# Re Wilton

**IN THE MATTER OF:**

**THE DEALER MEMBER RULES OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA**

**AND**

**JAMES COREY WILTON**

2009 IIROC 20

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

Heard: March 3, 2009
Decision: April 2, 2009
(13 paras.)

**Hearing Panel:**
Thomas Kormylo, Chair, Walter Silicz and Edward Griffith

**Appearances:**
Tamara Brooks, Enforcement Counsel, for the Investment Industry Regulatory Organization of Canada
Ms. Sherri Walsh and Mr. Michael Weinstein, Hill Dewar Vincent, Barristers and Solicitors, Counsel for the Respondent

## DECISION

1. A hearing panel (the "Panel") of the Investment Industry Regulatory Organization of Canada ("IIROC") was convened on March 3, 2009 in accordance with Rule 15 of the IIROC Dealer Member Rules of Practice and Procedure to review a settlement agreement dated January 20, 2009 (the "Settlement Agreement") negotiated between the Enforcement Department of IIROC and James Corey Wilton ("Respondent") in accordance with Rule 20.35 of Part 10 of the IIROC Dealer Member Rules (the "Rules").

2. After hearing submissions by counsel for the Respondent, and IIROC, the Panel considered, reviewed and accepted the proposed settlement set forth in the settlement agreement, a copy of which is attached hereto.

**Background**

3. IIROC counsel advised the Panel that this matter had been the subject of an earlier settlement agreement which was considered by a settlement panel at a hearing held on December 2, 2008. Following the hearing, the settlement panel rejected the settlement proposed in the earlier settlement agreement and purported to impose certain educational requirements as remedial sanctions in lieu of the imposition of the suspension recommended in the earlier settlement agreement, for the reasons set forth in a decision document dated December 4, 2008, a copy of which was provided to the Panel.

4. Section 20.36(1) of the Rules does not permit a hearing panel to do anything other than accept or reject a settlement agreement. IIROC counsel and counsel for the Respondent took the position, correctly in our view, that the decision of the previous panel must be viewed simply as a rejection of the settlement proposed by the earlier settlement agreement. The parties then negotiated the settlement proposal set forth in the Settlement Agreement now before this Panel.

**Facts and Contraventions**

5. The facts relating to the matter before the Panel are set forth in the Statement of Agreed Fact contained in the Settlement Agreement. The rules, regulations, by-laws and policies, which the Respondent has admitted to contravening are also set forth in the Settlement Agreement. There is no necessity to repeat the agreed facts or the admitted contraventions in this decision document.

**Matters Considered**

6. The Panel reviewed the Statement of Agreed Facts in the Settlement Agreement and noted that:

- the 26 clients who opened brokerage accounts through the Respondent between September 2002 and June 2003 and acquired CCPC securities lost, in the aggregate, $917,000;
- the acquisition of the CCPC securities by the clients were made in contravention of applicable securities laws;
- the clients' account documentation was sent to third parties for execution by the clients;
- the Respondent made no attempt to contact clients prior to the accounts being opened or prior to the acquisition of the CCPC securities to verify their investment knowledge or determine whether or not the investments were suitable for the client; and,
- the Respondent verified client signatures on account opening documentation without seeing original identification thereby undermining the integrity of money laundering regulations.

7. IIROC counsel advised the Panel that there had been no regulatory issues with the Respondent prior to the transactions that gave rise to the matters that are the subject of this hearing and confirmed that no regulatory matters have arisen since that time.

8. Respondent's counsel advised the Panel that no complaints regarding this matter or any other matter involving the Respondent have ever been received by the Respondent's employers since he became registered with the Investment Dealers Association of Canada as a Registered Representative in 2000. The Panel was advised that since the Respondent entered the industry, he has moved into successively more responsible positions and held a number of management positions. The Respondent's counsel emphasized that the Respondent did not personally benefit from any of the transactions giving rise to these proceedings and did not solicit the clients who opened trading accounts with him. Letters of support from a number of clients of the Respondent were filed. Each of the Respondent's clients stated in their letter, that, among other things, they found the Respondent to be an honest individual with a high degree of integrity.

9. The Panel considered the following mitigating factors in determining the appropriateness of the penalties imposed under the Settlement Agreement and whether they are within a reasonable range for and proportionate to the gravity of the misconduct of the Respondent:

- the Respondent contacted his carrying broker to determine whether the member firm could process CCPC trades and obtained documentation relating to such trades and verified that CCPC trades could be processed in client accounts;
- the Respondent obtained all documentation required by his firm to establish the accounts;

- the Respondent conducted some due diligence regarding the existence, business operations and opportunities of the issuer of the CCPC securities;
- the Respondent did not recommend the purchase of the CCPC securities, received no compensation for his role in facilitating the transactions and was motivated by a desire to increase his client base;
- the Respondent lacked any record of regulatory misconduct before and after the subject transactions; and,
- the Respondent cooperated throughout the investigation and has acknowledged his misconduct and accepted responsibility for his actions.

**Decision**

10. The Panel recognized the importance of IIROC taking steps to ensure compliance by its members with the IIROC rules, guidelines, by-laws, regulations and policies, and in particular enforcing compliance with the know-your-client rule, ensuring proper account opening procedures are followed and maintaining the integrity of the money laundering regulations.

11. The Panel noted that, in this case, although the Respondent was not the instigator of the series of transactions which facilitated the 26 investors investing in the CCPC securities and losing their investment, he was naïve and the circumstances ought to have prompted a reasonably diligent registered representative to conclude that the proposed transactions were suspicious, highly irregular and deserving of further attention and due diligence.

12. The Panel accepted IIROC counsel's submission that the sanctions proposed by the Settlement Agreement were appropriate in the circumstances, consistent with sanctions in similar cases, and necessary to underscore the need for representatives to take appropriate steps to protect the integrity of the industry, and to protect clients.

13. After reviewing the proposed Settlement Agreement, and after hearing submissions, the Panel agreed that the penalties proposed are in line with industry expectations and are sufficient to act as a general deterrence and accepted the Settlement Agreement.

Signed this 2nd day of April, 2009, by the following Statement Panel.

Thomas J.D. Kormylo, Panel Chair
Walter N. Silicz, Panel Member
Edward Griffith, Panel Member

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## SETTLEMENT AGREEMENT

### I. INTRODUCTION

1. The Enforcement Department Staff ("Staff") of the Investment Industry Regulatory Organization of Canada ("IIROC") has conducted an investigation ("the Investigation") into the conduct of *[Respondent's Name]* ("the Respondent").

2. The Investigation was commenced by Enforcement Department Staff ("IDA Staff") of the Investment Dealers Association of Canada ("IDA") prior to May 30, 2008. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada and Market Regulation Services Inc. Pursuant to the *Administrative and Regulatory Services Agreement* between

IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions.

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. The Respondent consents to be subject to the jurisdiction of IIROC.

5. Staff and the Respondent consent and agree to the settlement of these matters by way of this settlement agreement ("the Settlement Agreement") 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.

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

7. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

8. 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.

9. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her/its right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.

10. 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.

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

12. 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.

13. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

## III. Statement of Facts

*(i) Acknowledgment*

14. 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

**The Respondent's Registration History:**

15. During the material time, the Respondent resided in Winnipeg, Manitoba. The Respondent commenced his career in the investment industry in 1992 with the Winnipeg Commodities Exchange. By 1997 he

was employed by LFG Futures Canada Inc., which became CFG Futures Canada Inc. ("CFG") in 1999. The Respondent was approved as a Registered Representative in October 2000. CFG was purchased by Refco Futures Inc. ('Refco") in or around January 1, 2003, at which time the Respondent became Branch Manager in the Refco Winnipeg office. At the material time, the Respondent was registered in various provinces including Manitoba, Ontario and British Columbia.

16. On June 1, 2008, the Respondent became a regulated person of IIROC.

Overview of The Association's Investigation

17. The Investigation by the Association commenced as a result of findings that the Respondent had received client referrals from a promoter group under investigation. The purpose of the referrals was for purchasing private company shares of Advanced Rescue Technologies Inc. ("ARTI") of Prince George, British Columbia. The Respondent's clients came to acquire $917,000 of ARTI preferred shares through private placement. The sale of ARTI shares constituted an illegal distribution.

18. In November 2005, the British Columbia Securities Commission issued a Cease Trade Order with respect to ARTI. Whereas ARTI represented to the BCSC that it had relied on the offering memorandum exemption in Part 4 of Multilateral Instrument 45-103 to complete some of the distributions, it had filed neither offering memoranda nor distribution reports as and when required with respect to any of the distributions.

19. The Respondent did not recommend the ARTI security to any of the investors and was not compensated in any manner with respect to the transactions. The Respondent opened accounts referred to him by the promoters and processed ARTI placements in them, without having first contacted the majority of the clients or having reasonably informed himself as to the security and the manner in which it was being distributed.

The Promoters

20. C.C. and P.S. (collectively the "Promoters") were unregistered individuals residing in Ontario. They held themselves out to clients as financial planners working for an unregistered company known as C.A.M.

21. The Respondent was introduced to C.C. through A.B., a long standing brokerage client and friend. A.B. was a commodities trader and Registered Representative in Winnipeg. A.B. was unable to process Canadian Controlled Private Corporation ("CCPC") share offerings through his member firm and asked the Respondent whether he could open the account for an investor interested in completing a CCPC swap.

22. The Respondent knew nothing about a CCPC share offering transaction, as he was only just in the process of becoming licensed as a stock equities broker. CFG's primary business was in futures trading and as such used the services of a carrying broker to clear its securities business. The Respondent contacted the carrying broker to inquire as to whether CFG could process this type of transaction. The Respondent was provided with a booklet outlining the documentation and related administration requirements for a CCPC investment by an investor using funds in a registered account.

23. Once he was satisfied through the clearing agent that the transaction could be completed, the Respondent informed A.B. that he could open the account. Subsequently, C.C. contacted the Respondent and represented himself as a consultant working for C.A.M. with a mandate to raise funds for ARTI.

24. The Respondent made no inquiries with C.C. as to his background or qualifications. The Respondent researched ARTI on-line and determined that it was a patient immobilization and transportation device that protected patients from environmental exposure as well as biological and chemical threats. The Respondent understood from speaking with the President of ARTI, Greg Rivers, that ARTI was targeting the United States government as a potential client. Based on the information the Respondent received from C.C. and his own research, including his conversation with the President of ARTI, the Respondent formed the opinion that ARTI was marketing a product that had a reasonable prospect of success. The Respondent did not know how C.C. was being compensated for promoting ARTI. While aware that a publicly listed company had a prospectus requirement, the Respondent did not ask if ARTI had a prospectus, an offering memorandum or any other such document. The Respondent had no knowledge of or contact with P.S.

25. Unbeknown to the Respondent at the material time, the Promoters used promises of significant earnings of 2% monthly to convince clients to invest their RRSP money in foreign currency exchange through their company. Investors were told that shares of the private company could only be purchased in a Self-Directed RRSP.

The Respondent's ARTI clients

26. The Respondent provided C.C. with information as to how to access his member firm's blank New Client Account Forms ("NCAF") on-line. While the Respondent initially thought C.C. was sending him one new client, between September 2002 and June 2003, twenty-six (26) clients referred by C.C. opened accounts and purchased private placements of ARTI. The Respondent received completed NCAFs through C.C. in order open accounts at his member firm. One additional client was referred by F. & Co. Chartered Accountants in January 2003. The Respondent communicated with both the accountants and their client in order to open that account.

27. Transactions to purchase ARTI shares were processed into clients' RRSP accounts through the Member firm as a swap from non-registered accounts in the form of qualifying CCPC investments. Twenty-four (24) of the referred clients were resident in Ontario while two (2) were resident in Manitoba. The Respondent was registered in both Ontario and Manitoba at the material time.

28. None of the clients had dealings with the Respondent prior to opening an account with him. The NCAFs for the majority of clients indicated that they had good investment knowledge. The personal information provided on the NCAFs with respect to occupation, income and net worth varied from client to client. The stated investment objectives and risk tolerances also varied, with the majority of clients (17 of the 26) allocating 80% of the assets in their accounts with the Respondent's firm to higher-risk, speculative securities and trading strategies. At the time of opening the accounts, the Respondent relied on the information as provided on the NCAFs.

29. The Ontario clients derived from either the Sarnia/Corunna area, London/Essex/Delhi area or Coe Hill area. All of the clients were referred to the Respondent by C.C. The Sarnia/Corunna clients were handled directly by a Mutual Fund Dealers Association ("MFDA") registrant K.B. who assisted them with opening their accounts and purchasing the ARTI shares. Unbeknown to the Respondent, these clients had also been KB's mutual fund clients but selling shares in ARTI was outside his MFDA registration. KB assisted his clients in completing documentation to open accounts with the Respondent.

30. The London/Essex/Delhi and Coe Hill clients were also referred to the Respondent by C.C. These clients were handled directly by P.S., a local resident, who assisted them in opening their accounts and purchasing ARTI shares. Unbeknown to the Respondent, P.S. had been a financial advisor and was known to the London clients.

31. RRSP investors persuaded to purchase shares of the private company were advised by the promoters they had to open Self-Directed RRSP accounts. The investors completed account opening documentation with the assistance of the Promoters or KB.

32. The completed NCAFs were returned to the Respondent to open the new client accounts. The Respondent played no role in the completion and execution of the account opening documentation.

33. Clients liquidated their RRSP holding at other financial institutions and transferred the proceeds of sale in cash to an account opened in their name at CFG and later Refco under the administration of the Respondent. One client account was liquidated after it was opened with the Respondent. The investors would then use the proceeds in their CFG or Refco accounts to purchase the shares of ARTI.

34. The Respondent accepted the new client accounts in hopes of generating future business following the ARTI transactions.

35. For the most part, the Respondent did not contact the clients to discuss and confirm the content of their NCAFs before opening accounts. At the time of opening each account, the Respondent reviewed the completed documentation but only contacted a client when documentation was not complete. In some cases, the Respondent never contacted the ARTI clients throughout the entire time they held an account with him, although he did attempt to contact all the clients at some point during his relationship with them. When he did contact a client directly or by leaving a message, it was only to discuss other investment recommendations. On many occasions, clients advised the Respondent that they relied on K.B. for their investment advice and some said they would have to speak to K.B. prior to proceeding with additional investments. This information caused the Respondent to have some concerns.

36. In June 2003, the Respondent became concerned with the volume of accounts being referred by C.C. for the purpose of purchasing shares of ARTI. On one occasion, notwithstanding the client's written instructions to proceed, the Respondent refused to open an account where it appeared ARTI was not a suitable investment. Around that same time, the Respondent started to question C.C. about the suitability of ARTI in some client accounts. The Respondent felt that C.C. was annoyed with him and suddenly stopped sending the Respondent referrals.

37. In June 2003, the Respondent contacted the firm's carrying broker and the Manitoba Securities Commission to enquire as to any problems with ARTI . He did not receive negative information.

Proceeds of Crime (Money Laundering)

38. For the purpose of Proceeds of Crime (Money Laundering) obligations, the Respondent completed the signature section of the NCAFs in 11 cases by attesting that he had seen original identification and had verified the client's signature against it. However, the Respondent had never seen original documentation and had verified signatures only against photocopies of the clients' identification. The NCAFs supported the opening of both cash and RSP accounts in each client's name.

The ARTI Distribution Method

39. Each client received documentation in relation to his/her purchase of the ARTI shares. Clients received an executed document entitled "Certificate" bearing the name of Gregory W. Rivers ("Rivers") signing as President of ARTI. The document stated that the shares in ARTI were RRSP eligible and certified that Rivers had personally estimated or calculated the fair market value of the shares at $1.00.

40. In addition, F. & Co. Chartered Accountants of British Columbia wrote an opinion letter entitled "Certification of Private Corporation Shares" stating that shares in the company were qualified RRSP investments and had a fair market value of $1.00.

41. Client's completed and signed a "Letter of Indemnity". This document was intended as the clients' warrant that they understood the RRSP eligibility, liquidity, marketability and value of the ARTI shares and had the opportunity to obtain independent financial, investment, tax and legal advice. The clients further certified that the shares of ARTI were "qualified investments for purposes of Applicable Legislation".

42. The Promoters directed the clients to sign a "Letter of Direction" which instructed CFG or Refco to accept shares of ARTI into their RRSP accounts and deliver money from those accounts in payment to "Advance Rescue Technologies Inc." on their behalf.

43. The Respondent received a package of documents to accompany the new account openings. The package included the following documents: a letter, written on ARTI letterhead and signed by C.C. as Business Development Manager; a Letter of Direction for payment; the Letter of Corporation Certificate for Eligible Corporation; the Letter of Corporation Certificate of Fair Market Value; the Letter of Qualified Investment of Compliance and Indemnification; and share certificates executed by Rivers. Without making further inquiries and based on the documents he received, the Respondent believed that he had discharged his obligations to the clients in the completion of their purchase of shares in ARTI.

44. CFG or Refco delivered funds from the clients' accounts to ARTI after which the funds cannot be accurately traced by the Association.

The Illegal Distribution

45. The Respondent unintentionally facilitated an illegal distribution of shares in ARTI to 26 clients resident in Ontario or Manitoba. None of those clients qualified as accredited investors nor did they qualify for any available exemptions pursuant to the securities legislation of these provinces.

46. The Respondent was not aware that any of the clients had a familial relationship with principles of ARTI. As a CCPC distribution to unrelated persons, ARTI shares would have to have been distributed by way of an exemption to the prospectus requirement set out in provincial securities legislation that recognizes accredited investors.

47. Pursuant to the *Securities Act*, R.S.O. 1990, c. S. 5, as amended, and Ontario Securities Commission Rule 45-501 (collectively the "Securities Legislation"), the "accredited investor exemption" required an investment of at lest $150,000 per investor up until February 2003, and thereafter required clients to own financial assets having an aggregate realizable value that, before taxes but net of any related liabilities, exceeded $1,000,000, or had a net income before taxes exceeding $200,000 in each of the two most recent years or whose net income before taxes exceeded $200,000 in each of the two most recent years or whose net income before taxes combined with that of a spouse exceeded $300,000 in each of those years. Similar provisions are found in the securities legislation of Manitoba. In the case of the Ontario and Manitoba residents purchasing shares in ARTI, a private company in British Columbia, the rules with respect to accredited investor exemptions under the *Ontario Securities Act* and the *Manitoba Securities Act*, respectively, applied.

48. In November 2005, the British Columbia Securities Commission issued Cease Trade Order 661 in response to ARTI's failure to file offering memoranda or distribution reports as and when required. The Respondent's clients lost all of their money used to purchase shares in ARTI.

49. On February 15, 2008, in a settlement with the BCSC, Rivers admitted that between February 2002 and April 2005, as former president and director of ARTI and another company, he illegally distributed and misrepresented approximately $6.6 million in securities to investors in Canada.

The Respondent's Failure to Make Reasonable Inquiries

50. The Respondent received completed and executed account opening documentation for each new ARTI client. Notwithstanding that the client signatures on the NCAFs, Letters of Direction and Letters of Indemnity were primarily witnessed by the Promoters or KB, the Respondent made no inquiries and performed no due diligence on these individuals' qualifications and backgrounds.

51. The Respondent failed to know his clients by not contacting each of them to satisfy him as to their reported occupations, income, net worth, investment knowledge and risk tolerance with respect to the NCAFs forwarded to him by C.C.

52. The Respondent failed to make enquiries and took no steps to ensure that the transactions involving the purchase of ARTI shares by his clients were within the bounds of good business practice. The Respondent failed to perform any due diligence into the legitimacy of ARTI and whether it was a viable business suited for investment in unrelated persons RRSPs. Further, he failed to determine whether the transactions complied with prospectus requirements, whether they were made in reliance on an exemption, or were even approved for distribution pursuant to the applicable provincial securities legislation.

53. In doing all of the above, the Respondent relinquished his gatekeeper duties to individuals about whom he knew little or nothing in circumstances where he knew or ought to have known that they had recommended ARTI as an investment and advised his clients' to sign the supporting documentation.

54. The Respondent did not benefit financially from the sale of ARTI to his clients. The Respondent fully cooperated with the investigation.

55. MF Global Canada suspended the Respondent for three weeks without pay as an internal firm sanction in response to the misconduct described in this Settlement Agreement.

## IV. Contraventions

56. The Respondent admits to the following contraventions of Association By-laws, Regulations, Rulings or Policies:

1) Between September 2002 and June 2003, James Corey Wilton, a Registered Representative employed at the material time by a Member of the IDA, failed to observe high standards of conduct in the transaction of his business and engaged in business conduct or practice which was detrimental to the public interest, by facilitating the purchase of shares of ARTI, a Canadian Controlled Private Corporation, by a group of clients without making any reasonable inquiry to determine:

   a) The essential facts relative to the clients;
   b) Whether the acceptance of purchase orders taken from these clients were within the bounds of good business practice; and,
   c) Whether the purchases were suitable for each client taking into account the clients' financial situations, investment knowledge, investment objectives and risk tolerances,

   contrary to by-law 29.1.

2) Between February and June 2003, James Corey Wilton, a Registered Representative employed by a Member of the Association, engaging in business conduct or practice which is unbecoming a Registered Representative or detrimental to the public interest by falsely attesting on new client

account opening documentation that he had seen original identification and had verified the client's signature against it for the Purpose of Proceeds of Crime (Money Laundering) legislation, contrary to Association By-law 29.1

## V. Terms of Settlement

57. The Respondent agrees to the following terms of settlement:

    1. A fine in the amount of :
        i. $ 15,000 with respect to Contravention 1;
        ii. $ 5,000 with respect to Contravention 2;

58. The Respondent shall pay a portion of Staff's costs of this proceeding in the amount of $5,000

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

60. 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 Winnipeg in the Province of Manitoba, this _____ day of January, 2009.

**Witness** **James Corey Wilton**

**AGREED TO** by Staff at the City of Toronto in the Province of Ontario, this _____ day of January, 2009.

**Witness** **Tamara Brooks**
Enforcement Counsel on behalf of Staff of the Investment Industry Regulatory Organization of Canada