

# Re Kochan

IN THE MATTER OF:

**The By-Laws of the Investment Dealers Association of Canada**

**and**

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

**and**

**Donald Alexander Kochan**

2013 IIROC 54

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

Heard: August 13, 2013, Toronto  
Decision rendered: August 13, 2013

**Hearing Panel:**

Julia Dublin, Chair, Brigitte Geisler and Peter Bailey

**Appearances:**

Ms. Natalija Popovic, Counsel for IIROC

Mr. Glen Jennings Counsel for the Respondent, Donald Alexander Kochan

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## REASONS FOR DECISION ON SETTLEMENT AGREEMENT

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### SUMMARY

¶ 1 At a hearing on August 13, 2013 Staff of the Investment Industry Regulatory Organization of Canada (“IIROC”) and the Respondent, Donald Alexander Kochan (“the Respondent”) jointly recommended that the Hearing Panel approve the attached Settlement Agreement. The settlement was in accordance with IIROC Dealer Member Rules 20.35 to 20.40, inclusive, and Rule 15 of the IIROC Dealer Member Rules of Practice and Procedure.

¶ 2 The Respondent admitted to the following contraventions of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:

- i. Between March 2004 and December 2010 the Respondent failed to use due diligence to ensure that the acceptance of any order from a customer was suitable for such customer based on factors including the customer’s financial situation, investment knowledge, investment objectives and risk tolerance, contrary to IDA Regulation 1300.1(a) and IIROC Rule 1300.1(p).
- ii. Between January 2007 and December 2010, the Respondent engaged in unauthorized trading for three clients, and thereby engaged in conduct unbecoming contrary to IDA By-law 29.1 and IIROC Rule 29.1.

¶ 3 Staff and the Respondent agreed to the following terms of settlement:

- i. a fine in the amount of \$50,000; and
- ii. disgorgement of commissions of \$13,000.

¶ 4 The Respondent agreed to pay IIROC the sum of \$2,000 in total to reflect the costs that Staff incurred in connection with this matter.

¶ 5 At the conclusion of the hearing, having heard from counsel for both parties, the Panel accepted the Settlement Agreement for the reasons stated below.

**FACTS**

¶ 6 Staff and the Respondent agreed to the facts contained in the Settlement Agreement and their agreement is based upon those specific facts.

**A. Overview**

¶ 7 The Respondent recommended and purchased high risk securities over a period of time that were unsuitable for two of his clients given their financial situation, investment knowledge, investment objectives and risk tolerance.

¶ 8 Both of these clients had limited investment knowledge or experience were vulnerable and of retirement age. Certain of the purchases resulted in high risk holdings in these clients’ accounts when there was no allocation for high risk, or the holdings exceeded the stated percentage for high risk as shown on the clients’ respective Know Your Client [KYC] documentation.

¶ 9 The Respondent therefore exposed these clients to greater risk than was suitable for them.

¶ 10 As such, the Respondent failed to fulfill the most basic of responsibilities towards these clients.

¶ 11 In addition, the Respondent executed numerous trades for three clients without authorization from these clients and without their knowledge and consent. These clients only learned of the trades after the fact.

¶ 12 By doing so, the Respondent thereby undermined the relationship of trust and confidence that must exist between a registrant and his or her client.

**B. Registration History**

¶ 13 The Respondent has been a registrant of IIROC, and its predecessor, since 1991. At all material times, the Respondent was employed as a Registered Representative with Dundee Securities Corporation [Dundee] in the Cambridge, Ontario branch. Since 2011 the Respondent has been registered with National Bank Financial Inc.

**C. Unsuitable Investments**

**i) Client PP**

¶ 14 The Respondent’s client, PP, was born in 1945. PP was employed in administrative roles for over 20 years until retiring in the spring of 2005 at the age of 60.

¶ 15 In 2003, PP opened three accounts with the Respondent: a LIRA [LIRA] account and a Canadian Cash account [Cash] in July 2003; and an RSP [RSP] account in September 2003. Prior to opening these accounts PP’s only investment experience had been with GICs.

**a) Purchase of High Risk Securities Not Suitable for PP**

¶ 16 Between March 2004 and December 2005 the Respondent made several purchases of high risk securities on a solicited basis in PP’s accounts when there was no allocation for high risk on PP’s KYCs. As such, these purchases were not suitable for PP.

¶ 17 The high risk purchases were as follows:

Purchase Date	Account	Security
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March 5/2004	LIRA	Calpine CDA 8.75% 15OC07
August 30/2004	RSP	Calpine CDA 8.75% 15OC07
October 12/2005	RSP	Petroworth Resources Inc. [Petroworth]
November 21/2005	LIRA	SRAI Capital 8% 31OC10 [SRAI]
November 21/2005	Cash	Sunstone 05 Limited Partnership [Sunstone 05]
December 23/2005	Cash	Skypower Wind Energy – Flow Through LP

¶ 18 These securities were characterized as high risk in their respective prospectuses and / or by established rating agency evaluations. In addition, in the case of the Petroworth, SRAI and Sunstone 05 purchases, these investments were also identified as high risk securities by Dundee’s internal risk rating system. Accordingly, these investments were not suitable for PP.

¶ 19 As at month end in April 2007, the value of PP’s portfolio inclusive of all accounts with the Respondent was approximately \$87,000. In or about mid-May 2007 PP deposited the proceeds from the sale of her principle residence, of approximately \$352,000, into the Cash account. Accordingly, the value of her portfolio with the Respondent increased to approximately \$433,000.

¶ 20 In 2006, and again in 2008, PP’s KYC information was updated by the Respondent to reflect an increase in speculative trading (up to 40% in the LIRA and 20% in the RSP accounts in 2008) and increasing the risk tolerance to 60% in all accounts in 2008 (the LIRA account actually increased in risk tolerance to 92% in 2006).

¶ 21 The changes to the KYC information in relation to the increases to the percentages of speculative trading or aggressive growth, and the increases to a higher level of risk tolerance, suggested that PP had a greater tolerance for higher risk investments.

¶ 22 However, there is no evidence to justify these changes. In fact PP did not want or have a higher tolerance for risk in 2006 or 2008 and was subsequently shocked to see that a 92% high risk tolerance was indicated on the 2006 LIRA KYC.

**b) Purchase of Flow-Through Investment Not Suitable for PP**

¶ 23 In or about October 2008 The Respondent purchased units of a security called Qwest Energy 2008-II Flow Through Limited Partnership [Qwest Energy] for PP in the Cash account for a value of approximately \$7500.

¶ 24 The Respondent did so, in part, as an investment strategy to lower the amount of taxes PP would have to pay in a given year.

¶ 25 The Qwest Energy prospectus provides the following information:

- The investment is a tax-assisted investment in a diversified portfolio of Flow- Through Shares
- The investments held were predominately of resource issuers engaged in the oil and gas, and mining industry
- The tax benefits from investing in the product were greatest for corporations and individual investors whose income was subject to the highest marginal income tax rate
- The flow through investment was a “speculative” product

¶ 26 Many of the issuers associated with the flow through shares were junior oil and gas companies that had no earnings history and were listed on the venture exchanges

¶ 27 PP indicated to IIROC that her income did not increase from 2003-2008 and that although she trusted

and relied upon the Respondent with respect to the completion of the KYCs, the stated income of \$35,000 on the updated KYCs was not accurate.

¶ 28 The Respondent completed PP's tax returns as an added client service, for which he did not charge any additional fee. However, given PP's relatively modest income level and the correspondingly low rate at which PP would be taxed, there would be little in the way of any available tax savings to be had with the Qwest Energy investment. With limited, if any, tax savings, the added risk that this security carried made it an unsuitable investment for PP.

¶ 29 Several transactions in PP's accounts were also identified as being out of compliance by Dundee. For example, in January 2010 alone, at least seven transactions were identified in Dundee Out of Compliance reports. These reports noted that the actual high risk holdings exceed the target percentage amounts by between 24%-31% in PP's Cash account.

¶ 30 From 2007 to 2010 the value of PP's three accounts with the Respondent sustained a total loss in value of approximately \$35,000.

## ii) Client KS

¶ 31 The Respondent's client KS was born in 1949. In 2004, KS worked as a secretary in her spouse WS's contracting construction company which primarily built rural structures. WS also the Respondent's client and was semi-retired in 2004.

¶ 32 In October 2004 the Respondent opened two accounts for KS, namely a Spousal RSP [SP-RSP] and an individual RSP [I-RSP]. Prior to investing funds with the Respondent, KS' investment experience involved mostly mutual funds which had been held for approximately six years at that time.

¶ 33 The KYC in 2004 indicated that KS wanted 100% medium risk investments in her accounts, and no high risk securities at all. The Respondent attempted to have the KYCs for the two accounts updated in 2006 to reflect a 25% high risk allocation, however KS declined to sign off on the new KYCs.

### a) Purchase of High Risk Securities Not Suitable for KS

¶ 34 KS did not want any high risk securities in her accounts at any time. Nevertheless, between 2004 and 2006 the Respondent purchased high risk securities for her on a solicited basis. As such, these purchases were not suitable for KS.

¶ 35 The high risk securities purchased were as follows:

Date	Security	Risk Rating at Purchase
November 12, 2004	Calpine CDA 8.75%	High
April 26, 2005	Calpine CDA 8.75%	High
October 6, 2005	Petroworth Resources Inc.	High
October 21, 2005	SRAI Capital 8%	High
October 31, 2005	SRAI Capital 8%	High
December 20, 2005	Equinox Minerals Ltd.	High
March 2006	INV Metals INTL Nickel Ventures Corp	High

¶ 36 These securities were characterized as high risk in their respective prospectuses and/or by established rating agency evaluations. Accordingly, these investments were not suitable for KS.

¶ 37 Several transactions in KS's accounts were also identified as being out of compliance by Dundee. The

following inquiries and or Out of Compliance Reports were generated by Dundee:

- January 2009 --a head office inquiry noted that KS' I-RSP account had holdings of 77% high risk securities which were out of compliance with the client's stated high risk tolerance of 25% as noted on the most recent KYC on file at head office;
- February 2009—a head office inquiry noted that KS' SP RSP account had holdings of 73% high risk securities which were out of compliance with the client's stated high risk tolerance of 25% for the account;
- Between October 2007 and July 2009, at least seven Out of Compliance reports were generated by virtue of actual high risk holdings exceeding the target percentage amounts by between 17%-60% in KS' SP-RSP and I-RSP accounts.

#### **D. Unauthorised Trading**

##### **i) Client PP**

¶ 38 The Respondent executed several trades in PP's account without client authorization and without her knowledge or consent.

¶ 39 In particular, PP was on vacation from January 6–13, 2008 and could not be reached during this time. On or about January 11, 2008 the Respondent executed two transactions in the Cash account; namely a purchase of Interrent REIT SR A at a cost of approximately \$20,000; and a sale of Temple REIT for proceeds of approximately \$15,900.

¶ 40 Further, between August 22, 2009 to October 11, 2009 PP was again on vacation and could not be reached. During this time period the Respondent executed five sale transactions and one purchase without PP's authorization.

¶ 41 PP did not authorize any of these transactions and was not aware that they had been completed until after the fact upon receipt of confirmation notices and or looking at the relevant monthly statements. PP did know generally that the Respondent was placing orders in her account but was not aware that he needed her authorization in advance of each trade to do so.

¶ 42 At an IIROC interview, the Respondent admitted that he did not obtain PP's authorization to place these trades for this client's accounts

##### **ii) Clients KS and WS**

¶ 43 The Respondent executed several trades in the accounts of his clients KS and WS without client authorization, and without their knowledge or consent. Due to the fact that KS had certain health issues, WS was the primary contact for all account activity for both of them; however the Respondent at no time obtained formal trading authority for any of the accounts of these clients.

¶ 44 In particular, between January 2007 and December 2010 on at least ten occasions the Respondent executed trades that were not authorized by these clients. In each of these cases, the Respondent communicated with WS only after the completion of the trades.

¶ 45 KS and WS did not authorize these trades and were not aware that they had been completed until after the fact upon receipt of confirmation notices and or looking at the relevant monthly statements. WS was not aware that it was the normal practice for investment advisors to call clients prior to execution of each trade as he understood that as his advisor it was the Respondent's profession to make money for the client.

¶ 46 At an IIROC interview, the Respondent admitted that he did not obtain KS and/or WS's authorization to place these trades for these clients' accounts.

##### **No Additional Clients**

¶ 47 During the course of the Investigation, IIROC conducted a wider review of approximately 17 other client accounts of the Respondent and found no additional issues or concerns. Accordingly, the regulatory

issues in relation to the Respondent are contained to the three clients dealt with herein.

### **Mitigating Factors**

- ¶ 48 The Respondent has been a registrant in the securities industry for over 20 years and has not been the subject of an IIROC disciplinary proceeding.
- ¶ 49 The Respondent personally compensated client PP in the amount of \$35,000.
- ¶ 50 There was no evidence of dishonesty or deceit by the Respondent.
- ¶ 51 The Respondent was co-operative and forthcoming throughout the Investigation.
- ¶ 52 The Respondent was candid with IIROC and admitted his responsibility for the contraventions.
- ¶ 53 The Respondent has been under strict supervision at his member firm for 21 months without incident.

### **DISCUSSION AND CONCLUSION**

¶ 54 The Panel considered staff's submissions, various precedents regarding unsuitable trades and failure to obtain trading authorization, and the considerations to be brought to bear in approving a settlement agreement. The Panel also considered IIROC staff's guidelines as to suitable penalties for regulatory infractions. While none of these are binding on the Panel, the Panel gave serious consideration to the agreement that had been reached between the parties and concluded that the agreed sanctions were reasonable given the conduct of the respondent, the Respondent's experience of a 21-month period of strict supervision, the mitigating factors including the fact that client PP had been compensated and that there was no evidence of dishonesty or deceit in the Respondent's relations with clients. The Panel also considered the types of sanctions imposed in other cases of unsuitable trades or unauthorized trades.

¶ 55 Accordingly, the Panel accepted the settlement agreement on the terms agreed to between the parties.

DATED the 4<sup>th</sup> day of November, 2013.

Julia Dublin, Chair

Brigitte Geisler, Member

Peter Bailey, Member

## **SETTLEMENT AGREEMENT**

### **INTRODUCTION**

1. Enforcement staff of the Investment Industry Regulatory Organization of Canada (IIROC) and the Respondent, (Kochan or the Respondent) consent and agree to the settlement of this matter by way of this agreement (the Settlement Agreement).
2. IIROC's Enforcement Department has conducted an investigation (the Investigation) into Kochan's conduct.
3. The Investigation discloses matters for which Kochan may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C (the Hearing Panel).

### **JOINT SETTLEMENT RECOMMENDATION**

4. IIROC staff (Staff), and Kochan jointly recommend that the Hearing Panel accept this Settlement Agreement.
5. Kochan admits to the following contraventions of IIROC Dealer Member Rules, Guidelines, Regulations or Policies and the By-Laws and Regulations of the Investment Dealers Association of Canada:

- i. Between March 2004 and December 2010 the Respondent failed to use due diligence to ensure that the acceptance of any order from a customer was suitable for such customer based on factors including the customer's financial situation, investment knowledge, investment objectives and risk tolerance, contrary to IDA Regulation 1300.1(a) and IIROC Rule 1300.1(p).
  - ii. Between January 2007 and December 2010, the Respondent engaged in unauthorized trading for three clients, and thereby engaged in conduct unbecoming contrary to IDA By-law 29.1 and IIROC Rule 29.1.
6. Staff and Kochan agree to the following terms of settlement:
  - (a) a fine in the amount of \$50,000; and
  - (b) disgorgement of commissions of \$13,000.
7. The Respondent shall also pay IIROC the sum of \$2,500 in total to reflect the costs that Staff incurred in connection with this matter.

## **STATEMENT OF FACTS**

### **Acknowledgement**

8. Staff and Kochan agree with the facts set out in this section and acknowledge that the terms of the settlement contained in this Settlement Agreement are based on those specific facts.

### **A. Overview**

9. The Respondent recommended and purchased high risk securities over a period of time that were unsuitable for two of his clients given their financial situation, investment knowledge, investment objectives and risk tolerance.
10. Both of these clients had limited investment knowledge or experience were vulnerable and of retirement age. Certain of the purchases resulted in high risk holdings in these clients' accounts when there was no allocation for high risk, or the holdings exceeded the stated percentage for high risk as shown on the clients' respective Know Your Client [KYC] documentation.
11. The Respondent therefore exposed these clients to greater risk than was suitable for them. As such, the Respondent failed to fulfill the most basic of responsibilities towards these clients.
12. In addition, the Respondent executed numerous trades for three clients without authorization from these clients and without their knowledge and consent. These clients only learned of the trades after the fact.
13. By doing so, the Respondent thereby undermined the relationship of trust and confidence that must exist between a registrant and his or her client.

### **B. Registration History**

14. The Respondent has been a registrant of IIROC, and its predecessor, since 1991. At all material times, the Respondent was employed as a Registered Representative with Dundee Securities Corporation [Dundee] in the Cambridge, Ontario branch. Since 2011 the Respondent has been registered with National Bank Financial Inc.

### **C. Unsuitable Investments**

#### **i) Client PP**

15. The Respondent's client, PP, was born in 1945. PP was employed in administrative roles for over 20 years until retiring in the spring of 2005 at the age of 60.
16. In 2003, PP opened three accounts with the Respondent: a LIRA [LIRA] account and a Canadian Cash account [Cash] in July 2003; and an RSP [RSP] account in September 2003. Prior to opening these accounts PP's only investment experience had been with GICs.

17. PP's KYC information in relation to these three accounts was as follows:

<b>2003 KYC</b>	<b>LIRA</b>	<b>Cash</b>	<b>RSP</b>
<b><u>Inv. Objectives:</u></b>			
Income	0%	0%	0%
Capital Appreciation (LT)	100%	100%	100%
Speculative Trading	0%	0%	0%
<b><u>Risk</u></b> – Low	0%	0%	0%
<b><u>Risk</u></b> – Medium	100%	100%	100%
<b><u>Risk</u></b> High	0%	0%	0%
<b><u>Investment Knowledge</u></b>	Limited	Limited	Limited
Est. Liquid Assets	\$10,000	\$10,000	\$10,000
Est. Fixed Assets	\$360,000	\$360,000	\$400,000
Income	\$15,000	\$15,000	<\$10,000

**a) Purchase of High Risk Securities Not Suitable for PP**

18. Between March 2004 and December 2005 the Respondent made several purchases of high risk securities on a solicited basis in PP's accounts when there was no allocation for high risk on PP's KYCs. As such, these purchases were not suitable for PP.

19. The high risk purchases were as follows:

<b>Purchase Date</b>	<b>Account</b>	<b>Security</b>
March 5/2004	LIRA	Calpine CDA 8.75% 15OC07
August 30/2004	RSP	Calpine CDA 8.75% 15OC07
October 12/2005	RSP	Petroworth Resources Inc. [Petroworth]
November 21/2005	LIRA	SRAI Capital 8% 31OC10 [SRAI]
November 21/2005	Cash	Sunstone 05 Limited Partnership [Sunstone 05]
December 23/2005	Cash	Skypower Wind Energy – Flow Through LP

20. These securities were characterized as high risk in their respective prospectuses and / or by established rating agency evaluations. In addition, in the case of the Petroworth, SRAI and Sunstone 05 purchases, these investments were also identified as high risk securities by Dundee's internal risk rating system. Accordingly, these investments were not suitable for PP.

21. As at month end in April 2007, the value of PP's portfolio inclusive of all accounts with the Respondent was approximately \$87,000. In or about mid-May 2007 PP deposited the proceeds from the sale of her principle residence, of approximately \$352,000, into the Cash account. Accordingly, the value of her portfolio with the Respondent increased to approximately \$433,000.

22. In 2006, and again in 2008, PP's KYC information was updated by the Respondent to reflect the following changes from the original KYC in 2003:

<b>KYC</b>	<b>LIRA</b>			<b>Cash</b>			<b>RSP</b>		
<b>Year</b>	<b>2003</b>	<b>2006</b>	<b>2008</b>	<b>2003</b>	<b>2006</b>	<b>2008</b>	<b>2003</b>	<b>2006</b>	<b>2008</b>

<b>Inv.</b>									
<b>Objectives:</b>									
Income	0%	0%	0%	0%	10%	10%	0%	30%	30%
Capital Appreciation (LT) [Growth in 2006 & 2008]	100%	67%	60%	100%	90%	80%	100%	50%	50%
Speculative Trading [Aggressive Growth in 2006 & 2008]	0%	33%	40%	0%	0%	10%	0%	20%	20%
<b>Risk</b> – Low	0%	8%	10%	0%	0%	0%	0%	0%	0%
<b>Risk</b> – Medium	100%	0%	30%	100%	80%	60%	100%	80%	40%
<b>Risk</b> High	0%	92%	60%	0%	20%	60%	0%	20%	60%
<b>Investment Knowledge</b>	Limited	Good	Good	Limited	Good	Good	Limited	Good	Good
Est. Liquid Assets	\$10,000	\$1,000	\$350,000	\$10,000	\$1,000	\$350,000	\$10,000	\$350,000	\$1,000
Est. Fixed Assets	\$360,000	\$450,000	\$100,000	\$360,000	\$450,000	\$100,000	\$400,000	\$100,000	\$450,000
Income	\$15,000	\$10,000	\$35,000	\$15,000	\$10,000	\$35,000	<\$10,000	\$35,000	\$10,000

23. The changes to the KYC information in relation to the increases to the percentages of speculative trading or aggressive growth, and the increases to a higher level of risk tolerance, suggested that PP had a greater tolerance for higher risk investments.
24. However, there is no evidence to justify these changes. In fact PP did not want or have a higher tolerance for risk in 2006 or 2008 and was subsequently shocked to see that a 92% high risk tolerance was indicated on the 2006 LIRA KYC.

**b) Purchase of Flow-Through Investment Not Suitable for PP**

25. In or about October 2008 The Respondent purchased units of a security called Qwest Energy 2008-II Flow Through Limited Partnership [Qwest Energy] for PP in the Cash account for a value of approximately \$7500.

26. The Respondent did so, in part, as an investment strategy to lower the amount of taxes PP would have to pay in a given year.
27. The Qwest Energy prospectus provides the following information:
  - The investment is a tax-assisted investment in a diversified portfolio of Flow-Through Shares
  - The investments held were predominately of resource issuers engaged in the oil and gas, and mining industry
  - The tax benefits from investing in the product were greatest for corporations and individual investors whose income was subject to the highest marginal income tax rate
  - The flow through investment was a “speculative” product
  - Many of the issuers associated with the flow through shares were junior oil and gas companies that had no earnings history and were listed on the venture exchanges
28. PP indicated to IIROC that her income did not increase from 2003-2008 and that although she trusted and relied upon the Respondent with respect to the completion of the KYCs, the stated income of \$35,000 on the updated KYCs was not accurate.
29. The Respondent completed PP’s tax returns as an added client service, for which he did not charge any additional fee. However, given PP’s relatively modest income level and the correspondingly low rate at which PP would be taxed, there would be little in the way of any available tax savings to be had with the Qwest Energy investment. With limited, if any, tax savings, the added risk that this security carried made it an unsuitable investment for PP.
30. Several transactions in PP’s accounts were also identified as being out of compliance by Dundee. For example, in January 2010 alone, at least seven transactions were identified in Dundee Out of Compliance reports. These reports noted that the actual high risk holdings exceed the target percentage amounts by between 24%-31% in PPs Cash account.
31. From 2007 to 2010 the value of PP’s three accounts with the Respondent sustained a total loss in value of approximately \$35,000.

**ii) Client KS**

32. The Respondent’s client KS was born in 1949. In 2004, KS worked as a secretary in her spouse WS’s contracting construction company which primarily built rural structures. WS also the Respondent’s client and was semi-retired in 2004.
33. In October 2004 the Respondent opened two accounts for KS, namely a Spousal RSP [SP-RSP] and an individual RSP [I-RSP]. Prior to investing funds with the Respondent, KS’ investment experience involved mostly mutual funds which had been held for approximately six years at that time.
34. The KYC in 2004 indicated that KS wanted 100% medium risk investments in her accounts, and no high risk securities at all. The Respondent attempted to have the KYCs for the two accounts updated in 2006 to reflect a 25% high risk allocation, however KS declined to sign off on the new KYCs.
35. The 2004 and 2006 KYCs, contained the following information:

<b>KYC</b>	<b>SP-RSP</b>		<b>I-RSP</b>	
<b>Year</b>	<b>2004</b>	<b>2006</b>	<b>2004</b>	<b>2006</b>
<b><u>Inv. Objectives:</u></b>				
Income	0%	0%	0%	0%
Capital Appreciation.	100%	75%	100%	75%

Speculative Trading/ Aggressive Growth	<b>0%</b>	<b>25%</b>		<b>0%</b>	<b>25%</b>
<b>Risk</b> – Low	0%	0%		0%	0%
<b>Risk</b> – Medium	100%	75%		100%	75%
<b>Risk</b> – High	<b>0%</b>	<b>25%</b>		<b>0%</b>	<b>25%</b>
<b>Investment Knowledge</b>	Good	Good		Good	Good
Est. Liquid Assets	250,000	300,00		250,000	300,00
Est. Fixed Assets	350,000	300,000		350,000	300,000
Income	(WS – 50K) (KS-30K)	(WS – 50K) (KS – 30K)		(WS – 50K) (KS-30K)	(WS – 50K) (KS – 30K)

**a) Purchase of High Risk Securities Not Suitable for KS**

36. KS did not want any high risk securities in her accounts at any time. Never the less, between 2004 and 2006 the Respondent purchased high risk securities for her on a solicited basis. As such, these purchases were not suitable for KS.
37. The high risk securities purchased were as follows:

<b>Date</b>	<b>Security</b>	<b>Risk Rating at Purchase</b>
November 12, 2004	Calpine CDA 8.75%	High
April 26, 2005	Calpine CDA 8.75%	High
October 6, 2005	Petroworth Resources Inc.	High
October 21, 2005	SRAI Capital 8%	High
October 31, 2005	SRAI Capital 8%	High
December 20, 2005	Equinox Minerals Ltd.	High
March 2006	INV Metals INTL Nickel Ventures Corp	High

38. These securities were characterized as high risk in their respective prospectuses and / or by established rating agency evaluations. Accordingly, these investments were not suitable for KS.
39. Several transactions in KS's accounts were also identified as being out of compliance by Dundee. The following inquiries and or Out of Compliance Reports were generated by Dundee:
- January 2009 --a head office inquiry noted that KS' I-RSP account had holdings of 77% high risk securities which were out of compliance with the client's stated high risk tolerance of 25% as noted on the most recent KYC on file at head office;
  - February 2009—a head office inquiry noted that KS' SP RSP account had holdings of 73% high risk securities which were out of compliance with the client's stated high risk tolerance of 25% for the account;
  - Between October 2007 and July 2009, at least seven Out of Compliance reports were generated by virtue of actual high risk holdings exceeding the target percentage amounts by between 17%-60% in KS' SP-RSP and I-RSP accounts.

**D. Unauthorized Trading**

**i) Client PP**

40. The Respondent executed several trades in PP's account without client authorization and without her knowledge or consent.
41. In particular, PP was on vacation from January 6–13, 2008 and could not be reached during this time. On or about January 11, 2008 the Respondent executed two transactions in the Cash account; namely a purchase of Interrent REIT SR A at a cost of approximately \$20,000; and a sale of Temple REIT for proceeds of approximately \$15,900.
42. Further, between August 22, 2009 to October 11, 2009 PP was again on vacation and could not be reached. During this time period the Respondent executed the following trades without PP's authorization:
- August 24, 2009--- sale of SS Growth & Income for proceeds of approximately \$4,200;
  - August 26, 2009---sale of Harvest Energy 7.25% CV 30SEP13 for proceeds of approximately \$9,200;
  - September 23, 2009---sale of Mavericks Bal Monthly Pay Fund for proceeds of approximately \$11,400;
  - September 24, 2009---purchase of Scott's REIT CV 7.75% 31DEC14 for a cost of approximately \$10,000; and sale of Harvest Energy 7.25% CV 30Sep13 for proceeds of approximately \$10,400;
  - October 14th 2009---sale of BTB REIT 8.5% CV-B 31MAR13 for proceeds of approximately \$3,200; sale of Harvest Energy 7.25% CB 30SEP12 for proceeds of approximately \$8,200; and purchase of Lakeview REIT 8.50% 31May13 for proceeds of approximately \$10,000;
  - October 9, 2009---sale of WT-Star Hedge Managers 30OCT09 for proceeds of approximately \$500.
43. PP did not authorize any of the above transactions and was not aware that they had been completed until after the fact upon receipt of confirmation notices and or looking at the relevant monthly statements. PP did know generally that the Respondent was placing orders in her account but was not aware that he needed her authorization in advance of each trade to do so.
44. At an IIROC interview, the Respondent admitted that he did not obtain PP's authorization to place the above trades for this client's accounts.

**ii) Clients KS and WS**

45. The Respondent executed several trades in the accounts of his clients KS and WS without client authorization, and without their knowledge or consent. Due to the fact that KS had certain health issues, WS was the primary contact for all account activity for both of them; however the Respondent at no time obtained formal trading authority for any of the accounts of these clients.
46. In particular, between January 2007 and December 2010 on at least ten occasions the Respondent executed trades that were not authorized by these clients. In each of these cases, the Respondent communicated with WS only after the completion of the trades.
47. KS and WS did not authorize these trades and were not aware that they had been completed until after the fact upon receipt of confirmation notices and or looking at the relevant monthly statements. WS was not aware that it was the normal practice for investment advisors to call clients prior to execution of each trade as he understood that as his advisor it was the Respondent's profession to make money for the client.
48. At an IIROC interview, the Respondent admitted that he did not obtain KS and/or WS's authorization to place these trades for these clients' accounts.

### **No Additional Clients**

49. During the course of the Investigation, IIROC conducted a wider review of approximately 17 other client accounts of the Respondent and found no additional issues or concerns. Accordingly, the regulatory issues in relation to the Respondent are contained to the three clients dealt with herein.

### **Mitigating Factors**

50. The Respondent has been a registrant in the securities industry for over 20 years and has not been the subject of an IIROC disciplinary proceeding.
51. The Respondent personally compensated client PP in the amount of \$35,000.
52. There was no evidence of dishonesty or deceit by the Respondent.
53. The Respondent was co-operative and forthcoming throughout the Investigation.
54. The Respondent was candid with IIROC and admitted his responsibility for the contraventions.
55. The Respondent has been under strict supervision at his member firm for 21 months without incident.

### **TERMS OF SETTLEMENT**

56. 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.
57. The Settlement Agreement is subject to acceptance by the Hearing Panel.
58. The Settlement Agreement shall become effective and binding upon the Respondent and IIROC Staff as of the date of its acceptance by the Hearing Panel.
59. 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.
60. The Respondent hereby waives its rights under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal in the event that the Hearing Panel accepts the Settlement Agreement.
61. If the Hearing Panel rejects the Settlement Agreement, IIROC 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.
62. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
63. IIROC 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.
64. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
65. 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 Donald Alexander Kochan at the City of Waterloo in the Province of Ontario, this 6th day of ~~May~~, August, 2013.

"Cindy Fraser"

Witness

"Donald Kochan"

**Donald Alexander Kochan**

**AGREED TO** by Staff at the City of Toronto in the Province of Ontario, this 8th day of ~~May~~, August, 2013.

“Vito Pedone”

Witness: Vito Pedone

“Natalija Popovic”

**Natalija Popovic**

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

**ACCEPTED** at the City of Toronto in the Province of Ontario, this 13th day of August, 2013, by the following Hearing Panel:

Per: “Julia Dublin”

Panel Chair

Per: “Brigitte Geisler”

Panel Member

Per: “Peter Bailey”

Panel Member

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