

Re Oldfield

IN THE MATTER OF:

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

and

Robert Graydon Oldfield

2016 IIROC 24

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

Heard: May 25, 2016 in Toronto, Ontario

Oral Decision: May 25, 2016

Written Reasons: June 20, 2016

Hearing Panel:

Mark Sandler, Chair; Stuart Livingston, Nick Savona

Appearances:

Kathryn Andrews, Senior Enforcement Counsel

Dave DiPaolo, counsel for Mr. Oldfield

REASONS FOR DECISION

Introduction

¶ 1 On May 25, 2016, the Hearing Panel conducted a Settlement Hearing respecting allegations against the Respondent Robert Graydon Oldfield (“Oldfield” or the “Respondent”).

¶ 2 The Respondent admitted that from August 2010 to April 2011, he failed to adequately supervise Registered Representative Robert Connor, contrary to IIROC Dealer Member Rules 38.4 (a), 1300.2, and 2500.

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

- a) Payment of a fine in the amount of \$20,000 and,
- b) A six month suspension from registration in a supervisory capacity.

The Respondent also agreed to pay costs to IIROC totalling \$3,000.

¶ 4 On May 25, 2016, after considering the Settlement Agreement and the submissions of counsel, the Hearing Panel accepted the terms of settlement, effective immediately. These are our reasons for doing so.

Overview

¶ 5 At the material time, Oldfield was the Branch Manager at a Scotia Capital Inc. (“Scotia”) branch located in Barrie, Ontario. Registered Representative Robert Connor (“Connor”) joined the Barrie Scotia branch in

August 2010.

¶ 6 From August 2010 through to April 2011, Oldfield failed to adequately supervise Connor. Oldfield did not question certain trades which raised suitability concerns in various Connor client accounts. Oldfield also allowed Connor to operate several client accounts with incomplete account documentation, some for a lengthy period of time. In particular, Connor was permitted to trade in some client accounts where Know Your Client (“KYC”) forms had not been completed.

Background

¶ 7 Oldfield has been an Approved Person with IIROC in various capacities since 1999. He was employed by Scotia and was registered with IIROC as a Branch Manager in January 2003. From August 2010 until April 2011 (the “Relevant Time Period”) Oldfield was the Branch Manager responsible for supervising Connor.

¶ 8 In May 2011, many of Oldfield’s Tier 1 supervisory responsibilities such as daily and monthly supervision were delegated to a regional office at Scotia. The Respondent is not currently approved as a Supervisor.

Opening of Connor’s new accounts at Scotia

¶ 9 Connor brought numerous clients with him from his previous firm when he joined Scotia in August 2010. Prior to obtaining KYCs, Connor provided his clients with a Scotia document entitled Summary of Client Information Sheet (“SCIS”) which listed client investment objectives and risk factors. While signed by the clients, the SCIS was not signed by Connor or Oldfield. The SCIS was used to facilitate the transfer of clients with the intention that Connor would obtain properly executed KYCs within a reasonable period of time after transfer. Despite warnings from Oldfield, Connor failed to expeditiously obtain properly executed KYCs from all of his clients during the Relevant Time Period.

Inadequate Supervision

¶ 10 The Respondent failed to conduct adequate supervision of Connor’s accounts during the Relevant Time Period in the following manner.

(a) Accounts not rejected or put under review

¶ 11 Many of the SCISs were incomplete in that they did not contain information such as the date the document was completed by the client, how long Connor had known the client, identity verification information, bank account details and other required information.

¶ 12 From August 2010 to October 2010, 67 of Connor’s clients had new accounts opened at Scotia on the basis of only a SCIS, many of which were incomplete.

¶ 13 In circumstances where the SCISs were missing information, the Respondent did not reject the account or put it under review.

(b) Trading before KYC obtained

¶ 14 Oldfield permitted eight Connor client accounts to trade while the accounts were missing documentation and/or information.

¶ 15 Eight clients who opened accounts in August or September 2010 effected trades in their accounts between October 2010 and April 2011. The KYC forms for these clients, however, were not completed until between May 2011 and November of 2011.

¶ 16 The Respondent made efforts to ensure that Connor obtained completed KYCs from his clients. While some progress was made, Connor failed to complete the process during the Relevant Time Period. The Respondent admitted that he failed to ensure that completed KYCs were obtained from all of Connor’s clients

by the end of the Relevant Time Period.

(c) Restricted accounts

¶ 17 Although Oldfield received a Restricted Account Report every two weeks, during the Relevant Time Period he did not make sufficient efforts to ensure that he was adequately supervising the process of the transfer of Connor's accounts.

¶ 18 Furthermore, as of May 2011, an internal Scotia audit discovered that Connor had 682 restricted accounts due to missing documentation.

(d) Lack of questioning re suitability

¶ 19 Oldfield told Staff that he recorded any daily or monthly trading supervision queries that he intended to make on a Supervision Tracking Sheet ("STS"). Oldfield's STSs indicate that he made no queries regarding any of Connor's client accounts between August 2010 and February 2011.

¶ 20 The STSs indicate that Oldfield made only four queries regarding Connor's accounts in March and April 2011.

¶ 21 There were various trades effected in Connor client accounts between the beginning of October 2010 and April 2011, which were not queried by Oldfield even though they should have raised suitability concerns. These trades should have been queried either because there were no investment objectives or risk tolerances listed for the client on the Daily Commission Report used by Oldfield to conduct supervision, or because the transaction was riskier than indicated by the client objectives and risk tolerances listed for that client.

(e) Concentration

¶ 22 In addition, the Respondent should have queried certain concentration issues in client JC's accounts during the Relevant Time Period.

¶ 23 JC's two accounts were both concentrated during January 2011 to April 2011. For example, Agnico Eagles Mines Ltd made up over 30% of the holdings at month end in JC's LIF account in February, March and April 2011. In JC's regular account there were only one or two securities held at month end during January to April 2011.

Connor's Misconduct

¶ 24 Connor was disciplined by an IROC Hearing Panel on November 3, 2015. That Hearing Panel also proceeded pursuant to a Settlement Agreement. Connor admitted that he made unsuitable recommendations in a client's account, compensated clients without his firm's knowledge or consent and engaged in unauthorized and discretionary trading in clients' accounts. Counsel for Mr. Oldfield pointed out that Connor's latter two activities were completely unknown to Oldfield and do not form part of his failings as Supervisor. The penalty terms included a \$30,000 fine, a one year suspension, a provision that Connor rewrite the CPH and 12 months of close supervision upon any re-registration.

Prior Disciplinary History

¶ 25 The Respondent does not have a previous disciplinary history with IROC.

Analysis

¶ 26 As reflected in our jurisprudence, a Hearing Panel should not interfere lightly in a negotiated settlement. More specifically, it should not reject a Settlement Agreement unless it views the proposed disposition as clearly falling outside the range of reasonableness. In our view, the Settlement Agreement is not contrary to the public interest, and falls within the range of reasonable outcomes available to us in the circumstances.

¶ 27 There are a number of aggravating circumstances that present themselves here:

- (a) The Respondent's role as Supervisor was integral to protecting Connor's clients;
- (b) The Respondent's level of supervision fell significantly below what was required in the circumstances; and
- (c) The inadequacy of that supervision was multi-faceted, involving missing information that should have resulted in accounts rejected or placed under review, trading without KYCs in place, the existence of 682 restricted accounts due to missing documentation, lack of queries about trades that should have raised suitability concerns, or about certain concentration issues in one client's account.

¶ 28 There are also mitigating circumstances that exist:

- (a) the absence of any prior disciplinary history;
- (b) the relatively short time frame involved;
- (c) the absence of any dishonesty or deceit;
- (d) the absence of any personal benefit to the Respondent;
- (e) the Respondent engaged in some supervision, albeit inadequate; and
- (f) the Respondent has acknowledged his misconduct, and cooperated with Staff in facilitating a settlement.

¶ 29 In our view, a fine of \$20,000 and a six month suspension from registration in a supervisory capacity represent a significant penalty which will serve to prevent and discourage future misconduct by the Respondent and to deter others from engaging in similar misconduct. It fosters confidence in the industry and in its regulation. It is proportionate to the misconduct and consistent with industry expectations. It is also consistent with IROC Sanction Guidelines and existing jurisprudence, which we have reviewed. Finally, it recognizes some appropriate differentiation between the Respondent's conduct and Connor's more serious misconduct.

¶ 30 For these reasons, we accepted the Settlement Agreement and made an order in accordance with paragraph 3 of these reasons. The fine and costs imposed upon the Respondent were payable immediately upon the date that we accepted the Settlement Agreement.

¶ 31 We are grateful to both counsel for their assistance.

Dated at Toronto this 20th day of June, 2016.

Mark Sandler, Chair

Stuart Livingston

Nick Savona

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IROC Enforcement Staff ("Staff") and the Respondent Robert Graydon Oldfield ("Oldfield" or the "Respondent"), consent and agree to the settlement of this matter by way of this agreement (the "Settlement Agreement").
2. The Enforcement Department of IROC has conducted an investigation (the "Investigation") into the

Respondent's conduct.

3. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C (the "Hearing Panel").

II. JOINT SETTLEMENT RECOMMENDATION

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

From August 2010 to April 2011, the Respondent failed to adequately supervise Registered Representative Robert Connor, contrary to IIROC Dealer Member Rules 38.4 (a), 1300.2, and 2500.

6. Staff and the Respondent agree to the following terms of settlement:
 - a. Payment of a fine in the amount of \$20,000 and,
 - b. A six month suspension from registration in a supervisory capacity.
7. The Respondent agrees to pay costs to IIROC in the sum of \$3,000.

III. STATEMENT OF FACTS

(i) Acknowledgment

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

(ii) Factual Background

Overview

9. At all material times, Oldfield was the Branch Manager at a Scotia Capital Inc. ("Scotia") branch located in Barrie, Ontario. Registered Representative Robert Connor ("Connor") joined the Barrie Scotia branch in August 2010.
10. From August 2010 through to April 2011, Oldfield failed to adequately supervise Connor. Oldfield did not question certain trades which raised suitability concerns in various Connor client accounts. Oldfield also allowed Connor to operate several client accounts with incomplete account documentation, some for a lengthy period of time. In particular, Connor was permitted to trade in some client accounts where Know Your Client ("KYC") forms had not been completed.

Background

11. Oldfield has been an Approved Person with IIROC in various capacities since 1999. Oldfield was employed by Scotia and was registered with IIROC as a Branch Manager in January 2003. From August 2010 until April 2011 (the "Relevant Time Period") Oldfield was the Branch Manager responsible for supervising Connor.
12. In May 2011, after the Relevant Time Period, many of Oldfield's Tier 1 supervisory responsibilities such as daily and monthly supervision were delegated to a regional office at Scotia responsible for various compliance functions. The Respondent is not currently approved as a Supervisor.

Opening of Connor's new accounts at Scotia

13. Connor brought numerous clients with him from his previous firm when he joined Scotia in August

2010. Prior to obtaining KYCs, Connor provided his clients with a Scotia document entitled Summary of Client Information Sheet (“SCIS”) which listed client investment objectives and risk factors. While signed by the clients, the SCIS was not signed by Connor or Oldfield. The SCIS was used to facilitate the transfer of clients with the intention that Connor would obtain properly executed KYCs within a reasonable period of time after transfer. Despite warnings from Oldfield, Connor failed to expeditiously obtain properly executed KYCs from all of his clients during the Relevant Time Period.

Inadequate Supervision

14. The Respondent failed to conduct adequate supervision of Connor’s accounts during the Relevant Time Period in the following manner.

(a) Accounts not rejected or put under review

15. Many of the SCISs were incomplete in that they did not contain information such as the date the document was completed by the client, how long Connor had known the client, identity verification information, bank account details and other required information.

16. From August 2010 to October 2010, 67 of Connor’s clients had new accounts opened at Scotia on the basis of only a SCIS, many of which were incomplete.

17. In circumstances where the SCISs were missing information, the Respondent did not reject the account or put it under review.

(b) Trading before KYC obtained

18. Oldfield permitted eight Connor client accounts to trade while the accounts were missing documentation and/or information.

19. Eight clients who opened accounts in August or September 2010 effected trades in their accounts between October 2010 and April 2011. The KYC forms for these clients, however, were not completed until between May 2011 and November of 2011.

20. The Respondent made efforts to ensure that Connor obtained completed KYCs from his clients. While some progress was made, Connor failed to complete the process during the Relevant Time Period. The Respondent admits that he failed to ensure that completed KYCs were obtained from all of Connor’s clients by the end of the Relevant Time Period.

(c) Restricted accounts

21. Although Oldfield received a Restricted Account Report every two weeks, during the Relevant Time Period he did not make sufficient efforts to ensure that he was adequately supervising the process of the transfer of Connor’s accounts.

22. Furthermore, as of May 2011, an internal Scotia audit discovered that Connor had 682 restricted accounts due to missing documentation.

(d) Lack of questioning re suitability

23. Oldfield told Staff that he recorded any daily or monthly trading supervision queries that he intended to make on a Supervision Tracking Sheet (“STS”). Oldfield’s STSs indicate that he made no queries regarding any of Connor’s client accounts between August 2010 and February 2011.

24. The STSs indicate that Oldfield made only 4 queries regarding Connor’s accounts in March and April 2011, namely on March 10 and 25, 2011 and two queries on April 18, 2011.

25. There were various trades effected in Connor client accounts between October 1st 2010 and April 2011,

which were not queried by Oldfield even though they should have raised suitability concerns. These trades should have been queried either because there were no investment objectives or risk tolerances listed for the client on the Daily Commission Report used by Oldfield to conduct supervision, or because the transaction was riskier than indicated by the client objectives and risk tolerances listed for that client.

(e) Concentration

26. In addition, the Respondent should have queried certain concentration issues in client JC's accounts during the Relevant Time Period.
27. JC's two accounts were both concentrated during January 2011 to April 2011. For example, Agnico Eagles Mines Ltd made up over 30% of the holdings at month end in JC's LIF account in February, March and April 2011. In JC's regular account there were only one or two securities held at month end during January to April 2011.

Other

28. Connor was disciplined by an IIROC Hearing Panel by way of a Settlement Agreement accepted on November 3, 2015. Connor admitted that he made unsuitable recommendations in a client's account, compensated clients without his firm's knowledge or consent and engaged in unauthorized and discretionary trading in clients' accounts. The penalty terms were a \$30,000 fine, a one year suspension, to re write the CPH and 12 months of close supervision upon any re-registration.
29. The Respondent does not have a previous disciplinary history with IIROC.
30. The Respondent was involved in dealing with numerous client complaints received by Scotia in relation to Connor's conduct.

IV. TERMS OF SETTLEMENT

31. 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.
32. The Settlement Agreement is subject to acceptance by the Hearing Panel.
33. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
34. 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.
35. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his rights under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
36. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement; or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.
37. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
38. 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.
39. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.

40. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

AGREED TO by the Respondent at the City of "Collingwood" in the Province of Ontario, this "16" day of May, 2016.

"Witness"

"Robert Graydon Oldfield"

WITNESS

ROBERT GRAYDON OLDFIELD

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this "20th" day of May, 2016.

"Ricki Ann Newmarch"

"Kathryn Andrews"

Witness

Kathryn Andrews

Senior 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 "25th" day of "May", 2016, by the following Hearing Panel:

Per: "Mark Sandler"

Panel Chair

Per: "Stuart Livingston"

Panel Member

Per: "Nick Savona"

Panel Member

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