Re Wellington West Capital & Walters-Sagher

IN THE MATTER OF:

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

and

Wellington West Capital Inc.

and

Lesley Walters-Sagher

2013 IIROC 46

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

Heard: November 1, 2012
Decision: August 6, 2013

Hearing Panel:
Thomas J.D. Kormylo (Chair), Bernie Plett, Bruce Henderson
Appearances:
Ms. Natalija Popovic and Ms. Susan Kushneryk, Enforcement Counsel, for IIROC
Mr. Renee Reichelt, for the Respondents

Hearing Panel Reasons for Decision
(Settlement Agreement)

INTRODUCTION

¶ 1 A Settlement Agreement dated November 1, 2012 was entered into among Wellington West Capital Inc. ("**WWC**") and the Investment Industry Regulatory Organization of Canada ("**IIROC**") 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.

¶ 2 In the Settlement Agreement, a copy of which is attached, each of WWC and Lesley Walters-Sagher ("**LWS**" and collectively with WWC the "**Respondents**") admit to contraventions. The Settlement Agreement contains a complete Statement of Facts, a description of the Contraventions and the Terms of Settlement. It is stated that the Settlement Agreement is subject to acceptance by the Hearing Panel and if the Panel accepts the Settlement Agreement, each of the Respondents waives their respective rights under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal. IIROC and the Respondents jointly recommend that the Hearing Panel accept the Settlement Agreement.

¶ 3 A Settlement Hearing Book was provided in advance of the Hearing by IIROC to the Respondents, their Counsel and members of the Hearing Panel.

STATEMENT OF FACTS

¶ 4 The Statement of Facts in the Settlement Agreement includes:

(a) **Acknowledgment**

i. Staff, WWC and LWS agree with the facts set out in the Settlement Agreement and acknowledge that the terms of the settlement contained in the Settlement Agreement are based upon those specific facts.

(b) **Factual Background**

Overview

i. Commencing as early as 2006, publicly traded leveraged exchange traded funds ("**LETFs**") became available to WWC's registered representatives for recommendation to clients and WWC began accepting client orders for LETFs.

ii. During the period commencing January 1, 2009 and June 30, 2009 (the "**Relevant Period**"), Terry Dyck, an investment advisor at WWC's Thunder Bay, Ontario offices, purchased and sold certain LETFs for his clients which were made available by WWC to its registered representatives.

iii. By the end of 2009, LETFs were held by approximately 145 of Terry Dyck's clients. Mr. Dyck's clients suffered losses on their LETF investments in 2009.

iv. WWC accepted orders from clients for the LETFs, including "Bull" and "Bear" LETFs. The "Bull" LETFs are designed to achieve a multiple of the daily performance of an index (i.e., to rise or fall in value in the same direction as the index), whereas the "Bear" LETFs are designed to achieve an inverse multiple of the daily performance of an index (i.e., to rise or fall in value in the opposite direction from the index).

v. The LETFs are described in their prospectuses as "highly speculative" and as "involving a high degree of risk". The LETFs include the following characteristics, among others, as described in their prospectuses:

a. the securities underlying the funds include equity and/or fixed income securities, currencies, commodities and/or financial instruments including derivatives, such as options, swap agreements and futures and forward contracts;

b. their use of leverage could magnify market movements and provide greater investment exposure than in an unleveraged investment; and

c. they are designed to provide daily investment results and are rebalanced daily, which could magnify gains or losses.

vi. The prospectuses for the LETFs identify a number of inherent risks, including: active investor risk; leverage risk; volatility risk; derivatives trading risk; restrictive effect of speculative position limits; commodity risk; aggressive investment technique risk; correlation and inverse correlation risk; counterparty risk; and risks associated with the underlying securities.

vii. In June 2009, IIROC issued a Guidance Notice (the "**Guidance Notice**") to Dealer Members indicating that leveraged and inverse ETFs that are reset daily typically are unsuitable for retail investors who plan to hold them for longer than one trading session, particularly in volatile markets.

Respondents

viii. WWC became an IIROC registrant on June 1, 2008 and prior thereto was a member of the Investment Dealers Association of Canada ("**IDA**"). After the Relevant Period, in or about June, 2011, WWC was acquired by National Bank Financial Ltd. ("**NBF**"), also an IIROC Dealer Member.

ix. LWS has been a registrant of the IDA since 1995 and became an IIROC registrant on June 1, 2008. LWS was registered as a compliance manager and branch manager at WWC from 2003 to 2011, when WWC was acquired by NBF. LWS is now an IIROC registrant with NBF.

x. LWS was asked by WWC to act as interim branch manager for WWC's Thunder Bay branch from 2008 to 2011 while she was a compliance department employee of WWC based out of WWC's Winnipeg offices.

xi. In her capacity as interim branch manager for WWC's Thunder Bay office, LWS was, among other things, responsible for approval of the new client accounts, the supervision of account activity and the supervision of registered representatives, including Mr. Terry Dyck during the Relevant Period.

Mitigating Factors

xii. After IIROC issued the Guidance Notice, WWC circulated the Guidance Notice to is registered representatives.

xiii. By 2010, WWC took additional steps to ensure that it sufficiently understood the structure and features of more complex and/or non-transparent investment products that its registered representatives would recommend to clients, including LETFs.

xiv. WWC and LWS have cooperated with IIROC Staff throughout the course of the Investigation.

CONTRAVENTIONS

¶ 5 The Settlement Agreement includes the following admissions:

(a) **WWC failed to Use Due Diligence to Learn Essential Facts of LETFs.**

i. WWC failed to use adequate due diligence to learn and remain informed of essential facts about the LETFs.

ii. It is immediately apparent on the face of the prospectuses relating to LETFs that the LETFs are high risk. To have somehow failed to identify the LETFs as high risk products, WWC clearly failed to use adequate due diligence to learn and remain informed of essential facts about the LETFs. As such, WWC was not in a position to verify the suitability of the LETFs.

(b) **WWC Failed to Adequately Supervise**

i. The LETFs were recommended for investment to WWC clients. Without understanding the essential facts relative to the LETFs before accepting the client orders, WWC could not accurately assess the nature and level of risk attendant in the LETFs. As such, WWC was not able to meet its obligation to supervise the suitability of the recommendations to clients to invest in the LETFs.

(c) **LWS Failed to Use Due Diligence to Learn Essential Facts of LETFs**

i. LWS was branch manager for WWC's Thunder Bay branch over the Relevant Period when Mr. Dyck recommended the LETFs for investment to approximately 145 clients. At least one other registered representative at the Thunder Bay branch also recommended LETFs to clients.

ii. Although LWS was aware of Mr. Dyck's extensive recommendation of the LETFs, she did not take any independent steps - such as reviewing the prospectuses or otherwise - to understand the LETFs. Instead, she relied on Mr. Dyck's assessment of the product as the responsible investment advisor and WWC's misidentification of the LETFs as a medium

risk security.

iii. Had LWS reviewed the LETF prospectuses, it would have been clearly apparent to someone of her diligence and experience that they are a high risk product that would have to be supervised as such.

(d) **LWS Failed to Adequately Supervise**

i. As branch manager, LWS was responsible for assessing compliance with regulatory requirements, including conducting daily trading reviews for, among other things, the suitability of recommended securities for clients.

ii. While LWS generally executed her obligations as branch manager with diligence, she failed to meet those obligations in respect of the LETFs. Without understanding the essential facts relative to the LETFs, LWS could not accurately assess the nature and level of risk attendant in the LETFs and thus could not meet her obligation to supervise the suitability of the recommendations regarding the LETFs. As such, LWS failed to adequately supervise Mr. Dyck.

TERMS OF SETTLEMENT

¶ 6 The Settlement Agreement provides for the following terms of settlement:

(a) WWC shall pay IIROC a fine in the amount of $175,000;

(b) LWS shall pay IIROC a fine in the amount of $15,000; and

(c) WWC shall pay IIROC the sum of $10,000 to reflect the costs that staff of IIROC incurred in connection with this matter.

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

¶ 8 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. (The effective date of the Settlement Agreement is November 1, 2012, the date of the Hearing.)

SUBMISSIONS OF IIROC

¶ 9 The foregoing Statement of Facts, Contraventions and Terms of Settlement were reviewed by Ms. Kushneryk, IIROC counsel, who made the following submissions:

(a) Ms. Kushneryk referred to pertinent parts of the Settlement Hearing Book including IIROC "Dealer Member Disciplinary Sanction Guidelines: General Principles" (the "**Guidelines**") that relate to Improper Sales Practices - "Unsuitable Recommendations" and "Failure to Supervise" and noted;

i. WWC failed to perform appropriate due diligence which would have disclosed the risk level of LETFs.

ii. Without understanding the essential facts of LETFs, WWC was not in a position to supervise the suitability of a recommendation made by an advisor to clients to invest in LETFs.

iii. LWS, in performing her supervisory function, was aware of the large number of LETF trades, but erred by failing to exercise any independent due diligence and instead relied solely on the advisor and WWC in considering suitability. It was not possible for LWS to effectively manage without personally knowing the product.

iv. Substantial losses were sustained by clients of Mr. Dyck. Reference was made to the decision made by the hearing panel in respect of Mr. Dyck's disciplinary proceeding (see

Dyck 2012 IIROC 31).

v. WWC and LWS cooperated throughout the course of the investigation.

vi. An important mitigating factor to be considered in the case of LWS is that WWC had identified LETFs as low risk. Accordingly, IIROC was in the case of LWS recommending a fine of less than the fine suggested by the Guidelines.

vii. The Settlement Agreement is reasonable and the recommended penalties are considered by IIROC to be significant in recognition of the seriousness of the misconduct, and within the reasonable range of penalties for cases of this nature.

viii. The role of a Hearing Panel in considering a settlement agreement between parties is not to determine whether it would impose a different result following a contested hearing, but rather to determine whether the settlement is reasonable. IIROC counsel referred to the following decisions to provide assistance to the Hearing Panel in relation to the following:

Settlement Agreements Should be Approved Unless Unreasonable

- ***Bereskin (Re)*** 2010 IIROC 37 at para. 5, was referred to as determining that the Hearing Panel must decide *"…whether the penalties set forth in the Settlement Agreement strike a reasonable balance between fairness to the Respondent in the circumstances and the need to protect the investing public, the industry membership, the integrity of the discipline process, the integrity of the securities markets and prevention of a repetition of the offense."*

- ***Milewski (Re)*** [1999] I.D.A.C.D. 17 at page 12, was referred to as determining that the Hearing Panel should not reject the penalties set out in the Settlement Agreement unless it views the penalties as *"…clearly falling outside a reasonable range of appropriateness."*, given the conduct of the Respondent.

- ***Higgs (Re)*** 2010 IIROC 3 at para. 6 was referred to where the hearing panel accepted that the governing principles applicable to a decision to accept or reject a settlement are similar to the principles applicable to joint submissions on sentencing in criminal cases: *"namely, that there is an obligation on the tribunal to give serious consideration to a joint submission on sentencing agreed upon by counsel unless the sentence is unfit or unreasonable; or contrary to the public interest; and, it should not be departed from unless there are good or cogent reasons for doing so."*

IIROC Precedent Decisions Support Settlement Agreement

- ***Laurentian Bank Securities Inc. (Re)*** 2012 IIROC 49, was referred to where the hearing panel very recently considered the issue of failing to know leveraged exchange traded funds. Laurentian Bank Securities Inc. admitted in a settlement agreement similar to the agreement before this Panel that it failed to exercise adequate and effective supervision and failed to take measures to ensure that its supervisors had the necessary knowledge to fully understand the features and risks inherent in leveraged exchange-traded funds. The Panel approved the settlement agreement with an agreed fine of $140,000 and costs in the amount of $10,000. While there is a small difference in the fines, reflective of the unique facts and circumstances in the cases, the difference is not material.

- ***Canaccord Financial Ltd. (Re)*** 2009 IIROC 56 at para. 23 and para. 24 and ***Credential Securities Inc. (Re)*** 2009 IIROC 55 at para. 23 and para. 24 were referred to where other hearing panels have approved settlement agreements

relating to dealer members failing to know asset backed commercial paper products and thus being unable to adequately supervise the recommendations of such products. The fines approved in those matters at $3.1 Million (inclusive of costs) and $200,000 (inclusive of costs) respectively, were higher than provided for in the Settlement Agreement. IIROC counsel distinguished those cases on the basis that the circumstances surrounding the extent to which those products were sold and the dealers' utter misunderstanding of them was more egregious than the matter before this Panel. These cases were cited as confirmation of the significance of the requirement for Dealer Members to know the products being recommended to their clients.

- ***TD Waterhouse Canada Inc. (Re)*** 2008 IIROC 7 was referred too, where the Dealer Member admitted in a settlement agreement that it had failed to establish and maintain alternative investment review or approval procedures relating to hedge funds. In that instance, the agreed fine in respect of the failure to know the product was $500,000, which was agreed in the context of other allegations relating to selling the exempt product to non-accredited investors with an agreed fine of $1.5 million.

- ***Graham (Re)*** [2005] I.D.A.C.D. No. 21, at paras. 11, 12, 14 and 30, was referred to where an IDA hearing panel imposed a penalty on a co-branch manager for failing to adequately know a product. In this case, the panel cited an agreed statement of facts in which the co-branch manager admitted that he failed to adequately supervise an advisor in his branch to ensure that the advisor performed sufficient due diligence with respect to a particular security, and that he personally failed to take steps to remain informed of the essential facts in respect of that security. A distinguishing feature of that case is that the advisor specifically approached the co-branch manager to obtain his views with respect to the security at issue. When presented with the direct request, the co-branch manager failed to take any steps to verify the details of the security. Four client accounts and losses over $700,000 were involved. The Panel imposed a fine of $50,000, along with costs of $15,000 and a requirement that he rewrite various industry examinations, on the basis that the co-branch manager was negligent but not deceitful and no personal gain was involved.

The *Graham* case emphasized the co-branch manager's responsibility to know the securities being recommended in their branch. The penalties are more severe than those provided in the Settlement Agreement in recognition that in the Graham case, the co-branch manager took more active steps than LWS in expressly advising his advisor on the security without verifying the details. Further, in the subject matter, LWS's conduct is distinguishable in that she relied on both WWC and the advisor in accepting the LETFs as medium risk. In these circumstances, IIROC counsel argued the fine of $15,000 provided in the Settlement Agreement is an appropriate penalty.

(b) In addition to the precedent cases, IIROC counsel noted that:

i. the obligation to understand a product is addressed in the Guidelines, in connection with unsuitable recommendations contrary to Dealer Member Rule 1300.1. The Guidelines emphasize that "[r]egistrants have a basic duty to ensure that the recommendations [for clients] are suitable, and in accordance with the clients' investment objectives and risk factors." If an advisor, their supervising dealer and branch manager fail to know the product they cannot meet that basic duty. The recommended penalties for this breach include a minimum fine of $10,000.

ii. The Guidelines also consider a failure to supervise to be a breach of Dealer Member Rule

2500. The Guidelines indicate that the extent of inadequacy in the supervision is a consideration to take into account, as well as corrective measures taken since discovery of the problem. The minimum fine recommended for a Dealer Member is $50,000 and for a Supervisor is $25,000.

SUBMISSIONS OF THE RESPONDENTS

¶ 10 Ms. Reichelt, counsel for the Respondents, agreed with the submissions of Counsel for IIROC. Ms. Reichelt referred to the cooperation of the Respondents and recommended the Hearing Panel accept of the Settlement Agreement on the basis that it represents an appropriate balance. She referred to the fact that the incident was isolated and LWS was otherwise a diligent branch manager. She reiterated that LWS relied on the WWC classification of LETFs as medium risk and noted LWS did not benefit financially from what transpired.

DECISION

¶ 11 In the Settlement Agreement, the Respondents admit to the contraventions of IIROC Dealer Member Rules. The Hearing Panel accepts that the contraventions have been established.

¶ 12 We accept, and adopt, the submissions of IIROC (para. 9 above).

¶ 13 IIROC Dealer Member Rule 1300.1(p) "Improper Sales Practice" provides, in part, as follows:

> 3.1 Unsuitable Recommendations
>
> The core of a registered representative's business activity is to make recommendations for his/her clients. Registrants have a basic duty to ensure that the recommendations are suitable, and in accordance with the clients' investment objectives and risk factors. The courts have generally held that a registrant owes a fiduciary duty to the client where the client relies upon the advice and recommendations of the registrant. This fiduciary relationship requires the registrant to act carefully, honestly and in good faith in dealing with the client. Therefore, a registrant who makes unsuitable recommendations has breached his/her fiduciary duty owed to the client.
>
> Even in absence of general fiduciary relationship between registrant and client, there is at the very least, a relationship of trust and confidence that exists between a registrant and client. A client will rely upon and place confidence in the recommendations made by the registrant, who has an obligation to ensure the recommendations are suitable. Where the recommendations are unsuitable for the client, the registrant has breached his position of trust and failed to fulfill the most basic of responsibilities towards the client.

Considerations in Addition to General	Recommended Sanctions:
1. Extent of due diligence conducted with respect to recommended security. 2. Magnitude of losses directly attributable to the unsuitable recommendations. 3. The number of clients affected. 4. The level of sophistication of the clients. 5. The existence of any pattern of making unsuitable recommendations.	• Fine: Minimum of $10,000. • Disgorgement of profits. • Re-write of CPH. • Period of Close and/or Strict supervision. • Period of suspension (in most egregious cases involving elements of deception and misrepresentations).

6. Presence of any ulterior motive (i.e. financial gain to the Respondent).

¶ 14 IIROC Rule 1300 - "Supervision of Accounts" includes in 1300.2 the following requirements:

> Each Dealer Member must designate a director, partner or officer who is responsible for the opening of new accounts and the supervision of account activity (Ultimate Designated Person). An Alternate Designated Person may be appointed by the Dealer Member where necessary to ensure continuous supervision.
>
> The Ultimate Designated Person (or Branch Manager appointed by the Ultimate Designated Person) is responsible for establishing and maintaining procedures for account supervision and shall ensure that the handling of client business is within the bounds of ethical conduct, consistent with just and equitable principles of trade and not detrimental to the interests of the securities industry.

Considerations in Addition to General	Recommended Sanctions:
1. Extent of inadequacy in the procedures for supervision or the actual supervision of employee(s) 2. Extent of employee(s) misconduct. 3. Amount of losses or compensation for which the Dealer Member is liable as a result of the employee(s) misconduct. 4. "Red flag" warnings that should have been caught by a proper system of supervision/failure to follow-up or to conduct periodic reviews. 5. Corrective measures taken since discovery of problem.	• Designated Person/Supervisor: • Fine: Minimum of $25,000 • Re-write of PDO. • Period of suspension or permanent bar from director/office/supervisory and or compliance responsibilities. • Permanent bar from approval in all capacities in egregious cases.

¶ 15 IIROC Dealer Member Rule 2500 outlines the "Minimum Standards for Retail Account Supervision," which include, under the heading "III. Account Supervision Generally," the following:

> A. Supervisory Structure…
>
> 5. A Dealer Member must ensure that Supervisors are qualified to supervise trading activity in all products traded by those under his or her supervision…
>
> 6. A Dealer Member's supervisory system must provide Supervisors with the information necessary to properly conduct their supervision…

¶ 16 The Guidelines, under the heading "General Principles," include the following:

> **1. Main Concerns When Determining An Appropriate Penalty**
>
> As set out in *Re Derivative Services Inc.*, [2000] I.D.A.C.D. No. 26, at page 3, a Hearing Panel's main concerns in determining an appropriate penalty are:
>
> 1. Protection of the investing public;
>
> 2. Protection of the Investment Industry Regulatory Organization's membership;
>
> 3. Protection of the integrity of the Investment Industry Regulatory Organization's process;

4. Protection of the integrity of the securities markets, and

5. Prevention of a repetition of conduct of the type under consideration.

The penalty imposed in a specific proceeding should reflect the Hearing Panel's assessment of the measures necessary in the specific case to accomplish these goals, ranging from a reprimand to an absolute bar, and may take into account the seriousness of the respondent's conduct and specific and general deterrence.

2. Disciplinary Sanctions As Deterrence

Registrants and Dealer Member firms have significant responsibilities that they must meet if investors are to be protected and market integrity maintained. Registrants who choose to act in ways that threaten the integrity of the capital markets, must have the expectation that they will be held accountable through enforcement action by regulators. Sanctions should be based on the circumstances of the particular misconduct by a respondent with an aim at general deterrence.

General deterrence will follow from an appropriate decision and deter others from engaging in similar misconduct and improve overall business standards in the securities industry. This can be achieved if a sanction strikes an appropriate balance by addressing a registrant's specific misconduct, but also being in line with industry expectations. As was observed by the Hearing Panel in *Re Mills,* [2001] I.D.A.C.D. No. 7, April 17, 2001, at p. 3:

"Industry expectations and understandings are particularly relevant to general deterrence. If a penalty is less than industry understandings would lead its Members to expect for the conduct under consideration, it may undermine the goals of the Association :s disciplinary process; similarly, excessive penalties may reduce respect/or the process and concomitantly diminish its deterrent effect. Thus the responsibility of the District Council in a penalty hearing is to determine a penalty appropriate to the conduct and respondent be/ore it, reflecting that its primary purpose is prevention rather than punishment…"

3. Key Considerations When Determining Sanctions

The following list of factors should be considered in conjunction with the imposition of sanctions. Individual guidelines may list additional factors. This list is illustrative, not exhaustive, and the Hearing Panel should consider case-specific factors in addition to those listed here and in the guidelines. Since sanctions should be tailored to address the misconduct involved in a particular case, a penalty must be proportionate to the gravity of the misconduct and the relative degree of responsibility of a respondent. To properly assess the gravity of specific misconduct, the decision-maker should look to a number of factors, including, but not restricted to the following:

¶ 17 The following are those of the listed factors which are pertinent in the present case:

3.1 Harm To Clients, Employer and/or the Securities Market

Actual harm can sometimes be quantified by considering the type of transactions, the number of transactions, the size of the transactions, the number of clients affected by the misconduct, the length of time over which the misconduct took place, and the size of the loss suffered by the client(s) or the Dealer Member firm. Harm can also be measured using less empirical, but more subjective factors, such as the impact of a specific misconduct on a client's life (from an emotional, physical and/or mental perspective), or the impact on the reputation of the Dealer Member firm, or the reputation of the Canadian securities industry as a whole.

3.2 Blameworthiness

In appropriate cases, distinctions should be drawn between conduct that was

unintentional or negligent, and conduct that involves manipulative, fraudulent or deceptive conduct. Distinctions should also be drawn between isolated incidents and repeated, pervasive, or systemic contraventions of the Dealer Member Rules…

3.3 Degree of Participation

As a general rule, there ought to be a distinction between the sanctions imposed on direct perpetrators and those with a lesser level of complicity…

3.4 Extent to which the Respondent was Enriched by the Misconduct

3.5 Prior Disciplinary Record

The fact that a respondent has no prior disciplinary record should, in the absence of evidence to the contrary, lead a panel to a presumption that the respondent was of good moral character prior to the misconduct… However, in certain cases it may be that the misconduct at issue is so serious/egregious as to nullify the mitigating effect of the respondent having no prior disciplinary history (or at least no relevant disciplinary history).

3.6 Acceptance Of Responsibilities, Acknowledgement Of Misconduct and Remorse

An admission of wrongdoing by a respondent is usually considered to be a mitigating factor because it implies remorse and an acknowledgement of responsibility. The extent of the mitigating value is affected by timing: the earlier, the better....

3.7 Credit For Cooperation

Since Dealer Member regulation is dependent in large part upon the adherence to internal controls and compliance regimes, full cooperation with the Corporation's investigations by registrants is expected. However, respondents or potential respondents should be given credit for cooperation if they act in a reasonable manner during the course of investigation and disciplinary process by self-reporting and self-correcting the misconduct in question…

3.8 Voluntary Rehabilitative Efforts

Remediation efforts prior to (or even subsequent to) detection or intervention by the Corporation should be taken into consideration as mitigating the seriousness of misconduct.

There will no doubt be concerns that subsequent rehabilitative efforts are self-serving, but they warrant credit because they show both recognition of the misconduct and a commitment to remedy it…

3.9 Reliance on the Expertise of Others

In general, it is expected that registrants will use proper care and exercise independent professional judgment at all times in the course of their business activities. However, there may be times when an Approved Person's relative culpability may be tempered by his/her reliance on the expertise of others…

3.11 Multiple Incidents Of Misconduct Over An Extended Period Of Time

Generally, blameworthiness is compounded as the number of incidents expands. This rationale applies to all types of misconduct: a series of victims indicates a pattern, which compounds the culpability.

3.12 Vulnerability of Victim

The disciplinary process must be seen to provide some degree of protection for the

investing public, and in particular, the client with a lower level of sophistication. Consequently, the vulnerability of a victim should be taken into account in determining relative culpability, and hence the relative measure of the sanction imposed…

3.14 Significant Economic Loss to the Client and/or Dealer Member Firm

A finding of a significant monetary loss by the respondent's clients or the Dealer Member firm arising out of the respondent's misconduct can be seen as an aggravating factor to the extent that investing has at its core capital preservation and returns. If that core function is significantly eroded by regulatory misconduct, then it should be taken into account when the appropriate penalty is imposed.

4. Use of Sanctions

As set out above, sanctions should be remedial in nature and "fit" the misconduct. Sanctions should effectively address the conduct in question in such a way as to discourage and prevent future misconduct by the respondent, and at the same time, promote general adherence to industry rules and standards.

¶ 18 In applying the general principles set out above, the protection of the investing public, protection of the integrity of the IIROC process, protection of the integrity of the securities market, prevention of a repetition of conduct of the type under consideration, and general deterrence lead us to the conclusion that the penalties agreed upon between IIROC and the Respondents in the Settlement Agreement are appropriate and should be accepted. In considering the evidence before us, we have not found there to have been any circumstance in this case that would cause us to conclude that the agreed upon penalties fall outside a reasonable range of appropriateness.

¶ 19 We have taken into consideration the aggravating factors that the failure to supervise caused for a number of clients and the significant losses that resulted; 141 clients had losses exceeding just over $270,000. Some clients were impacted significantly. We do not know what percentage of each client's net worth these losses represented. On the other hand, there are mitigating factors in both the Respondents' favour, including the Respondents' cooperation with the investigation and negotiating the Settlement Agreement. Compliance in Toronto was involved and must share responsibility, and we have no information that LWS had any prior disciplinary history and there is no evidence that there have been any subsequent issues regarding her compliance with her obligations and duties under IIROC Rules.

¶ 20 We have had regard to the decisions of District Councils mentioned above and recognize the limitations in applying decisions in other cases to varying factual situations. The following passage from *Graham* (above, para. 10 at page 7) is pertinent:

> *"While cases presented during argument may be helpful, they are not decisive. The integrity of the process does however require that any penalty that is imposed should be consistent with prior cases, to the extent that they have been correctly decided, and to the extent that the Hearing Panel believes that the decision is consistent with the other cases; ..."*

¶ 21 The Hearing Panel advised, at the conclusion of the Hearing, that we accepted, and we signed, the Settlement Agreement. We confirm that decision.

¶ 22 The Respondents, in the Settlement Agreement, agreed to the following terms of settlement, which we have accepted as appropriate:

(a) WWC a fine of $175,000;

(b) LWS a fine of $15,000.

¶ 23 WWC has agreed to pay costs to IIROC in the sum of $10,000 which we also accept as appropriate. We recognize that the agreed costs reflect the reduced involvement and cost for IIROC resulting from the

cooperation of WWC and LWS.

August 6, 2013
Thomas J.D. Kormylo, Chair
Bernie Plett
Bruce Henderson

SETTLEMENT AGREEMENT

INTRODUCTION

1. Enforcement staff of the Investment Industry Regulatory Organization of Canada ("IIROC") and the Respondents, Wellington West Capital Inc. ("WW") and Lesley Walters-Sagher ("LWS") 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 WW's and LWS's conduct.

3. The Investigation discloses matters for which WW and LWS 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"), WW and LWS jointly recommend that the Hearing Panel accept this Settlement Agreement.

5. WW and LWS admit to the following contraventions of IIROC Dealer Member Rules, Guidelines, Regulations or Policies for the period from January to June, 2009 (the "Relevant Period"):

   (a) each did not use due diligence to learn and remain informed of the essential facts relative to the orders for certain leveraged exchange traded funds accepted during the Relevant Period, contrary to Dealer Member Rule 1300.1(a); and

   (b) they did not adequately supervise WW registered representatives when they recommended certain leveraged exchange traded funds to their clients during the Relevant Period, contrary to Dealer Member Rule 2500.

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

   (a) WW shall pay to IIROC a fine in the amount of $175,000;

   (b) LWS shall pay to IIROC a fine in the amount of $15,000; and

   (c) WW shall pay IIROC the sum of $10,000 to reflect the costs that Staff incurred in connection with this matter.

STATEMENT OF FACTS

Acknowledgement

7. Staff, WW and LWS agree with the facts set out in this Settlement Agreement and acknowledge that the terms of the settlement contained in this Settlement Agreement are based on those specific facts.

WW

8. WW was admitted to membership with the Investment Dealers Association of Canada ("IDA") in October 2006 and became an IIROC registrant on June 1, 2008. In or about July 2011, well after the Relevant Period, WW was acquired by National Bank Financial Ltd. ("NBF"), another IIROC Dealer Member.

LWS

9. LWS has been a registrant of the IDA since 1995 and became an IIROC registrant on June 1, 2008. LWS was registered as a compliance manager and branch manager at WW from 2003 to 2011, when WW was acquired by NBF. LWS is now an IIROC registrant with NBF.

10. LWS was asked by WW to act as interim branch manager for WW's Thunder Bay branch from 2008 to 2011 while she was a compliance department employee of WW based out of WW's Winnipeg offices.

LETFs Made Available and Client Orders Accepted

11. Prior to the Relevant Period, and as early as 2006, publicly-traded leveraged exchange traded funds became available to WW's registered representatives for recommendation to clients and WW began accepting client orders for leveraged exchange traded funds around the same time. In 2008, WW allowed an issuer of leveraged exchange traded funds to present to its registered representatives on a national sales call.

12. During the Relevant Period, Terry Dyck, while an investment advisor at WW, was able to purchase and sell certain leveraged exchange traded funds for his clients. The products at issue in this matter are the certain leveraged exchange traded funds that were purchased and sold by Terry Dyck for his clients during the Relevant Period that were available at the time and were recommended by WW's registered representatives (the "LETFs").

13. During the Relevant Period, a number of Mr. Dyck's client accounts held the LETFs and, by the end of 2009, the LETFs were held by approximately 145 of his clients. Mr. Dyck's clients suffered losses in connection with such investments in 2009, notwithstanding the gains made on LETFs by certain of those clients in 2008.

LETFs are Complex High Risk Products

14. WW accepted orders from clients for the LETFs, including "Bull" and "Bear" LETFs. The "Bull" LETFs are designed to achieve a multiple of the daily performance of an index (*i.e.*, to rise or fall in value in the same direction as the index), whereas the "Bear" LETFs are designed to achieve an inverse multiple of the daily performance of an index (*i.e.*, to rise or fall in value in the opposite direction from the index).

15. The LETFs are described in their prospectuses as "highly speculative" and as "involving a high degree of risk". The LETFs include the following characteristics, among others, as described in their prospectuses:

    (a) the securities underlying the funds include equity and/or fixed income securities, currencies, commodities and/or financial instruments including derivatives, such as options, swap agreements and futures and forward contracts;

    (b) their use of leverage could magnify market movements and provide greater investment exposure than in an unleveraged investment; and

    (c) they are designed to provide daily investment results and are rebalanced daily, which could magnify gains or losses.

16. The prospectuses for the LETFs identify a number of inherent risks, including: active investor risk; leverage risk; volatility risk; derivatives trading risk; restrictive effect of speculative position limits; commodity risk; aggressive investment technique risk; correlation and inverse correlation risk; counterparty risk; and risks associated with the underlying securities.

17. In June 2009, IIROC issued a Guidance Notice (the "Guidance Notice") to Dealer Members indicating that leveraged and inverse ETFs that are reset daily typically are unsuitable for retail investors who plan to hold them for longer than one trading session, particularly in volatile markets.

WW Failed to Use Due Diligence to Learn Essential Facts of LETFs

18. WW failed to use adequate due diligence to learn and remain informed of essential facts about the LETFs.

19. It is immediately apparent on the face of the prospectuses that the LETFs are high risk. To have failed to identify the LETFs as high risk products, WW failed to use adequate due diligence to learn and remain informed of essential facts about the LETFs. As such, WW was not in a position to verify the suitability of the LETFs.

WW Failed to Adequately Supervise

20. The LETFs were recommended for investment to WW clients. Without understanding the essential facts relative to the LETFs before accepting the client orders, WW could not accurately assess the nature and level of risk attendant in the LETFs. As such, WW was not able to meet its obligation to supervise the suitability of the recommendations to invest in the LETFs.

LWS Failed to Use Due Diligence to Learn Essential Facts of LETFs

21. LWS was branch manager for WW's Thunder Bay branch over the period when Mr. Dyck recommended the LETFs for investment to approximately 145 clients. At least one other registered representative at the Thunder Bay branch also recommended LETFs to clients.

22. Although LWS was aware of Mr. Dyck's extensive recommendation of the LETFs, she did not take any independent steps – such as reviewing the prospectuses or otherwise – to understand the LETFs. Instead, she relied on Mr. Dyck's assessment of the product as the responsible investment advisor and WW's identification of the LETFs as a medium risk security.

23. Had LWS reviewed the LETF prospectuses, it would have been clearly apparent to someone of her diligence and experience that they are a high risk product that would have to be supervised as such.

LWS Failed to Adequately Supervise

24. As branch manager, LWS was responsible for assessing compliance with regulatory requirements, including conducting daily trading reviews for, among other things, the suitability of recommended securities for clients.

25. While LWS generally executed her obligations as branch manager with diligence, she failed to meet those obligations in respect of the LETFs. Without understanding the essential facts relative to the LETFs, LWS could not accurately assess the nature and level of risk attendant in the LETFs and thus could not meet her obligation to supervise the suitability of the recommendations regarding the LETFs. As such, LWS failed to adequately supervise Mr. Dyck.

Mitigating Factors

26. After IIROC issued the Guidance Notice, Wellington West circulated the notice to its registered representatives.

27. By 2010, WW took additional steps to ensure that it sufficiently understood the structure and features of more complex and/or non-transparent investment products that its registered representatives would recommend to clients, including leveraged exchange traded funds.

28. WW and LWS have cooperated with IIROC Staff throughout the course of the Investigation.

TERMS OF SETTLEMENT

29. 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.

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

31. 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.

32. 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.

33. 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.

34. 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.

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

36. 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.

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

38. 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 Wellington West Capital Inc. at the City of Montréal in the Province of Québec, this 25th day of October, 2012.

"Sabrina Tremblay"	*"François Lavallée"*
Witness	**Wellington West Capital Inc.**
	Per: François Lavallée

AGREED TO by the Respondent Lesley Walters-Sagher at the City of Winnipeg in the Province of Manitoba, this 30th day of October, 2012.

"Jim Lawson"	*"Lesley Walters-Sagher"*
Witness	**Lesley Walters-Sagher**

AGREED TO by Staff at the City of Winnipeg in the Province of Manitoba, this 1st day of November, 2012.

"Gil Gauthier"	*"Susan Kushneryk for"*
Witness	**Natalija Popovic and Susan Kushneryk**
	Enforcement Counsel on behalf of Staff of the Investment Industry Regulatory Organization of Canada

ACCEPTED at the City of Winnipeg in the Province of Manitoba, this 1st day of November, 2012, by the following Hearing Panel:

"Thomas Kormylo"

Mr. Thomas Kormylo

Panel Chair

"Bernie Plett"

Mr. Bernie Plett

Panel Member

"Bruce Henderson"

Mr. Bruce Henderson

Panel Member