC counsel, and the Respondent, recommended that the Panel accept the Settlement Agreement.

Panel Reasons and Decision

¶ 42 The Panel acknowledged its role in considering the Settlement Agreement under Rule 20.36, the principles set out in *Re Milewski*, and the other authorities referenced by IIROC counsel as summarized above.

¶ 43 The Respondent admitted, and this Panel finds, that the Respondent breached IIROC Dealer Member Rules regarding his dealings with two clients, TR and SM. The Respondent failed to learn the essential facts for each client, and he failed to ensure that the securities held by, and recommended to, those two clients were suitable for them. The particulars of the breaches were set out above and in the Settlement Agreement (attached as Schedule A).

¶ 44 The Panel considered a number of factors in determining whether to accept the Settlement Agreement, including whether the terms of the settlement:

a. were reasonable, given the conduct of the Respondent;

b. addressed both specific and general deterrence;

c. will prevent the type of conduct described from occurring in the future;

d. will protect investors as a result of the proposed penalty; and

e. will foster confidence in the integrity of the capital markets, IIROC, and the regulatory process.

¶ 45 The Panel considered the IIROC Sanction Guidelines. The Guidelines provide a framework for the exercise of a Panel's discretion in determining sanctions which meet the general sanctioning objections and providing key factors to take into account when determining the appropriate sanction. Sanctions are preventative in nature and are designed to protect the public, strengthen market integrity, and improve business practices and standards. IIROC counsel made helpful submissions regarding the application of the Guidelines in this case.

¶ 46 The Panel considered the *Husebye* case. As noted in *Husebye*, suitability determinations are fact specific. The Panel in *Husebye* noted that there were few cases directly on point, and that most of the cases presented to the Panel regarding suitability imposed similar monetary fines (generally $20,000), although the individual factors varied.

¶ 47 The facts in this case are similar to *Husebye* in that the allegations involved three clients of similar ages, who suffered similar percentage losses in their accounts, over about a year. The NCAFs completed by Husebye did not accurately reflect the clients' investment objectives and risk tolerances. Husebye inherited the clients from another registrant. The underlying violation was suitability without discretionary trading. There was no deceptive conduct.

¶ 48 The *Husebye* case is different from this case in that the clients were among 50 with managed accounts for whom Husebye used the same investment strategy. The securities were riskier (Leveraged Inverse Exchange Traded Funds), which involved double margin. Husebye did not have a discipline history. Husebye and the firm did not compensate the clients, who sued him. After a hearing (not settlement), the penalty imposed by the Panel was a $20,000 fine, 6 months' prohibition (at that time, Husebye had not been a registrant for about three years), costs of $10,000, and that he successfully complete the CPH prior to re-registration.

¶ 49 The Panel considered the following aggravating and mitigating factors in this case:

a. Nature of transactions. The conduct related to two clients. With respect to TR, the unsuitable transactions and NCAF inaccuracies occurred over a period of about four years, at two firms. For SM, the unsuitable transactions and NCAF inaccuracies occurred over a period of about two and a half years at the post-merger firm. Although the Respondent did not recommend the private issuer note investment to SM, he failed to adequately explain the risk of that investment when he took over her account at the post-merger firm. There was no evidence of a pattern of conduct by the Respondent. There were no significant aggravating factors such as discretionary trading, margin, or excess commissions.

b. Nature of conduct. Despite the inaccuracies in the NCAFs for the two clients, there was no evidence of dishonesty or deceit by the Respondent. The Respondent's conduct was careless and did not meet the level of conduct expected of a registrant, particularly given his experience and disciplinary history. His errors prevented the firm from proper supervision of the accounts.

c. Experience. The Respondent had sufficient knowledge and experience and ought to have recognized the obligations to the client, firm, IIROC, and the public regarding his obligations to ensure suitability and accurate NCAFs for each client.

d. Harm to clients. The Respondent knew that the accounts for the two clients held almost all of their investable assets, and that the clients needed income from the accounts for their retirement. The clients suffered losses – TR about $16,555 and SM about $26,700 (exclusive of the private issuer notes). The Respondent's firm reached a settlement with the clients regarding the losses, to which the Respondent contributed funds based upon his limited financial means.

e. Personal benefit. The Respondent derived little personal benefit from the conduct.

f. Internal discipline and disgorgement. The Respondent was subject to internal close supervision

by his firm from July 2015 to May 2016, as a result of the complaints by the two clients. He repaid to the firm almost twice the value of the commissions he earned for the two clients.

g. Conduct after the fact. The Respondent accepted responsibility for his conduct, cooperated with IIROC, and participated in the settlement process, even after he ceased to be a registrant. Although expected of registrants and former registrants, the Respondent continued to incur costs to complete the IIROC process, even though he had meager financial means.

h. Discipline history. Prior disciplinary history is usually an aggravating factor and may warrant a higher sanction being imposed for subsequent conduct. However, as noted in the Sanction Guidelines, prior discipline history generally becomes less relevant as it becomes more dated. The Respondent's history, while relevant, occurred at the beginning of his career as a registrant. There is no evidence of conduct issues regarding the Respondent in the interim. We agree that the prior discipline history should be given less weight in this case for those reasons.

i. Inability to pay. The Panel accepted the submissions of IIROC counsel regarding the Respondent's inability to pay a higher fine and/or costs. The Panel took into account these circumstances in reducing the amount of the fine that might otherwise have been contemplated, and in not ordering costs to be paid by the Respondent.

¶ 50 The amount of the global penalty in this case is a fair resolution of the matter, given the facts, the Respondent's demonstrated inability to pay and the *Husebye* case. The penalty will have a significant impact upon the Respondent, given his age, lack of financial resources, and limited employment prospects. The Respondent is no longer a registrant and is unlikely to engage in similar conduct in the future.

¶ 51 The securities industry is a business of trust and confidence. Registrants must meet significant responsibilities and play an important role in protecting investors and maintaining the integrity of the capital markets. It is important for registrants and firms to appreciate that there will be significant penalties, including significant fines, supervision conditions and perhaps suspension, as a result of disciplinary action for engaging in improper sales practices such as unsuitable recommendations for client accounts.

¶ 52 Ensuring accurate NCAFs and the suitability of transactions are fundamental obligations of registrants. The obligation to ensure suitability on an ongoing basis applies even if the client acquiesces to the trades. The penalties are significant and, even in the unique facts of this case, are sufficient to alert registrants to take seriously their obligations regarding suitability and accurate NCAFs.

¶ 53 The Panel believes that the proposed penalties will deter the Respondent and others from engaging in similar conduct, which will improve compliance by industry participants and foster confidence in the industry and the regulatory process.

¶ 54 Since the Respondent's conduct related to core responsibilities of a registrant, the Panel agreed that the Respondent should be required to successfully re-write the examination based upon the Conduct and Practices Handbook, and be subject to a period of supervision, if the Respondent were to apply for registration in the future.

¶ 55 The Panel, after careful consideration, concluded that the Settlement Agreement terms:

a. were reasonable and within the appropriate range for sanctions, given the facts and circumstances set out in the Settlement Agreement, the submissions by IIROC counsel and the Respondent, and the authorities cited;

b. met the IIROC Sanction Guidelines; and

c. the amount of the fine, as a global monetary penalty, was appropriate in the circumstances, given the Respondent's demonstrated inability to pay a higher fine or costs.

¶ 56 For the reasons set out above, the Panel unanimously accepted the Settlement Agreement. In accordance with the terms of the Settlement Agreement, the Panel imposed the following penalties upon the Respondent, effective on the date of the Settlement Hearing, being August 24, 2016:

a. to pay IIROC a fine in the amount of $10,000;

b. be required to successfully re-write the exam based on the Conduct and Practices Handbook; and

c. for any future registration, be subject to a one year period of close supervision in addition to any supervision requirements imposed on new registrants.

Panel Ruling – Disclosure of Personal Information (Generally)

¶ 57 Pursuant to IIROC policies, the Panel ordered that any personal information, as defined in IIROC's Policy Regarding Use and Disclosure of Personal Information in IIROC Disciplinary Proceedings, shall be redacted from the Hearing Record prior to any part of the Hearing Record being made public, subject to any specific rulings made by the Panel during the course of the hearing.

Dated April 28, 2017

Linda J. Murray

Chair

Richard Carter

Member

Schedule A – Settlement Agreement

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff ("Staff") and Michael William Sawisky (the "Respondent") 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 the Respondent.

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 contravention of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:

   (a) From September 2012 through April 2015, he failed to learn and remain informed of the essential facts related to two clients contrary to IIROC Dealer Member Rule 1300.1 (a);

   (b) In November 2012, he failed to ensure that a security held in one client's account was suitable for that client contrary to IIROC Dealer member Rule 1300.1 (r); and

   (c) From September 2012 through April 2015, he failed to ensure that his recommendations to two clients were suitable for them contrary to IIROC Dealer Member Rule 1300.1 (q).

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

   (a) A fine in the amount of ten thousand dollars ($10,000);

   (b) A requirement to successfully rewrite the exam based on the Conduct and Practices Handbook; and

   (c) A requirement that any future registration shall be subject to a one year period of close supervision in addition to any supervision requirements imposed on new registrants.

7. The Respondent acknowledges that if not for his inability to pay, the agreed fine would have been higher and that an order to pay costs would also have been made.

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.

(i) Factual Background

Overview

9. These facts relate to the period of time from September 2012 through April 2015 when the Respondent was a Registered Representative ("RR") working at Wolverton Securities Ltd. ("Wolverton") in Kelowna, British Columbia. During that period, the Respondent failed to learn essential facts about two different clients and failed to ensure that securities held by and recommended to those clients were suitable for them.

The Respondent

10. The Respondent is 62 years old and was first registered in 1988. Since 1987, he has completed a number of industry courses and examinations including the following:

- Canadian Securities Course
- Registered Representative Exam
- Conduct and Practices Handbook Course
- Canadian Commodity Futures Examination
- Canadian Options Course
- Derivatives Fundamentals Course
- Options Licensing Course
- Options Supervisors Course
- Branch Managers Course
- Effective Management Seminar

11. From 1988 until 2016, the Respondent worked continuously at registered firms as an RR and was licensed to trade in options.

12. In 1992 the Respondent agreed to an Offer of Settlement with sanctions imposed by the Alberta Stock Exchange for conduct during the period from May 1988 to January 1990. The sanction included a $6,000 fine and two years of close supervision for failing to ensure that his recommendations to clients were appropriate for them.

13. In May 2000 the Respondent joined Union Securities Ltd. ("Union") where he worked as an options licensed RR at Union's office in Kelowna, British Columbia.

14. In September 2012 the Respondent's registration was transferred to Wolverton after Union announced that it would no longer carry on business as a Dealer Member firm.

15. From September 2012 through May 2016 the Respondent worked at the Kelowna office of Wolverton.

16. Since July 2015, Wolverton had the Respondent subject to internal close supervision after it received complaints from the clients who are referred to in this Settlement Agreement.

17. The Respondent has not worked at a Dealer Member firm since May 2016 after Wolverton announced

that it would no longer carry on business as a Dealer Member firm.

18. As contemplated by IIROC's Sanction Guidelines, the Respondent has provided Staff with evidence that demonstrates that he has a bona fide inability to pay a higher fine.

Client #1 (TR)

Knowing the Client

19. TR was born in 1961. During the relevant time period discussed below she was 52 or 53 years old.

20. From the age of 19, TR worked steadily for the same company for over 30 years. Throughout her career TR contributed a portion of her earnings to her company's defined benefit pension plan which she was eligible to start receiving as early as age 55. In addition to her company pension plan, TR made regular contributions to a Registered Retirement Savings Plan ("RRSP").

21. In 2010, TR was notified by her employer that her position was being eliminated and that she would be laid off at the end of 2011 at the age of 50. As compensation for her loss of employment the company paid a lump sum retirement allowance directly into her RRSP. Neither the layoff nor the payment of the retirement allowance affected her ability to collect her company pension starting as early as age 55.

22. On the recommendation of a friend, TR opened an RRSP account with the Respondent in September 2010 when he was an RR working at the Kelowna, British Columbia office of Union.

23. In September 2012 the Respondent's registration was transferred to Wolverton after Union announced that it would no longer carry on business as a Dealer Member firm. TR's account was transferred to Wolverton at the same time.

24. With an amount transferred from the RRSP she had opened at another Dealer Member firm and the amount from her retirement allowance, TR deposited approximately $110,000 to her account. Apart from her company pension, this amount plus her house in Burnaby, British Columbia which was worth approximately $450,000, was her entire net worth.

25. TR had limited investment knowledge and no experience with or knowledge of options such as covered call writing. She needed her invested money to ensure that she was financially secure between the ages of 50 (when she lost her long time employment) and 55 (when she could collect her pension).

26. On the New Client Application Form ("NCAF") for TR's account that was opened at Union, the Respondent recorded TR's investment objectives and risk tolerance as follows:

Investment Objectives		**Risk Tolerance**	
Long Term Growth:	45%	Moderate:	90%
Short Term Speculation:	45%	High:	10%
Venture Speculation:	10%		

27. On the NCAF for TR's account that was opened at Wolverton, the Respondent recorded TR's income as $48,000, even though she was no longer receiving this income, and her investment objectives and risk tolerance as follows:

Investment Objectives		**Risk Tolerance**	
Income:	45%	Medium:	90%
Growth:	45%	High:	10%
Speculative:	10%		

28. The recorded investment objectives and risk tolerance did not reflect TR's actual objectives and risk tolerance or her investment needs.

29. On the same NCAF the Respondent also indicated that the Wolverton account held only 25% of TR's

investable assets when the fact is it held 100% of her investable assets. This made it more difficult for Wolverton supervisors to detect suitability concerns.

Suitability of recommendations

30. Instead of relying on dividend paying low risk securities to create a diversified portfolio that would have addressed TR's investment needs, the Respondent recommended a portfolio and strategy that relied on writing covered call options on the shares of a small number of resource based companies in an attempt to generate transactional profits in the account. Most notable among these companies were Teck Resources Ltd. which represented approximately 20% of the book value of the account and Detour Gold Corporation which represented approximately 18%.

31. This portfolio and trading strategy was not suitable for TR.

32. All of the transactions in TR's account were recommended by the Respondent. TR relied entirely on the Respondent's advice and consented to all of the Respondent's recommendations even though she did not understand them.

33. In September 2012 when it was transferred to Wolverton, TR's account had a net equity of approximately $100,000.

34. Between September 2012 and April 14, 2014, when she sent a written complaint to Wolverton, TR's account received $17,947 in options premiums. This amount was offset by $16,606 in options expenses to cover positions that went against the client and $3,987 in commissions. On top of this net loss on options trading there was an unrealized capital loss of approximately $14,000 so that the total loss in TR's account during this period was $16,555.

35. During this same period the TSX Composite Index rose approximately 16% from 12,268 on September 7, 2012 to 14,257 on April 15, 2014. During this same period, many large dividend paying securities that would have been suitable for TR's investment needs outperformed the overall index. For example shares of Royal Bank increased 29% and paid an annual dividend of approximately 4% and shares of Telus Corporation increased 23% and paid an annual dividend of approximately 4%.

Compensation to client

36. Wolverton and TR reached an agreement on compensation for losses in her account and the Respondent paid a portion of this amount.

Client #2 (SM)

Knowing the Client

37. SM was born in 1952. During the relevant time period discussed below she was 61 or 62 years old. Her investment objective was to have a low risk diversified portfolio that would provide income during her retirement.

38. The Respondent became the RR responsible for a Locked-In-RRSP account that SM had at Union after she became dissatisfied with the service that another RR in the same office was providing her.

39. In September 2012 when the Respondent's registration was transferred to Wolverton, SM's account was transferred at the same time.

40. The NCAF dated January 28, 2013 which converted SM's Locked-In-RRSP to a Life Income Fund (LIF), indicated that SM's net worth consisted of $100,000 of investable assets and $250,000 of fixed assets. It recorded her annual income as $30,000 and her investment objectives and risk tolerance as follows:

Investment Objectives		**Risk Tolerance**	
Income:	45%	Medium:	90%

Growth:	45%	High:	10%
Speculative:	10%		

41. The recorded investment objectives and risk tolerance did not reflect SM's actual objectives and risk tolerance or her investment needs.

42. On the same NCAF, the Respondent indicated that the Wolverton account held only 25% of SM's investable assets when the fact is it held most of her investable assets. This made it more difficult for Wolverton supervisors to detect suitability concerns.

Armtech

43. When the Respondent took over as the RR responsible for SM's account the account had net value of approximately $90,000.

44. One of the holdings in SM's account that was recommended by her previous RR, was a $17,000 investment in unsecured notes of Armtech Holdings Limited ("Armtech") that were sold by private placement in September 2010 to mature in September 2017 (the "Notes"). The Notes were issued at par $100 to yield 8.875% with interest paid semi-annually in March and September.

45. In November 2012 SM asked the Respondent why the quoted price for the Notes had dropped from $75 to $71. The Respondent advised her that the price would "fluctuate based on supply & demand although at the end of the day it is expected that companies are able to pay off their debt as good borrowers." By so advising, the Respondent missed an opportunity to explain to SM that the Notes were not suitable for her because they carried significantly higher risk than investment grade bonds and that the 8.875% yield and the price decline was indicative of this.

46. In March 2015, Armtech announced that it would not make the semi-annual payment due on the Notes and that while the company had commenced a sale and investment process there could be no assurance that process would provide any recovery for holders of the Notes.

47. By the end of March 2015 the quoted price of the Notes was $11.

Concentration in Oil

48. Except for the purchase of the Armtech Notes, all of the transactions in SM's account were recommended by the Respondent and consented to by SM who relied on the Respondent's advice.

49. From September 2012, when SM's account was transferred to Wolverton, until April 2015, when SM sent a written complaint to Wolverton, her account was heavily concentrated in companies whose performance depended on the price of oil.

50. In February 2013, apart from the Armtech Notes, approximately 46% of the remaining portfolio was invested in the shares of Canadian Oil Sands Ltd. and Encana Corp.

51. This concentration on oil and gas related companies continued throughout the life of the account.

52. In August 2014, apart from the Armtech Notes, approximately 79% of the remaining portfolio was invested in the shares of Canadian Oil Sands Ltd., Baytex Energy Corp., and Crescent Point Energy and the other 21% was in two companies – Transalta Corp. and Veresen Inc. that were focused on power generation and energy infrastructure.

53. Such concentration in a small number of securities in the same sector that was dependent on the price of oil was not suitable for SM.

54. Between August 2014 and January 2015 the price of oil fell approximately 50%.

55. From September 2012 through April 2015, the value of SM's account declined by approximately $26,700 or approximately 30%.

Compensation to client

56. Wolverton and SM reached an agreement on compensation for losses in her account and the Respondent paid a portion of this amount.

No Margin Used

57. Neither the TR account nor the SM account used margin at any time during the relevant period.

IV. TERMS OF SETTLEMENT

58. 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.

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

60. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

61. 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.

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

63. 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.

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

65. 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.

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

67. 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 "Kelowna", British Columbia, this "4th" day of August, 2016.

"Jeanne Cowan"	"Mike Sawisky"
WITNESS	**RESPONDENT**

AGREED TO by Staff at Vancouver, British Columbia, this "22nd" day of "August", 2016.

"Wesley Chan"	"Paul Smith"
WITNESS	**PAUL SMITH** Senior Enforcement Counsel on behalf of Staff of the Investment Industry Regulatory Organization of Canada

ACCEPTED at Vancouver, British Columbia, this "24th"day of "August", 2016, by the following Hearing Panel:

Per: "Linda Murray", Chair

Per: "Richard Carter"

Per: _____

Schedule B – Personal Circumstances of Respondent's Inability to Pay

Panel Ruling – Disclosure of Respondent's Personal Information. Panel directs that the details of the Respondent's financial and personal circumstances, as summarized in Schedule B and referenced in the transcript of the settlement hearing, be redacted prior to making the hearing transcript and this written decision available to any third party.

The following is a summary of the factors referenced by IIROC counsel regarding the assessment of the Respondent's inability to pay a higher monetary penalty or costs.

The Respondent:

[redacted]

/ljm