

# Re Kotar

IN THE MATTER OF:

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

**and**

**Hugo Michel Nicolas Kotar**

2015 IIROC 07

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

Heard: January 21, 2015 in Vancouver, British Columbia  
Decision: January 21, 2015  
Written Decision: February 4, 2015

**Hearing Panel:**

Wade Nesmith (Chair), Chris Lay and Mark Redcliffe

**Appearances:**

Stacy Robertson, Enforcement Counsel

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## DECISION ON THE ACCEPTANCE OF SETTLEMENT AGREEMENT

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¶ 1 This matter came before the Panel by way of a Settlement Hearing based on a Settlement Agreement with a joint recommendation on penalty. A copy of the Settlement Agreement is appended to this decision. The Respondent was unrepresented and did not appear at the hearing. We were advised by Staff Counsel that the Respondent had indicated that he would probably attend, however, after a delay of 15 minutes the Respondent had still not appeared and the proceedings continued in his absence. We heard representations from Staff Counsel and following those representations and a short recess, we gave our decision to accept the Settlement Agreement and indicated that our reasons would follow. These are the reasons.

¶ 2 The Settlement Agreement sets out the salient facts in this matter. The admitted conduct forms the basis of a contravention of IIROC Dealer Member Rule 29.1, also known as the rule against conduct unbecoming an industry member. In summary, the parties agreed that the Respondent, while employed as a Registered Representative in the Vancouver office of Canaccord Genuity Corp. (“Canaccord”), during a period between 2007 and 2011, maintained a brokerage account not disclosed to his employer (and thereby contrary to Canaccord’s internal policies) at a brokerage firm based in Panama. That account held shares of a single company that were ultimately sold at a loss. The matter came to light during a British Columbia Securities Commission (the “Commission”) investigation at a time when the Respondent had transferred to PI Financial Corp. (“PI Financial”). The Respondent initially denied his involvement with the account but when presented with evidence of its existence, he cooperated with the Commission. Three days later (December 2, 2013) the Respondent was terminated by PI Financial and he has not worked in the industry since then. The Respondent was originally registered in 1997.

¶ 3 The Respondent and IIROC agreed to a penalty including a fine of \$20,000, a successful rewriting of the Conduct and Practices Handbook course prior to any re-registration with IIROC, and the payment of costs of \$2,500.

¶ 4 A panel’s role in a settlement hearing is well established both by the Dealer Member Rules (to accept or reject a settlement) and by an abundance of precedent that states clearly that the panel is not to substitute its discretion but, rather, is to accept a proposed settlement unless it determines that the proposed settlement is clearly outside an acceptable range of appropriateness based on a review of the facts and precedents.

¶ 5 Member firms put in place internal procedures that are designed, in part, to enable them to discharge their duties to securities markets in general. Non-disclosure of brokerage accounts held at other brokerage firms impairs a firm’s ability to monitor “pro trading” and restricted lists, among other things, and thus endangers the integrity of the capital markets. In short, these rules are important and even seemingly minor infractions must be dealt with seriously if they amount to conduct unbecoming.

¶ 6 IROC counsel referred us to *Re Kim* [2007] I.D.A.C.D. No 54. In that case the panel imposed a penalty of \$25,000 and costs of \$15,000 on a respondent who had maintained 2 separate and undisclosed brokerage accounts and in addition, acted as a director of a company and participated in a private placement without authorization from his employer. He also used a false occupation and residence when setting up the undisclosed accounts. We find that the facts of *Re Kim* are similar, if a bit more serious, than those before us and it provides a useful precedent in determining an appropriate penalty.

¶ 7 For the reasons stated above we accept the Settlement Agreement.

Dated at Vancouver, British Columbia this 4th day of February, 2015.

Wade Nesmith, Chair

Chris Lay

Mark Redcliffe

## SETTLEMENT AGREEMENT

### I. INTRODUCTION

1. IROC Enforcement Staff (“Staff”) and the Respondent, Hugo Michel Nicolas Kotar, consent and agree to the settlement of this matter by way of this agreement (the “Settlement Agreement”).
2. The Enforcement Department of IROC has conducted an investigation (“the Investigation”) in the conduct of Hugo Michel Nicolas Kotar.
3. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IROC Transitional Rule No.1, Schedule C.1, Part C (the “Hearing Panel”).

### II. JOINT SETTLEMENT RECOMMENDATION

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

Between May 2007 and July 2011, the Respondent maintained a brokerage account outside of his firm without the knowledge and consent of his employer contrary to Dealer Member Rule 29.1.

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

- a) The Respondent must pay a fine in the amount of \$20,000; and
- b) The Respondent must re-write the Conduct and Practices Handbook course prior to any re-registration with IROC.

7. The Respondent agrees to pay costs to IIROC in the sum of \$2,500.

### **III. STATEMENT OF FACTS**

#### **(i) Acknowledgment**

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

#### **(ii) Factual Background**

#### **Overview**

9. This settlement agreement relates to the period of time from May 2007 to July 2011 while the Respondent was a Registered Representative at the Vancouver office of Canaccord Genuity Corp. (“Canaccord”).

10. The Respondent maintained a brokerage account in Panama during the relevant time without the knowledge and consent of his employer. The undisclosed account only had shares in one company which were sold at a loss when the account was liquidated and closed in July 2011.

11. The Respondent did not cooperate fully with the initial investigation and attempted to conceal the existence of the foreign account.

#### **Registration History**

12. The Respondent has been registered in the industry since December 1997 initially with Scotia Capital Inc. He was registered with Canaccord from May 2004 to June 2013 when he left to join PI Financial Corp. (“PI Financial”).

13. Kotar was a Registered Representative with PI Financial from June 2013 to December 2013 when his employment was terminated due to the matters arising in this settlement agreement.

14. The Respondent has not been registered with IIROC since December 2013.

15. IIROC imposed a term and condition of close supervision on the Respondent effective July 23, 2013 as part of his transfer from Canaccord to PI Financial. This relates to two financial disclosures for amounts owing to the Canada Revenue Agency and one financial disclosure for amounts owing under the Family Maintenance Enforcement Program. As part of approving of Mr. Kotar’s transfer and re-registration, IIROC Registration imposed a term of close supervision until all of the financial obligations noted above have been satisfied.

#### **Failure to Disclose Account**

16. The Respondent opened an investment account at Verdmont Capital in Panama in the name of Deux Trois Quatre Investment Ltd. Inc. (the “Verdmont Account”).

17. The Verdmont Account was opened on or about May 30, 2007.

18. The Respondent was the only beneficial owner of the Verdmont Account and controlled the activity in the Verdmont Account.

19. The Respondent provided his personal information and signature on the Know Your Client forms provided by Verdmont Capital as part of the account opening procedure.

20. The Respondent was employed with Canaccord when he opened the Verdmont Account.

21. The Respondent did not notify or seek the approval of Canaccord to open the Verdmont Account.

22. Canaccord’s written Policies and Procedures manual specifically require that all accounts outside of Canaccord must be disclosed to Canaccord and requires Canaccord’s approval to hold any outside accounts.

23. The Verdmont Account had limited activity. On or about March 29, 2011 shares in IOU.Q were

deposited into the account. The Respondent had received these shares through a private placement in 2007.

24. The Respondent sold the shares of IOU.Q in the Verdmont Account on or about May 30, 2011 for a loss. The proceeds of the sale were transferred out of the Verdmont Account on or about June 2, 2011. Other than a couple of small clearing transactions, there was no other activity in the account after July 2011.
25. The British Columbia Securities Commission was investigating foreign accounts generally and set up an informal meeting with the Respondent and the Chief Compliance Officer at PI Financial on November 29, 2013 (the "Interview").
26. During the Interview the Respondent initially denied ever having an interest or control over any foreign accounts. When the Respondent was provided the account documentation from Verdmont Capital in relation to the Verdmont Account the Respondent said it might be his account.
27. On December 2, 2013, PI Financial terminated the Respondent for misleading PI compliance staff and British Columbia Securities Commission staff during the Interview regarding the existence and ownership of the Verdmont Account.

#### **IV. TERMS OF SETTLEMENT**

28. 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.
29. The Settlement Agreement is subject to acceptance by the Hearing Panel.
30. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
31. 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.
32. 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.
33. 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.
34. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
35. 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.
36. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
37. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

**AGREED TO** by the Respondent at the City of Vancouver in the Province of British Columbia, this 24th day of November, 2014.

"Wes Chan"

**Witness**

"Hugo Michel Nicolas Kotar"

**Respondent**

**AGREED TO** by Staff at the City of Calgary in the Province of Alberta, this 5 day of January, 2015.

“Wes Chan”

“Stacy Robertson”

**Witness**

**Stacy Robertson**

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

**ACCEPTED** at the City of Vancouver in the Province of British Columbia, this 21st day of January, 2015, by the following Hearing Panel:

Per: “Wade Nesmith”

**Panel Chair**

Per: “Mark Redcliffe”

Panel Member

Per: “Chris Lay”

Panel Member

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