

# Re Igra

IN THE MATTER OF:

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

AND

**THE BY-LAWS OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA**

AND

**IRWIN IGRA**

2009 IIROC 29

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

Heard: May 26, 2009  
Decision: June 22, 2009  
(2 paras.)

**Hearing Panel:**

The Honourable John B. Webber  
Mr. Robert Guilday  
Mr. Guenther Kleberg

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## ORDER

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¶ 1 THIS SETTLEMENT HEARING was heard on Tuesday, May 26, 2009, pursuant to Dealer Member Rules 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure; and upon reviewing the Settlement Agreement; and on hearing from counsel for both parties.

¶ 2 THIS HEARING PANEL ORDERS:

- i. The Settlement Agreement attached as Schedule 'A' is hereby accepted.

DATED at Toronto, Ontario this 22 nd day of June , 2009.

The Honourable John B. Webber  
Mr. Robert Guilday  
Mr. Guenther Kleberg

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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 Irwin Igra (“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 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**

##### **A. The Respondent**

15. At the material time, the Respondent was employed as a Registered Representative by IPC Securities Corporation (“IPC”) in Toronto, Ontario.

16. The Respondent has been employed as a Registered Representative since September 2000, except for the period January 2002 to July 2003, when the Respondent was employed as a mutual fund sales representative with IPC Investment Corporation, which is registered with the Mutual Fund Dealers Association.

17. The Respondent has been employed as a Registered Representative with Wellington West Capital Inc. since March 2007.

18. The Respondent has no prior disciplinary history.

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

##### **B. Failure to use due diligence to ensure clients qualified as accredited investors**

20. Between January 2005 and December 2006, a number of the Respondent’s clients purchased securities offered pursuant to prospectus exemptions in reliance on the accredited investor exemption.

21. The accredited investor definition is set out in National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106).<sup>1</sup> The relevant provisions are set out in section 1.1 (j) and (k):

“accredited investor” means:

(j) an individual who, either alone or with a spouse, beneficially owns, directly or indirectly, financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds \$1 000 000,

(k) an individual whose net income before taxes exceeded \$200 000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse exceeded \$300 000 in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year

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<sup>1</sup> NI 45-106 came into force on September 14, 2005. Prior to that date the accredited investor definition was set out in OSC Rule 45-501. The accredited investor provisions relevant to this matter were not amended by NI 45-106.

“financial assets” means

(a) cash,

(b) securities, or

(c) a contract of insurance, a deposit or an evidence of a deposit that is not a security for the purposes of securities legislation;

22. The Respondent was aware of and familiar with the accredited investor definition and requirements.
23. In order to purchase securities in reliance on the accredited investor exemption, the Respondent’s clients were required to complete documentation provided to them by the Respondent attesting that they were an accredited investor and indicating under which provision they qualified.
24. The Respondent did not review New Client Application Forms (NCAFs) prior to sending accredited investor documentation to clients for execution, after receiving the executed documentation, or prior to submitting the documentation for processing.
25. As a result, during the relevant period, fourteen of the Respondent’s clients completed documentation and purchased securities relying on the accredited investor exemption when their NCAFs and account statements clearly indicated that they did not qualify under any of the provisions of the accredited investor definition.
26. The fourteen clients made twenty-one purchases of securities relying on the accredited investor exemption as set out in the table below:

Client	Date of Purchase	Security	Amount Invested
1	August 25, 2006	Redwood Long/Short Conservative Equity <sup>1</sup>	\$5,880
2	August 30, 2005	Redwood Long/Short Canadian Growth <sup>1</sup>	\$10,000
	September 30, 2005	Redwood Long/Short Canadian Growth	\$6,000
	August 25, 2006	Redwood Long/Short Conservative Equity <sup>2</sup>	\$13,547
3	March 9, 2006	Silver Eagle Mines Inc. Special Warrants	\$10,000
4	February 27, 2006	Rose Investments I Limited Partnership	\$52,000
5	May 13, 2005	Redwood Long/Short Canadian Growth	\$9,000
	August 25, 2006	Redwood Long/Short Conservative Equity	\$17,657
6	August 25, 2006	Redwood Long/Short Conservative Equity	\$9,883
7	August 25, 2006	Redwood Long/Short Conservative Equity	\$4,941
8	March 19, 2006	Silver Eagle Mines Inc. Special Warrants	\$10,000
9	January 7, 2005	Redwood Long/Short Canadian Growth	\$5,000
	August 25, 2006	Redwood Long/Short Conservative Equity	\$4,391
10	August 30, 2006	Sprott Hedge Fund LP II <sup>1</sup>	\$25,000
11	February 27, 2006	Rose Investments I Limited Partnership	\$39,000
	March 8, 2006	Silver Eagle Mines Inc. Special Warrants	\$20,000
	November 27, 2006	Alpha Energy Flow-Through Fund	\$15,000
12	March 9, 2006	Silver Eagle Mines Inc. Special Warrants	\$10,000
	August 25, 2006	Redwood Long/Short Conservative Equity	\$24,376
13	March 9, 2006	Silver Eagle Mines Inc. Special Warrants	\$10,000

14	January 5, 2006	Redwood Long/Short Canadian Growth*	\$10,000
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<sup>1</sup>Sold under exemption but in continuous distribution

<sup>2</sup>These transactions were the result of transfers by the clients to another Redwood fund; see para. 27 for further particulars.

27. The client transfers from the Redwood Long/Short Canadian Growth Fund to the Redwood Long/Short Conservative Equity Fund occurred when IPC, through its advisors, including the Respondent, notified the clients that a change in fund managers was about to occur for the Redwood Long/Short Canadian Growth Fund. Redwood Asset Management advised that the change in management would likely result in a drop in the Long/Short Canadian Growth fund's net asset value (NAV). Investors were therefore given the option of staying in the fund, redeeming the fund at the new NAV price (which was to be set later in the week) or rolling over their investment at the previous week's price into the Redwood Conservative Equity Fund. As part of the proposed arrangement, no fees or commissions were to be charged. In addition, clients' would not be locked into holding the new fund for any minimum time period.
28. After the fund transfers were executed Redwood Asset Management informed the Respondent that new accredited investor forms were required. Thirteen of the Respondent's clients who transferred funds executed the forms; at this time, one client who transferred funds informed the Respondent that she did not qualify for the accredited investor exemption and was redeemed from the Fund.
29. All of the purchases with respect to the Redwood Funds were done on a "no-load" basis. No upfront commissions were paid to the Respondent by Redwood nor were there any deferred sales charges. The Respondent did collect a "trailer fee" of 1% per year (approximately \$780 to \$1,000 per year).
30. The Respondent acknowledges that he took no steps to verify or ensure that completed accredited investor documentation was accurate, supported or confirmed by information contained on NCAFs or otherwise.
31. By failing to review the NCAFs at any time, and thereby failing to make any further inquiries to ensure clients were accredited investors, the Respondent did not discharge his "know your client" obligations.
32. None of the clients in issue were new clients. The Respondent believed, based on knowledge of the clients' circumstances, such as their profession or business activities, that the clients qualified as accredited investors. The Respondent accepts that he did not perform the necessary due diligence to ensure that the clients were properly qualified as accredited investors.
33. IPC never made any inquiries or questioned any of the purchases set out in paragraph 26.

#### **IV. Contraventions**

34. The Respondent admits to the following contraventions of IIROC Rules, Guidance, IDA By-Laws, Regulations or Policies:
  - (i) Between January 2005 and December 2006, the Respondent failed to use due diligence to ensure that clients qualified as accredited investors in accordance with the provisions of the Ontario *Securities Act*, R.S.O. 1990, c. S. 5 (as amended) before facilitating the purchase of securities offered pursuant to prospectus exemptions, contrary to IDA Regulation 1300.1(a).

**V. Terms of Settlement**

35. The Respondent agrees to the following terms of settlement:
- a) A fine in the amount of \$10,000; and
  - b) Successful completion of the Conduct and Practices Handbook examination within 6 months from the effective date of the Settlement Agreement.
36. The Respondent shall pay a portion of Staff’s costs of this proceeding in the amount of \$2,500.
37. The monetary penalty and costs imposed upon the Respondent are payable in five installments of \$2,000 beginning July 1, 2009, and followed by payments August 1, September 1, October 1, November 1, 2009. The further sum of \$2500 is payable December 1, 2009.
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 at the City of Toronto in the Province of Ontario, this 20<sup>th</sup> day of April, 2009.

**“Witness signature”**

**“Irwin Igra”**

**Witness**

**IRWIN IGRA**

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this 22<sup>nd</sup> day of April, 2009.

**“Witness signature”**

**“Charles Corlett”**

**Witness**

**Charles corlett**

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 26<sup>th</sup> day of May, 2009, by the following Hearing Panel:

Per: “John Webber”

**Panel Chair**

Per: “Robert Guilday”  
Panel Member

Per: “Guenther Kleberg”  
Panel Member

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