

Re Chen

IN THE MATTER OF:

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

and

Pei-Ying Patty Chen

2018 IIROC 35

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

Heard: September 24, 2018 in Vancouver, British Columbia
Oral Decision: September 24, 2018
Written Decision: October 15, 2018

Hearing Panel:

Linda Murray (Chair), Robert Travers and Lloyd Costley

Appearance:

Sally Kwon, IIROC Enforcement Counsel

Patrick Sullivan for Ms. Pei-Ying Patty Chen (Counsel for the Respondent)

Ms. Pei-Ying Patty Chen (the Respondent)

DECISION ON ACCEPTANCE OF SETTLEMENT AGREEMENT

¶ 1 This was a settlement hearing to consider whether, pursuant to Section 8215 of IIROC's Consolidated Enforcement, Examination and Approval Rules, the Panel should accept the joint recommendation of the parties to approve a Settlement Agreement entered into between IIROC staff and the Respondent. A copy of the Settlement Agreement is attached.

¶ 2 At the settlement hearing on September 24, 2018, the Panel heard submissions from counsel for both parties and reviewed the terms of the Settlement Agreement. After considering the submissions and terms of the proposed Settlement Agreement, the Panel advised the parties of its decision to accept the Settlement Agreement and the Panel signed the Settlement Agreement. The Panel advised the parties that written reasons would follow. These are the reasons.

Background Facts

¶ 3 The facts are set out in detail in the attached Settlement Agreement. The Respondent, now in her mid-thirties, was employed by the Dealer Member firm from February 2010 to September 2015 as a registrant with the Mutual Fund Dealers Association. Between February 2016 and May 2017, the Respondent was registered with IIROC as a Registered Representative with the same Dealer Member firm. The majority of the Respondent's employment duties involved mortgage banking services.

¶ 4 The Respondent has not been registered in any capacity with IIROC since May 2017. The Respondent advised IIROC staff that she does not intend to return as a registrant. The Respondent has no disciplinary history.

¶ 5 In January 2016 (prior to becoming an IIROC registrant), the Respondent opened accounts at her Dealer

Member firm. At that time, the Respondent indicated that she held accounts at other firms but did not provide any details regarding those accounts.

¶ 6 In March 2016 (after becoming an IIROC registrant), the Respondent completed a Pro Account Notification Form (the “Pro Form”) required by her employer. The Respondent was required, among other things, to advise the employer of any accounts held by the Respondent and/or her spouse. The Respondent did not disclose in the Pro Form that she and her husband maintained, individually and jointly, a total of six investment accounts (the “Outside Investment Accounts”) at two other firms, nor did the Respondent properly comply with her employer’s other requirements regarding employee trading accounts. The Respondent did not advise the two other firms that she was a registrant.

¶ 7 The Respondent admitted that she was aware of her obligations to disclose the Outside Investment Accounts to her employer and to disclose her status as an IIROC registrant to other firms. The Respondent admitted that her conduct in failing to comply with those requirements breached then Dealer Member Rule 29.1. The Respondent also admitted that her conduct breached the terms of her employer’s specific internal requirements regarding the disclosure and supervision of investment accounts for its registrants. The Respondent acknowledged that, as a result of her conduct, her Dealer Member employer and the other firms holding the Outside Investment Accounts were not in a position to properly supervise the trading by the Respondent and her husband in the Outside Investment Accounts.

Submissions by the Parties

¶ 8 Counsel for IIROC staff and the Respondent provided submissions regarding the Panel’s role in considering a Settlement Agreement, the specific violations by the Respondent, factors to consider pursuant to the IIROC Sanction Guidelines, and other cases involving similar conduct.

¶ 9 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 represented by counsel. The Respondent wishes to conclude this matter and move forward.

¶ 10 With respect to the role of a hearing panel considering a settlement agreement, counsel referred the Panel to *Re IPC Securities*, 2016 IIROC 32, including references to previous cases *Re Johnson* (2012), *Re Milewski* (1999), and *Re Donnelly* (2016) and also to *Re Kotar*, 2015 IIROC 07. The cases establish that the role of the hearing panel is not to substitute its judgment but, rather, is to accept a proposed settlement unless it determines that the proposed settlement is clearly outside the acceptable range of what is appropriate, based upon a review of the facts and cases involving similar conduct. The cases recognize that settlements often involve compromises between the parties, that the hearing panel is not privy to all of the facts involved in the settlement process, and that the settlement process is valuable in the public interest.

¶ 11 Counsel made submissions regarding the rationale for then Dealer Member Rule 29.1, since the Respondent’s conduct occurred prior to September 1, 2016 and the enactment of the IIROC Consolidated Rules. Counsel referred the Panel to the *Kotar* case in which the hearing panel summarized the importance of these requirements:

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.

¶ 12 With respect to the issue of an appropriate range of sanctions, counsel referred the Panel to the *Kotar* case and to *Re Kim*, [2007] I.D.A.C.D. No. 54.

Panel Decision and Reasons

¶ 13 In considering the Settlement Agreement, the Panel acknowledged its role under Section 8215 of

IIROC's Consolidated Rules, the principles set out in Re IPC and the other cases referenced by IIROC counsel as summarized above.

¶ 14 Then Dealer Member Rule 29.1, which governed the Respondent's conduct prior to September 1, 2016, required registrants to observe high standards of ethics and business conduct in their business transactions, and to not engage in any business conduct or practice that was unbecoming or detrimental to the public interest.

¶ 15 The Respondent admitted, and this Panel finds, that the Respondent breached then Dealer Member Rule 29.1 by failing to advise her Dealer Member firm of the Outside Investment Accounts and failing to advise the other two firms that she was an IIROC registrant, which prevented the firms from properly supervising the Outside Investment Accounts. The particulars of the breaches are set out above and in the attached Settlement Agreement.

¶ 16 The Panel considered the IIROC Sanction Guidelines and IIROC counsel's submissions regarding the primary purpose of IIROC disciplinary proceedings, which is to maintain high standards of conduct in the securities industry and to protect market integrity. The Guidelines provide a framework and a list of key factors to consider regarding the exercise of the Panel's discretion in determining appropriate sanctions. Sanctions are preventative in nature and are designed to protect the public, strengthen market integrity, and improve business practices and standards.

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

1. were reasonable, given the conduct of the Respondent;
2. addressed both specific and general deterrence;
3. were proportionate to the conduct at issue and to other similar cases and sanctions;
4. will prevent the type of conduct described from occurring in the future;
5. will protect investors as a result of the proposed penalty; and
6. will foster confidence in the integrity of the capital markets, IIROC, and the regulatory process.

¶ 18 The Panel considered the Kotar and Kim cases referred to by counsel to assess the appropriate range of sanctions for cases with conduct similar to that of the Respondent in this case. The Kotar case was a settlement hearing in 2015 in which the parties and panel agreed to a fine of \$20,000, costs of \$2,500 and re-write of the Conduct and Practices Handbook course. The Kim case involved a hearing in 2007 that proceeded on the basis of an Agreed Statement of Facts with submissions regarding the appropriate sanctions. The panel in the Kim case imposed a fine of \$25,000 and costs of \$15,000. The conduct in the Kotar and Kim cases was more serious than that of this Respondent but provided assistance to the Panel in determining the appropriateness of the proposed sanctions in this case.

¶ 19 The facts in this case are similar to those in the Kotar and Kim cases in that those respondents failed to advise their firms of outside accounts so that their trading could be properly supervised by the firms. Kim and Kotar each admitted that their conduct breached then Dealer Member Rule 29.1.

¶ 20 The facts in this case differ from those in the Kotar case in that Kotar's one undisclosed account, located in Panama and open for about four years, was discovered during an investigation by another regulator. Kotar initially denied any involvement with the account but when confronted with evidence, he cooperated with the other regulator's investigation. He was terminated by his firm.

¶ 21 The facts in this case differ from those in the Kim case in that Kim, in addition to failing to disclose two outside accounts to his firm, also acted as a director of a company and participated in a private placement without his firm's authorization. Kim also provided deceitful answers on forms to set up the outside accounts.

¶ 22 In this case, there was no evidence of deception or other improper activities by Ms. Chen.

¶ 23 The Panel considered the following key factors in this case:

- a. Respondent's experience. The Respondent was employed in the securities industry with the Dealer Member firm from 2010 to May 2017. The Respondent was initially registered with the Mutual Fund Dealers Association and became an IIROC registrant in February 2016. The majority of her employment involved providing mortgage banking services. The Respondent, now in her mid-thirties, has not been a registrant since May 2017. She advised IIROC that she does not intend to become an IIROC registrant in the future.
- b. Extent of conduct. The Respondent's conduct occurred from March 9, 2016 to May 2017 and involved trading in two of six Outside Investment Accounts held by the Respondent and/or her husband.
- c. Nature of conduct. There was no evidence that the Respondent's conduct was wilfully blind, reckless or meant to deceive her employer or the other firms. There was no evidence that the Respondent attempted to conceal the Outside Investment Accounts or her potential breaches of IIROC Rules and her employer's internal policies once the accounts came to light. The Respondent disclosed to her employer in January 2016 (prior to becoming an IIROC registrant) that she had accounts at other firms, although she did not provide details of those accounts at that time.
- d. Harm or benefit. There was no evidence of harm to any clients or of improper trading activities in the accounts by the Respondent or her husband. There was no evidence that the Respondent or her husband received a financial benefit as a result of the conduct at issue in this case. However, this is a neutral factor given the rationale for the IIROC Rules and the employer's policies regarding outside accounts. Had there been harm or benefit identified, that would have been an aggravating factor.
- e. Accept responsibility. The Respondent accepted responsibility for her actions and acknowledged the nature and gravity of her misconduct. The Respondent admitted that she was aware of the requirements but failed to comply with those obligations, resulting in each of the Dealer Member firms being unable to properly supervise the trading activities in the Outside Investment Accounts.

¶ 24 The securities industry is a business of trust and confidence. Registrants must meet significant responsibilities and they play an important role in protecting investors and maintaining the integrity of the capital markets. As noted in the Kotar and Kim cases, it is important for registrants to appreciate that there will be significant penalties resulting from disciplinary action for failing to properly declare accounts deemed to be 'pro' trading accounts, which are required to be supervised to ensure market integrity. Such conduct may constitute conduct unbecoming a registrant. Significant penalties will result even if no harm actually occurred to others in order to impress upon respondents and others the seriousness of this type of conduct.

¶ 25 Since the Respondent's conduct related to core responsibilities of a registrant and sanctions are meant to be remedial, the Panel agreed that the Respondent should be required to successfully re-write and pass the Conduct and Practices Handbook course if the Respondent re-applies for IIROC registration.

¶ 26 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.

¶ 27 The Panel, after careful consideration, concluded that the Settlement Agreement terms met the requirements of IIROC's Rules and the Sanction Guidelines, and the terms 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.

¶ 28 For the reasons set out above, the Panel unanimously accepted the Settlement Agreement and imposed the following sanctions as agreed by the parties:

1. the Respondent will pay a fine of \$15,000;

2. the Respondent will pay costs of \$2,500;
3. the Respondent will re-write and pass the Conduct and Practices Handbook course prior to any re-registration with IIROC; and
4. as the Settlement Agreement was accepted by the Panel, the Respondent will pay the amounts referenced above within 30 days of September 24, 2018, unless otherwise agreed between IIROC staff and the Respondent.

Disclosure of Personal Information

¶ 29 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.

Panel Recommendation for future cases

¶ 30 The Panel requested, and counsel provided, additional information and submissions regarding the specific IIROC Rules for categorizing, declaring and supervising 'pro' accounts, and for the specific IIROC Rules (in addition to then Dealer Member Rule 29.1, now Section 1402 of the Consolidated Rules) governing the violation of IIROC's Rules regarding 'pro' accounts. As in this case, many firms have requirements for 'pro' accounts that are broader than IIROC Rule requirements. The Panel felt that it would be of general assistance to the industry (both individuals and firms) to set out the specific IIROC Rules regarding the 'pro' accounts in these types of cases.

¶ 31 As noted in our oral reasons, this is only a recommendation by the Panel to assist the industry and did not impact our decision to accept the Settlement Agreement in this particular case.

Dated at Vancouver, British Columbia as of October 15, 2018.

Linda Murray

Robert Travers

Lloyd Costley

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 Pei-Ying Patty Chen ("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 and her husband, JL, maintained investment accounts outside of CIBC Investor Services Inc. ("CIBC"), her Dealer Member, without the express written consent of CIBC. The Respondent failed

to disclose the existence of these outside accounts in a Pro Account Notification form. As a result, CIBC was not in a position to properly supervise the Respondent's and her husband's personal trading.

5. The Respondent also failed to disclose to the outside firms that she was employed as a registrant in the securities industry, thereby preventing these firms from taking a more active role in the supervision of her and her husband's personal trading.

Background

6. The Respondent began working in the securities industry in 2010. Between February 2010 and September 2015, the Respondent was registered with the Mutual Fund Dealers Association as a Dealing Representative at CIBC. The majority of the Respondent's employment at CIBC involved the provision of mortgage banking services.
7. Between February 2016 and May 2017, the Respondent was registered with IIROC as a Registered Representative at a Vancouver branch of CIBC.
8. The Respondent has not been registered with IIROC in any capacity since May 2017.

Failure to Disclose Outside Investment Accounts

9. At the time that the Respondent became an IIROC approved person in February 2016, she and JL held the following investment accounts outside of CIBC:

Firm	Account Holder(s)	Account
CMC Markets Canada Inc. ("CMC")	Respondent	Canadian dollar investment account
	Respondent and JL	Joint investment account
	JL	Canadian dollar investment account
	JL	US dollar investment account
Questrade, Inc. ("Questrade")	Respondent	Tax-free savings account

10. The Respondent's TFSA account at Questrade and JL's US dollar account at CMC were active during the time that the Respondent was registered.
11. On or about March 9, 2016, the Respondent completed a PRO Account Notification Form (the "PRO Form"), which CIBC required her to complete in order to enable CIBC to identify and supervise PRO accounts.
12. The PRO Form stated, in part:

As a member of the Investment Industry Regulatory Organization (IIROC), CIBC Investor Services Inc. (ISI) is required to identify and supervise non-client, or PRO, accounts.

The following account types are considered PRO for ISI employees:

- the employee's own account,
...
- any account belonging to a related party of an employee, including one's spouse, ...
...

Employees are required to notify CIBC Wealth Management Compliance of any accounts that are held with another IIROC member firm. The employee must make arrangements to transfer these accounts as PRO Accounts to one of the following CIBC companies: CIBC ISI, CIBC Financial Planning or CIBC Wood Gundy...

13. The Respondent was aware of her obligations to (a) indicate on the PRO Form that she and JL held accounts at CMC and Questrade and (b) transfer these outside accounts to a CIBC company. The Respondent failed to do so and as a result, CIBC was not able to supervise the trading in these outside accounts.
14. At no time did the Respondent notify CMC or Questrade that she was employed as a registrant in the securities industry. None of these outside accounts were coded as “Pro” accounts by CMC or Questrade.
15. The Respondent does not have a previous disciplinary history.
16. In January 2016, prior to becoming an IIROC Registrant, the Respondent opened three brokerage accounts with CIBC. In response to a question about whether she had accounts at other brokerage firms, the Respondent responded yes. Other than describing the type of account, the Respondent provided no additional details of the other brokerage accounts.
17. The Respondent is 35 years old and has advised Staff that she does not intend to return as a Registrant.

PART IV – CONTRAVENTION

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

In March 2016, the Respondent failed to disclose to her Dealer Member that she and her husband maintained outside investment accounts, contrary to Dealer Member Rule 29.1.

PART V – TERMS OF SETTLEMENT

19. The Respondent agrees to the following sanctions and costs:
 - a) The Respondent will pay a fine of \$15,000;
 - b) The Respondent will pay costs of \$2,500;
 - c) The Respondent will re-write and pass the Conduct and Practices Handbook course prior to any re-registration with IIROC.
20. 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

21. 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.
22. 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

23. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
24. 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.
25. 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.

26. 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.
27. 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.
28. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
29. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IIROC will post a full 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.
30. If this Settlement Agreement is accepted, the Respondent agrees that neither she nor anyone on her behalf, will make a public statement inconsistent with this Settlement Agreement.
31. 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

32. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.
33. A fax or electronic copy of any signature will be treated as an original signature.

DATED this “7th” day of “August”, 2018.

“Witness”

Witness

“Pei-Ying Patty Chen”

Pei-Ying Patty Chen

“Witness”

Witness

“Sally Kwon”

Sally Kwon

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

The Settlement Agreement is hereby accepted this “24th” day of “September”, 20“18” by the following Hearing Panel:

Per: “Linda Murray”

Panel Chair

Per: “Lloyd Costley”

Panel Member

Per: “Robert Travers”

Panel Member