# Re Brum

**IN THE MATTER OF:**

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

**and**

**Paul Brum**

2020 IIROC 39

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

Heard: October 7, 2020 in Vancouver, British Columbia (by videoconference)
Decision: October 7, 2020
Written Reasons for Decision: October 19, 2020

**Hearing Panel:**
Gary Snarch, Chair, Johannes van Koll and David Duquette
**Appearance:**
Stacey Robertson, Senior Enforcement Counsel
John Shields, Counsel for Paul Brum
Paul Brum (absent)

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# DECISION ON THE ACCEPTANCE OF SETTLEMENT AGREEMENT

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## Introduction

¶ 1 This settlement hearing was convened to consider the joint recommendation of the parties to accept a settlement agreement ("Settlement Agreement") entered into between Enforcement Staff of the Investment Industry Regulatory Organization of Canada ("IIROC") and the Respondent, Paul Brum, pursuant to Section 8428 of the Consolidated Enforcement, Examination and Approval Rules of IIROC ("Dealer Member Rules"). A copy of the Settlement Agreement is attached.

¶ 2 After considering the material filed and oral submissions of counsel, and after reviewing the proposed Settlement Agreement, the Panel advised counsel at the hearing that the Settlement Agreement was accepted. The Panel further advised counsel that written Reasons would be provided.

¶ 3 The Respondent admitted to the following contraventions of the Dealer Member Rules:

a) Between January 31 2011 and March 31 2017, the Respondent failed to use due diligence to ensure that investment recommendations were suitable for a client contrary to Dealer Member Rule 1300.1(q);

b) Between January 31 2011 and March 31 2106, the Respondent failed to use due diligence to ensure that investment recommendations were suitable for a client's account, contrary to Dealer Member Rule 1300.1 (q);

c) Between February 1, 2014 and March 31, 2017, the Respondent engaged in discretionary trading in a client's account, contrary to Dealer Member Rule 1300.4;

d) Between February 1, 2014 and March 31, 2016, the Respondent engaged in discretionary trading in a client's account, contrary to Dealer Member Rule 1300.4.

¶ 4 The Respondent agreed to the following sanctions:

a) A fine in the amount of $10,000;

b) A prohibition from registration approval in any capacity for 18 months;

c) A requirement that any future registration with IIROC be subject to a 12 month period of close supervision; and

d) If the Settlement Agreement was accepted by the Hearing Panel, the Respondent would pay the amount referred to above within 30 days of such acceptance unless otherwise agreed between IIROC Staff and the Respondent. The Respondent further agreed that if payment was not made within this timeframe, IIROC Staff was at liberty to bring proceedings under IIROC Rule 8200 against the Respondent

**Background Agreed Facts**

¶ 5 The agreed upon facts are set out in detail in the attached Settlement Agreement and in the written submissions provided by counsel for IIROC. They are summarized below with much of the following taken directly from these two documents:

a) The Respondent has been in the securities industry since 2000 and was employed at the Vancouver branch of BMO Nesbitt Burns as a Registered Representative from May 2003 until September 2017.

b) The Respondent was employed at the Langford B.C. branch of Raymond James Ltd. as a Registered Representative from September 2017 to September 2019

c) The Respondent resigned from Raymond James Ltd. in September 2019 and is not currently registered with IIROC.

d) The Client, SF, opened several accounts in April 2010 at BMO with the Respondent as her investment advisor. The accounts included a corporate account, TFSA, RRSP and a margin account. Over 90% of the average balance of all her accounts were in the RRSP and margin accounts.

e) SF's account documents for her margin and RRSP accounts allowed for 0-10% and 0-20% respectively in aggressive investments and strategies. The remainder of her accounts designated a balanced investment strategy with low to moderate risk.

f) The RRSP account documentation noted that SF may require income from her portfolio and preferred a low degree of price volatility. It also noted that SF had limited/average investment knowledge, an annual income of $150,000 and approximate net worth of over $13,000,000 in fixed and liquid assets for both her personal and corporate interests.

g) As of January 31, 2011 the market value of SF's RRSP account was approximately $1,440,000. As at March 31, 2017, after taking into account additions of approximately $1,580,000 and withdrawals of approximately $1,565,000, the market value of the RRSP account was approximately $1,150,000. This represented an approximate 20% loss on the initial investment. During this same period the S&P/TSX Composite Index had a return of 15.7%.

h) As of January 31, 2011, a market value of SF's margin account was approximately $645,000. As

at March 31, 2017, after taking into account additions of $530,000 and withdrawals of approximately $1,000,000, the market value of S F's margin account was approximately $180,000. This represented less than 1% gain on the initial investment. During the same period the S&P/TSX Composite Index had a return of 15.7%.

i) The turnover ratio for SF's RRSP account for the years 2012 to 2016 was 4.13, 4.5, 2.76, 4.45 and 5.21 respectively. The turnover ratio for SF's margin account for the years 2012 to 2014 was 4.77, 3.04 and 4.06 respectively. The Respondent earned $396,542 in fees from the excessive trading and from new issues in SF's RRSP and margin accounts during this period. The short-term and frequent trading with an emphasis on new issues, which was recommended by the Respondent, was not suitable for SF given her personal and financial circumstances.

j) From February 1, 2014 to March 31, 2017 there were 315 trades identified in SF's RRSP and margin accounts. For 281 of these trades, there was no evidence of the Respondent contacting SF to obtain instructions regarding which security would be purchased, the quantity and price of the security to be purchased or the timing of the purchase prior to executing these trades. None of SF's accounts were designated as managed accounts or approved for any discretionary trading in compliance with IIROC Rule 1300.4 by BMO Nesbitt Burns.

k) The clients SR and WR were husband-and-wife who opened a joint account at BMO Nesbitt Burns in 2004 with the Respondent as their investment advisor. The clients were an elderly retired couple. The only client account documents were from February 2014 which indicated a low to moderate risk tolerance and a balanced investment strategy with 0-20% aggressive investments and strategies. The account documents indicated an annual income of $8,378, liquid assets of $600,000, fixed assets of $780,000 and minimal to no investment knowledge.

l) As of January 31, 2011, the market value of SR and WR's account was approximately $290,000. After taking into account withdrawals of approximately $37,000, the market value of their account on March 31, 2016 was approximately $165,000. This represented an approximate loss of 35% on the initial investment. During the same period the S&P/TSX Composite Index had a return of 0.42%.

m) The turnover ratio for SR and WR's account in 2014 was 3.45 which was indicative of excessive trading. This was a fee-based account based on the market value of the account, accordingly, the clients were not charged commissions for individual transactions. During the period from January 31, 2011 to March 31, 2016, the account was charged fees of approximately $20,500. In addition to these account fees, the account was also charged fees related to new issues of over $36,000 during this period.

n) SR and WR's account did not contain sufficient low to medium income producing securities to meet their investment objectives and risk tolerance. In addition, the emphasis on new issues, all which was recommended by the Respondent, was not a suitable investment strategy given the personal and financial circumstances of the clients.

o) From February 1, 2014 to March 31, 2016, there were 34 trades identified in SR and WR's account. There was no evidence of the Respondent contacting SR or WR to obtain instructions regarding any of these trades. In particular, no instructions were obtained as to which security would be purchased, the quantity of the security to be purchased, the price of the security to be purchased or the timing of the purchase price prior to the Respondent executing the trades. The account was not designated as a managed account or approved for any discretionary trading in compliance with IIROC Rule 1300.4 by BMO Nesbitt Burns.

**Analysis**

¶ 6 Counsel for IIROC has provided the Panel with a number of cases regarding the proposed agreed upon sanctions as it relates to both suspension and fines.

¶ 7 We were referred to the following cases involving discretionary/unauthorized trading and excessive/unsuitable trading:

a) *Re Beck* 2012 IIROC 41;

b) *Re Brodie* 2013 IIROC 39;

c) *Re Brodie* 2013 IIROC 12;

d) *Re Li* 2016 IIROC 10;

e) *Re Hartner* 2018 IIROC 8*;*

f) *Re Renaud* 2016 IIROC 20; and

g) *Re Haller* 2017 IIROC 8.

¶ 8 IIROC Staff specifically referenced the case of *Re Hartner* as representing a factual matrix which most closely resembled the case before us. In that case, the respondent engaged in discretionary and excessive/unsuitable trading for four clients over a 17 month period. The IIROC panel accepted a settlement which included a fine of $40,000, an 18 month suspension and 12 months of close supervision.

¶ 9 It would appear that cases involving both discretionary trading and unsuitable trading with more than one client indicate suspensions of between 1 to 3 years.

¶ 10 In addition, we were referred to the Dealer Member Disciplinary Sanction Guidelines published by IIROC, which indicate that the following aggravating factors have relevance:

a) The conduct involved two separate client groups;

b) The conduct occurred over a period of many years;

c) The Respondent did receive financial benefit regarding the commissions; and

d) One of the clients was a retired couple.

¶ 11 The Sanction Guidelines also provide the following guidance for when a suspension should be considered:

a) There has been one or more serious contraventions;

b) There has been a pattern of misconduct;

c) The respondent has a prior disciplinary history;

d) The contravention involved fraudulent, wilful and/or reckless misconduct; or

e) The misconduct in question has caused some measure of harm to investors, the integrity of a marketplace or the securities industry as a whole.

¶ 12 As mitigating factors, the Panel has considered the fact that the Respondent has demonstrated to the satisfaction of IIROC Staff a *bona fide* inability to pay a higher fine than provided for in the proposed Settlement Agreement and that the expectation is that the fine will be paid. In that regard, the Respondent has agreed to pay the amount of $10,000 within 30 days of our accepting of the settlement (unless otherwise agreed between IIROC Staff and the Respondent). It is further agreed by the Respondent that if payment is not made within this timeframe, IIROC Staff is at liberty to bring proceedings under IIROC Rule 8200 against the Respondent.

¶ 13 The Respondent has also acknowledged that if not for his inability to pay, the agreed fine would have

been higher and that an order to pay cost would have also been made. Although the inability to pay is not an overriding and predominant factor in assessing financial penalties, it is to be taken into consideration. See *Re Sawisky* 2017 IIROC 28, *Re Newbury* 2019 IIROC 07 and Part I, Section 7 of the IIROC Sanction Guidelines.

¶ 14 As well, the Panel notes that the Respondent has no prior disciplinary history with IIROC and has contributed $300,000 towards a total settlement of over $560,000 as between BMO and SF.

¶ 15 It is well established that the Panel's role is not to substitute what we may consider appropriate penalties but to determine whether the proposed sanctions are reasonable in all the circumstances. Panels are not privy to the give and take that is necessary in any settlement and we acknowledge the benefits that settlements have to offer. This is especially the case when dealing, as we are here, with very experienced counsel.

¶ 16 Having said that, the Panel is of the view that but for the Respondent's inability to pay a larger fine or costs and the fact that the Respondent has contributed $300,000 to a settlement between BMO and SF, we would expect the fine to have been higher.

¶ 17 In all of the circumstances, the Panel is of the unanimous opinion that the penalties fall within the reasonable range of appropriateness in dealing with both personal and general deterrence and accepts the proposed Settlement Agreement.

Dated at Vancouver, BC, this 19 day of October 2020.

Gary Snarch

David Duquette

Johannes van Koll

**SETTLEMENT AGREEMENT**

**PART I – INTRODUCTION**

1. The Investment Industry Regulatory Organization of Canada ("IIROC") will issue a Notice of Application to announce that it will hold a settlement hearing to consider whether, pursuant to Section 8215 of the Consolidated Enforcement, Examination and Approval Rules of IIROC, a hearing panel ("Hearing Panel") should accept the settlement agreement ("Settlement Agreement") entered into between the staff of IIROC ("Staff") and Paul Brum ("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. The Respondent made recommendations regarding two clients which involved an over emphasis on new issues and short term trading which were unsuitable for those clients. The Respondent also engaged in discretionary trading in the two clients' accounts contrary to Dealer Member Rule 1300.4.

**Registration History**

5. The Respondent has been in the securities industry since 2000 and was employed at the Vancouver branch of BMO Nesbit Burns from May 2003 until September 2017.

6. The Respondent was employed at the Langford, B.C. branch of Raymond James Ltd. from September 2017 to September 2019.

7. The Respondent resigned from Raymond James in September 2019 and is not currently registered with IIROC.

**Client SF**

8. Client SF opened several accounts in April 2010 with BMO with the Respondent as her investment advisor. The accounts included a corporate account, TFSA, RRSP and a margin account. Over 90% of the average balance of all her accounts were in the RRSP and margin accounts and these were the accounts that IIROC focused on in its investigation for the period from January 31, 2011 to March 31, 2017 (the "Review Period")

9. SF's account documents for her RRSP account indicated a low to moderate risk tolerance and a balanced investment strategy with only 0-20% in aggressive investments and strategies. The account documents for SF's margin account indicated a low tolerance for risk and an income investment strategy with 0-10% in aggressive investments and strategies. This account noted that she may require income from her portfolio and preferred a low degree of price volatility. The account documents indicated that SF had limited/average investment knowledge and had annual income of $150,000 and approximate net worth of over $13 million in both fixed and liquid assets for both her personal and corporate interests.

10. As of January 31, 2011, the market value of SF's RRSP account was approximately $1,440,000. After taking into account additions of approximately $1,580,000 and withdrawals of approximately $1,565,000 from the RRSP account, the market value of SF's RRSP account on March 31, 2017 was approximately $1,150,000 which represents an approximate 20% loss on the initial investment during the Review Period while the S&P TSX Composite Index had a return of 15.7% during the same period.

11. As of January 31, 2011, the market value of SF's margin account was approximately $645,000. After taking into account additions of $530,000 and withdrawals of approximately $1,000,000 from the margin account, the market value of SF's margin account on March 31, 2017 was approximately $180,000 which represents a less than 1% gain on the initial investment during the Review Period while the S&P TSX Composite Index had a return of 15.7% during the same period.

12. The turnover ratio for SF's RRSP account for the years 2012 to 2016 was 4.13, 4.5, 2.76, 4.45 and 5.21 respectively. The turnover ratio for SF's margin account for the years 2012 to 2014 was 4.77, 3.04 and 4.06 respectively. These ratios are indicative of excessive trading in the RRSP account. The Respondent earned $396,542 in fees from the excessive trading and fees from new issues in SF's RRSP and margin accounts during the Review Period.

13. The short term and frequent trading along with the emphasis on new issues, which was recommended by the Respondent, was not suitable for SF given her personal and financial circumstances.

14. From February 1, 2014 to March 31, 2017, there were 315 trades identified in SF's RRSP and margin accounts. There were 281 trades for which there was no evidence of the Respondent contacting SF to obtain instructions regarding which security would be purchased, the quantity of the security to be purchased, the price of the security to be purchased or the timing of the purchase prior to executing those trades in SF's accounts. None of SF's accounts were designated as managed accounts or approved for any discretionary trading in compliance with IIROC Rule 1300.4 by BMO Nesbitt Burns.

**Clients SR and WR**

15. Clients SR and WR were husband and wife who opened a joint account at BMO Nesbitt Burns in 2004 with the Respondent as their investment advisor. SR and WR were an elderly retired couple and the only client account documents were from February 2014 which indicated a low to moderate risk tolerance and a balanced investment strategy with 0-20% aggressive investments and strategies. The account documents indicated an annual income of $8,378, liquid assets of $600,000, fixed assets of $780,000 and minimal to no investment knowledge.

16. As of January 31, 2011, the market value of SR and WR's account was approximately $290,000. After taking into account withdrawals of approximately $37,000 from the account, the market value of their account on March 31, 2016 was approximately $165,000 which represents an approximate 35% loss on the initial investment during the period from January 31, 2011 to March 31, 2016 while the S&P TSX Composite Index had a return of 0.42% during the same period.

17. The turnover ratio for SR and WR's account in 2014 was 3.45 which is indicative of excessive trading in the account. SR and WR's account was a fee based account based on the market value of the account and they were not charged commissions for individual transactions. During the period from January 31, 2011 to March 31, 2016, the account of SR and WR was charged fees based on the market value of the account of approximately $20,500. In addition to these account fees, the account was also charged fees related to new issues of over $36,000 during the same period.

18. SR and WR's account did not contain sufficient low to medium income producing securities to meet their investment objectives and risk tolerance. In addition, the emphasis on new issues, which was recommended by the Respondent, was not a suitable investment strategy for SR and WR given their personal and financial circumstances.

19. From February 1, 2014 to March 31, 2016, there were 34 trades identified in SR and WR's account. There was no evidence of the Respondent contacting SR or WR to obtain instructions regarding which security would be purchased, the quantity of the security to be purchased, the price of the security to be purchased or the timing of the purchase prior to the Respondent executing those trades in SR and WR's account. SR and WR's account was not designated as a managed account or approved for any discretionary trading in compliance with IIROC Rule 1300.4 by BMO Nesbitt Burns.

**Other Relevant Factors**

20. The Respondent contributed $300,000 towards a total settlement of over $560,000 between BMO and SF.

21. The Respondent has no prior disciplinary history with IIROC.

22. 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.

**PART IV – CONTRAVENTIONS**

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

    a) Between January 31, 2011 and March 31, 2017, the Respondent failed to use due diligence to ensure that recommendations were suitable for a client, contrary to Dealer Member Rule 1300.1(q);

    b) Between January 31, 2011 and March 31, 2016, the Respondent failed to use due diligence to ensure that recommendations were suitable for a clients' account, contrary to Dealer Member Rule 1300.1(q);

    c) Between February 1, 2014 and March 31, 2017, the Respondent engaged in discretionary trading in

a client's account, contrary to Dealer Member Rule 1300.4.

d) Between February 1, 2014 and March 31, 2016, the Respondent engaged in discretionary trading in a client's account, contrary to Dealer Member Rule 1300.4.

**PART V – TERMS OF SETTLEMENT**

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

a) Fine of $10,000;

b) Prohibition from approval in any capacity for 18 months;

c) Period of 12 months of close supervision upon any registration with IIROC.

25. 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**

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

27. 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**

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

29. 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.

30. 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.

31. 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.

32. 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.

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

34. 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.

35. If this Settlement Agreement is accepted, the Respondent agrees that neither [he/she/it] nor anyone on

[his/her/its] behalf, will make a public statement inconsistent with this Settlement Agreement.

36. 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**

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

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

**DATED** this 30th day of September, 2020.

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| _____ | "Paul Brum" _____ |
| Witness | Paul Brum |
| | (Respondent) |
| _____ | <<Stacy Robertson>> _____ |
| Witness | Stacy Robertson |
| | Enforcement Counsel on behalf of Enforcement Staff of the Investment Industry Regulatory Organization of Canada |

The Settlement Agreement is hereby accepted this 7th day of October, 2020 by the following Hearing Panel:

Per: "Gary Snarch" _____

Panel Chair

Per: "David Duquette" _____

Panel Member

Per: "John van Koll" _____

Panel Member