

Re Kwok

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

Hung Fai Raymond Kwok

2010 IIROC 38

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

Heard: July 29, 2010 in Vancouver BC

Decision: July 29, 2010

(42 paras.)

Hearing Panel:

Alison Narod (Chair), Doug Stewart, Lloyd Costley

DECISION

¶ 1 The undersigned panel was struck to conduct a settlement hearing pursuant to the By-Laws of the Investment Dealers Association of Canada (IDA) to consider whether or not to accept a Settlement Agreement reached between the parties (the “Settlement Agreement”).

¶ 2 According to the Settlement Agreement, the Respondent, Mr. Kwok, admits that in August 2007, while employed as a registered representative by a Member of the IDA, he personally compensated three of his clients, without the knowledge or consent of his employer, HSBC Securities (Canada) Inc. (“HSBC”), contrary to IDA By-Law 29.1. That By-Law states:

29.1 Members and each partner, director, officer, sales manager, branch manager, assistant or co-branch manager, registered representative, investment representative and employee of a Member (i) shall observe high standards of ethics and conduct in the transaction of their business, (ii) shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest, and (iii) shall be of such character and business repute and have such experience and training as is consistent with the standards described in clauses (i) and (ii) or as may be prescribed by the Board of Directors.

For the purposes of disciplinary proceedings pursuant to the By-laws, each Member shall be responsible for all acts and omissions of each partner, director, officer, sales manager, branch manager, assistant or co-branch manager, registered representative, investment

representative and employee of a Member; and each of the foregoing individuals shall comply with all By-laws, Regulations and Policies required to be complied with by the Member.

¶ 3 Additionally, at paragraph 6 of the Settlement Agreement, the Respondent agrees to the following terms of settlement:

- a) payment of a \$15,000 fine to IIROC;
- b) payment to IIROC of a portion of IIROC's investigation and prosecution costs in the amount of \$3,000;
- c) a suspension from approval in any registered capacity with IIROC for a period of six months;
- d) a requirement that he re-write and pass the Conduct and Practices Handbook examination, prior to being eligible for registration with IIROC; and
- e) a requirement that he be under close supervision for a period of 12 months upon any subsequent registration with IIROC.

Facts

¶ 4 The facts on which the Settlement Agreement is based are briefly described below.

(a) *the PL and YC Accounts*

¶ 5 The Respondent was a registered representative who was responsible for certain accounts opened by PL and others (collectively, the "PL accounts"), certain accounts opened by YC and others (collectively, the "YC accounts") and an account opened by KA. PL and YC were friends.

¶ 6 On the Respondent's advice, PL and YC decided to purchase 12 Year Callable LIBOR Range Accrual Deposit Notes (the "LIBOR Notes"). As a result, on January 25, 2005, the Respondent purchased:

- \$40,000 in LIBOR Notes for the PL accounts; and
- \$100,000 in LIBOR Notes for the YC accounts.

¶ 7 Further, on February 24, 2005, the Respondent purchased:

- \$20,000 in LIBOR Notes for the PL accounts; and
- \$70,000 in LIBOR Notes for the YC accounts.

¶ 8 The LIBOR Notes have, among other things, the following features: They are denominated in US dollars. They are non-callable for the first year. Thereafter, they are callable on quarterly coupon dates. For the first year, quarterly interest rates are guaranteed. After the first year, any given quarterly interest payment can amount to zero if the six month US dollar LIBOR is not within a pre-determined range.

¶ 9 In each case, the LIBOR Notes paid interest for the first year after purchase. However, by the end of the first year, the six month US dollar LIBOR was not within the pre-determined range. Therefore, interest payments ceased. As a result, interest was only paid for the first year in which each of these Notes were held by the PL and the YC accounts.

¶ 10 Additionally, in November 2006, the Respondent recommended that PL purchase Daylight Resources Trust Ltd. ("Daylight Resources") Units. Daylight Resources is a Canadian oil and gas royalty trust that trades on the Toronto Stock Exchange.

¶ 11 As a result, on November 3, 2006, the Respondent purchased, for the PL accounts, 2,000 Daylight Resources trust units at a cost of \$11.278 per trust unit (approximately \$22,500). At that time, Daylight Resources was paying a monthly distribution of \$0.195 per trust unit. On January 31, 2007, Daylight Resources reduced its monthly distribution to \$0.15 per trust unit.

¶ 12 On or about August 8, 2007, the Respondent advised PL that Daylight Resources had reduced its monthly distributions to \$0.10 per trust unit and that, consequently, the price of these units had dropped significantly. PL expressed her dissatisfaction with the Respondent's recommendation of these units.

¶ 13 By the end of that month, PL and YC had sold all of the LIBOR Notes and the Daylight Resources trust units that the Respondent had purchased for their respective accounts.

¶ 14 Paragraphs 36 and 37 of the Settlement Agreement state:

36. The PL Accounts:

- incurred capital losses of approximately \$4,908 US from the sale of the LIBOR Notes;
- did not receive approximately \$7,100 US in interest payments from the LIBOR Notes; and
- incurred capital losses of approximately \$8,507 CDN from the sale of the Daylight Resources trust units.

37. The YC Accounts:

- incurred capital losses of approximately \$13,600 US from the sale of LIBOR Notes; and
- did not receive approximately \$15,500 US in interest payments from the LIBOR Notes.

¶ 15 We are informed that the fact that these accounts did not receive the aforementioned interest payments from the LIBOR Notes was consistent with the terms of the Notes, ie. that interest payments were guaranteed only for the first year and, thereafter, may not be paid if the six month US dollar LIBOR was not within the pre-determined range.

¶ 16 In a telephone call on or about August 10, 2007, PL complained to the Respondent, on behalf of herself and YC, claiming that he had not provided good investment advice and that he was responsible for the losses incurred as a result of his recommended purchase of the LIBOR Notes and the Daylight Resources trust units. PL asked the Respondent to compensate her and YC for some of the capital losses and missed interest payments they had incurred.

¶ 17 In a subsequent telephone call on or about August 13, 2007, PL told the Respondent that if he did not compensate her and YC, they would both complain to the IDA.

¶ 18 The Respondent agreed to compensate PL and YC and, on August 17, 2007, he paid \$3,500 CDN plus \$12,408 US to PL, and \$14,000 US to YC. This was contrary to his employer's Compliance Manual, which stated:

Verbal Complaints

- Generally, clients should be advised to put their concerns in writing. In any event, it is recommended that the employee receiving the verbal complaint maintain detailed notes, including the date and time of the complaint.
- Employees must report the receipt of any verbal client complaint to their respective Branch Manager or immediate supervisor.

...

Employees MUST NOT under any circumstances, respond to a client complaint on their own. Employees MUST NOT offer to settle or settle client complaints without the knowledge or participation of the Compliance Department. Failure to comply with this policy may lead to disciplinary measures, including termination of employment. Employees MUST NOT speak to clients about outstanding complaints. Any client queries regarding outstanding complaints must be referred to Compliance.

¶ 19 The Respondent did not report PL’s and YC’s verbal complaints to his employer. Moreover, he settled their complaints without the knowledge or participation of his employer’s Compliance Department.

(b) the YA Account

¶ 20 In addition to the foregoing, the Respondent was a registered representative for KA and his wife.

¶ 21 On January 18, 2005, the Respondent recommended that KA purchase Farm Credit Canada Extendible Range Notes (the “Farm Credit Notes”). Among other things, these Notes had the following features: They were denominated in Canadian dollars. The first two quarterly payments were guaranteed. Thereafter, any given quarterly interest payment could amount to zero if the three month Canadian dollar bankers acceptance rate was not within a pre-determined range.

¶ 22 On the Respondent’s recommendation, KA agreed to purchase the Farm Credit Notes and, on November 21, 2005, the Respondent purchased \$50,000 of these Notes for the KA account.

¶ 23 However, as of August 22, 2006, the Farm Credit Notes ceased paying interest. KA verbally complained to the Respondent that he was no longer receiving interest payments on these Notes, causing him some financial hardship. On August 21, 2007, the Respondent paid KA \$750.

¶ 24 The Respondent did not report KA’s complaint to his employer. Additionally, he settled KA’s complaint without the knowledge or participation of his employer’s Compliance Department.

Argument

¶ 25 In support of the Settlement Agreement, Counsel for IIROC argued that the case of *Milewski (Re)*, [1999] I.D.A.C.D. No. 17 set out the test applicable to hearing panels when deciding whether or not to accept settlement agreements. In this regard, he referred to and relied on the following passage at page 11 of the electronic version of that case:

Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way,

the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.

This understanding is reflected in paragraph 20.26 of the By-laws [now section 20.36 of the IDA By-Laws] which authorizes the District Council to “accept”, rather than approve, a settlement agreement. In each case a District Council must determine appropriateness, but the standards applicable to its doing so on a settlement hearing differ from those in a contested hearing. Thus, the penalties imposed under settlement agreements, while relevant to a District Council exercising its discretion to penalize, provide only limited assistance in a hearing like this one.

¶ 26 In support of the assertion that the proposed settlement falls within a reasonable range of appropriateness, counsel for the IDA also referred to and relied on an IDA Disciplinary Sanction Guideline respecting By-Law 29.1 and efforts by a registered representative to settle a client complaint. Counsel said that the Guideline assists in explaining the rationale for prohibiting such settlements. We reproduce the Guideline below:

2.6 Attempt to Settle Client Claim for Compensation - By-law 29.1

A client who has a complaint regarding the activities of an RR is entitled to a fair and unbiased determination as to the validity of that complaint. If the client’s complaint is well-founded, he is entitled to present same to civil dispute resolution channels and the Member firm for compensation; and to the appropriate regulatory bodies to consider possible disciplinary action. The RR who attempts to, or does, settle a client claim deprives his client of these options, and prefers his interest over that of his client.

Considerations in Addition to General Principles

1. Did the RR conceal or attempt to conceal his activity from the Member firm?
2. Were any clients harmed by the activity and if so to what extent?
3. Was the client advised of the prohibited nature of this activity and if so did he appreciate same?
4. Was the client coerced to accept the settlement offered?

Recommended Sanctions

- Fine: Minimum of \$10,000 for individual.
- Temporary suspension from acting in relevant capacity for 6 to 12 months
- Successful completion of appropriate industry program within 6 months
- Period of close supervision for 12 to 24 months
- In egregious cases, consider permanent prohibition on approval in any capacity

¶ 27 Counsel for IROC supplied a copy of the decision in *Gareau (Re)*, [2005] I.D.A.C.D. No. 25 where, at paragraph 52, the panel said that, while the IDA’s disciplinary sanctions guidelines suggest a range of penalties for some, but not all, offences, they are not binding. There, the panel observed that the IDA had developed the guidelines in the context of its prime responsibility as the authority for discipline of its members. The guidelines had been said to reflect the views of the membership of the IDA as to how, generally, matters should be dealt with when they come before a hearing panel. The panel in the *Gareau* case stated that while it agreed that the guidelines were not binding, it accepted that they offered a touchstone for assessing an appropriate penalty.

¶ 28 In further support of the Settlement Agreement, counsel referred to the case of *Wong (Re)*, [2005]

I.D.A.C.D. No. 24, which he said was the only available comparable case. In that case, the registered representative was the subject of discipline on two counts. One of the counts was that, on four occasions, he had personally compensated his clients, without the knowledge or approval of his employer, a Member firm, for the default of interest payments on bonds held by his clients, contrary to IDA By-Law 29.1. He was also charged with a count relating to failure to exercise due diligence to ensure recommended investments were suitable for his clients, contrary to the same By-Law and another regulation. The latter charge is not made in the instant case; there is no allegation of unsuitability here.

¶ 29 With respect to the count for personally compensating his clients, the registered representative in the *Wong* case was required to pay a fine of \$15,000 and prohibited from acting in a registered capacity for two years. Additionally, in connection with both counts, his future re-approval in a registered capacity was subject to three requirements: that he undergo a one-year period of close supervision; that he re-write and pass an examination based on the Conduct & Practices Handbook Course; and that he pay the fines and costs stipulated in the Settlement Agreement, which included a payment of \$5,000 towards the IDA's investigation and prosecution costs.

¶ 30 We note that the count of unsuitable recommendations in the *Wong* case related to four clients who, together, lost a total of approximately \$168,000. The count of unauthorized compensation involved only one of those clients, but that client lost \$68,000 (US) on an investment of \$130,560 (US). The registered representative was required to pay a fine of \$25,000 with respect to the count of unsuitable recommendations.

¶ 31 We also note that the registered representative in the *Wong* case paid the single client four personal payments over a 17 month period totalling \$4,200, without the knowledge of his employer, the Member firm, after the client complained verbally to him about the investment.

¶ 32 The instant case does not involve an allegation of unsuitable investment recommendations. The total amounts invested by clients in the investments at issue are approximately \$300,000 (whereas the total amounts in the *Wong* case were approximately \$334,000). The losses incurred by the PL accounts and the YC accounts are said to be approximately \$41,000, including the non-payment of interest, which was suspended in accordance with the terms of the investments. We are not provided with the losses on the KA accounts. However, where the *Wong* case involved payments to a single client, the instant case involved compensation payments to several clients (PL, YC, KA, as well as the joint owners of the accounts at issue).

¶ 33 Counsel noted that the Respondent in the instant case had no prior record of misconduct and he was cooperative in the investigation of this matter. He ceased working in the industry in January 2008.

Decision

¶ 34 The hearing panel has accepted the Settlement Agreement. However, the hearing panel wishes to set out its reasons for so doing.

¶ 35 We are asked to view the terms of the Settlement Agreement in light of the aforementioned Guideline 2.6. We note that the minimum recommended fine for an offence of this nature is \$10,000 for the individual. A temporary suspension for six to twelve months is recommended, although in egregious, a permanent prohibition may be considered.

¶ 36 The panel is concerned that a suspension of six months can, in some cases, effectively result in the registrant's loss of his book of business. Moreover, a suspension of that length may have a seriously detrimental effect on the registered representative's ability to successfully return to work in the industry.

¶ 37 It is evident from reviewing the significance of the sanctions described in Guideline 2.6 that the offence of a registrant settling a client claim without the Member firm's knowledge and consent is viewed as a serious one. The Guideline evinces a concern that the registrant who attempts to or does settle a client's claim deprives the client of the options of pursuing civil dispute resolution channels and to seek compensation from the Member firm, as well as to complain to appropriate regulatory authorities who could consider possible disciplinary action. There is also a concern that a registrant may attempt to conceal such activities from the

Member firm, that clients may sustain harm occasioned by such activity, and that clients might not make informed decisions or might be coerced to accept settlements. The significance of the sanctions recommended by the Guideline also signals to the industry and the public that the offence is treated sternly.

¶ 38 However, we also note that the Guideline is just that; it is a guideline and it is not binding. We are wary of the prospect that acceptance of settlement agreements that fall within the range of the recommended sanctions might, by that fact alone, lead to the conclusion that wherever the sanctions recommended for this offence fall in the range described in the Guideline, they should be automatically accepted as being within the “reasonable range of appropriateness”. The hearing panel has a concern that a rubber-stamping approach not be taken to the use of Guideline 2.6. That is, it should not be taken as an indication of what is reasonable in every case. We think that, in an appropriate case, the facts may warrant a sanction that is less than the recommended minimums in Guideline 2.6. The instant case has elements that might lead a reviewing hearing panel to think it unduly harsh. For instance, it may be argued that the amount of the temporary suspension would be so detrimental to the registrant’s ability to successfully return to the industry that it should be reduced below six months.

¶ 39 That said, however, we are mindful that the *Milewski* case recommends that a panel ought not to alter a penalty that it considers to be within a reasonable range, “taking into account the settlement process and the fact that the parties have agreed”. There is considerable merit to the caveat that the settlement process and the fact that the parties have agreed to the settlement should be taken into account.

¶ 40 There are a multitude of reasons why parties may reach settlement, including one that may appear harsh on its face. Settlement terms are typically carefully negotiated. Parties may settle because of their views of their respective chances of success, either on the charges or sanctions they agree to accept or on other charges that might have proceeded in the absence of a settlement. It may be that the parties have considered whether or not their resources and financial wherewithal could withstand a contested hearing. It may be that the parties felt that the terms were onerous, but less onerous than the costs, efforts and resources that might be required to fight a contested hearing that might yield a similar result. They may simply not want to expose themselves to the risks inherent in litigation. Because of all of this, settlement agreements attract a measure of deference when put to a hearing panel for acceptance, but they have less precedential value when used as comparisons for future cases.

¶ 41 Considering the Settlement Agreement in light of all the circumstances and, in particular, in light of the fact that it arose out of a settlement process and the fact that the parties have agreed to its terms, we agree that it falls within a reasonable range of appropriateness in this particular case. We are supported in this by our view that the registrant made compensatory payments to several clients, which makes this case, on that fact alone, more serious than the compensation payments in the *Wong* case, which were to a single client.

¶ 42 We direct that the Settlement Agreement be released concurrent with the release of this Decision.

Dated this 29th day of July, 2010

Alison Narod, Panel Chair

Doug Stewart, Panel Member

Lloyd Costley, Panel Member

*** * * * SETTLEMENT AGREEMENT * * * ***

I. INTRODUCTION

1. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the IDA and Market Regulation Services Inc. Pursuant to the *Administrative and Regulatory Services Agreement* between the IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions.
2. The Enforcement Department of IIROC conducted an investigation (the Investigation) into the conduct of Hung Fai Raymond Kwok (the Respondent).
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).
4. IIROC Enforcement Staff and the Respondent consent and agree to the settlement of this matter by way of this settlement agreement (the Settlement Agreement).

II. Joint Settlement Recommendation

5. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
6. The Respondent admits that in August 2007, while employed as a registered representative by a Member of the IDA, he personally compensated three of his clients, without the knowledge or consent of his employer, contrary to IDA By-Law 29.1.
7. The Respondent agrees to the following terms of settlement:
 - a) payment of a \$15,000 fine to IIROC;
 - b) payment to IIROC of a portion of IIROC's investigation and prosecution costs in the amount of \$3,000;
 - c) a suspension from approval in any registered capacity with IIROC for a period of six months;
 - d) a requirement that he re-write and pass the Conduct and Practices Handbook examination, prior to being eligible for registration with IIROC; and
 - e) a requirement that he be under close supervision for a period of 12 months upon any subsequent registration with IIROC.

III. Statement of Facts

8. Staff and the Respondent agree, solely for the purposes of this Settlement Agreement, 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.

The Respondent

9. The Respondent's registration history is set out in the following table:

Registration Issue Date	Registration Termination Date	Member	Registration Category
May 1997	August 2001	Investors Group Financial Services Inc.	Registered Representative (Restricted)
October 2001	December 2001	HSBC Securities (Canada) Inc. (HSBC)	Registered Representative (Restricted)
December 2001	January 2008	HSBC	Registered Representative

The PL Accounts

10. On or about December 22, 2004, PL and her husband DL opened a joint investment account at a Vancouver branch office of HSBC (PL Account #1).
11. The Client Application Form for PL Account #1 indicated, among other things, that:
 - PL was a 42 year old homemaker;
 - PL's annual income was \$8,000;
 - DL was a 52 year old supervisor for a food products company;
 - DL's annual income was \$20,000; and
 - PL and DL had a joint total net worth of \$700,000.
12. On or about February 2, 2005, PL, PL's husband DL, and PL's mother SY opened a joint investment account at a Vancouver branch office of HSBC (PL Account #2).
13. The Client Application Form for PL Account #2 indicated, among other things, that:
 - SY was a 65 year old retiree; and
 - her estimated annual income was \$8,000.
14. On or about February 2, 2005, PL, PL's daughter HL, and PL's father YW opened a joint investment account at a Vancouver branch office of HSBC (PL Account #3).
15. The Client Application Form for PL Account #3 indicated, among other things, that:
 - HL was a 20 year old student;
 - HL's annual income was \$5,000;
 - YW was a 77 year old retiree;
 - YW's annual income was \$5,000; and
 - YW's net worth was \$700,000.
16. At all material times the Respondent was the registered representative who was responsible for PL Account #1, PL Account #2, and PL Account #3 (collectively, the PL Accounts).
17. PL made all the investment decisions for the PL Accounts.

The YC Accounts

18. On or about January 12, 2005, YC opened an investment account at a Vancouver branch office of HSBC (YC Account #1).
19. The Client Application Form for YC Account #1 indicated, among other things, that:
 - YC was a 48 year old homemaker;
 - YC's estimated annual income was \$25,000; and
 - YC and her husband YL had a joint total net worth of \$800,000.
20. On or about February 2, 2005, YC, YC's daughter KL, and YC's mother LW opened a joint investment account at a Vancouver branch office of HSBC (the YC Account# 2).
21. The Client Application Form for YC Account #2 indicated, among other things, that:

- KL was a 23 year old student;
 - KL's annual income was \$5,000;
 - LW was an 80 year old retiree;
 - LW's annual income was \$5,000; and
 - LW's total net worth was \$800,000.
22. On or about February 10, 2005, YC and her husband YL opened a joint investment account at a Vancouver branch office of HSBC (YC Account #3).
23. The Client Application Form for YC Account #3 indicated, among other things, that:
- YL was a 54 year old owner of a metal company; and
 - YL's estimated annual income was \$50,000.
24. At all material times the Respondent was the registered representative who was responsible for YC Account #1, YC Account #2, and YC Account #3 (collectively, the YC Accounts).
25. YC made all the investment decisions for the YC Accounts.

Purchase of 12 Year Callable LIBOR Range Accrual Deposit Notes

26. PL and YC were friends.
27. On January 18, 2005, the Respondent met with PL and YC to discuss potential investments. The Respondent, among other things, suggested that they purchase 12 Year Callable LIBOR Range Accrual Deposit Notes (the LIBOR Notes). LIBOR or the London Interbank Offered Rate, is an average of rates that financial institutions charge each other for unsecured, short-term loans.
28. The LIBOR Notes have, among other things, the following features:

Issuer	HSBC Bank Canada
Denomination	US Dollars
Call Feature	Non-callable for the first year, thereafter they are callable on the quarterly coupon dates.
Interest Payment	For the first year quarterly interest payments are guaranteed. After the first year, any given quarterly interest payment can amount to zero if the six month US dollar LIBOR is not within the pre-determined range.

29. PL and YC each decided to purchase the LIBOR Notes. As a result, on January 25, 2005 the Respondent purchased:
- \$40,000 in LIBOR Notes for the PL Accounts; and
 - \$100,000 in LIBOR Notes for the YC Accounts.
30. Further, on February 24, 2005 the Respondent purchased:
- \$20,000 in LIBOR Notes for the PL Accounts; and
 - \$70,000 in LIBOR Notes for the YC Accounts.

31. The LIBOR Notes paid interest for the first year. However, by the end of the first year the six month US dollar LIBOR was not within the pre-determined range. Therefore, the LIBOR Notes that were purchased on January 25, 2005 stopped paying interest as of January 27, 2006, and the LIBOR Notes that were purchased on February 24, 2005 stopped paying interest as of March 10, 2006

Purchase of Daylight Resources Trust Ltd. Units

32. In November 2006, PL contacted the Respondent to request a recommendation for an investment that paid regular distributions. The Respondent recommended the purchase of Daylight Resources Trust Ltd. (Daylight Resources) units. Daylight Resources is a Canadian oil and gas royalty trust that trades on the Toronto Stock Exchange.
33. As a result, on November 3, 2006 the Respondent purchased for the PL Accounts 2,000 Daylight Resources trust units at a cost of \$11.278 per trust unit. At that time, Daylight Resources was paying a monthly distribution of \$0.195 per trust unit. On January 31, 2007, Daylight Resources reduced its monthly distribution to \$0.15 per trust unit.

Payment of Compensation to PL and YC

34. On or about August 8, 2007, the Respondent telephoned PL in order to inform her that Daylight Resources had reduced its monthly distributions to \$0.10 per trust unit. The Respondent further advised PL that due to the distribution cut, the price of the Daylight Resources trust units had dropped significantly. PL expressed her dissatisfaction that the Respondent had recommended that she purchase the Daylight Resources trust units.
35. By August 2007, PL and YC had sold all of the LIBOR Notes and the Daylight Resources trust units that the Respondent had purchased on behalf of their accounts.
36. The PL Accounts:
- incurred capital losses of approximately \$4,908 US from the sale of the LIBOR Notes;
 - did not receive approximately \$7,100 US in interest payments from the LIBOR Notes; and
 - incurred capital losses of approximately \$8,507 CDN from the sale of the Daylight Resources trust units.
37. The YC Accounts:
- incurred capital losses of approximately \$13,600 US from the sale of LIBOR Notes; and
 - **did not receive approximately \$15,500 US in interest payments from the LIBOR Notes.**
38. On or about August 10, 2007, PL telephoned the Respondent in order to complain on behalf of herself and YC. PL claimed that the Respondent had not provided good investment advice and that he was responsible for the losses they incurred by purchasing the LIBOR Notes and the Daylight Resources trust units. As a result, PL asked the Respondent to compensate her and YC for some of the capital losses and the missed interest payments that they had incurred.
39. On or about August 13, 2007, the Respondent telephoned PL to discuss her complaint. PL advised the Respondent that if he did not compensate her and YC, they would both complain to the IDA.
40. The Respondent agreed to compensate PL and YC. On August 17, 2007, the Respondent gave:
- **\$3,500 CDN and \$12,408 US to PL; and**
 - **\$14,000 US to YC.**
41. HSBC's Compliance Manual states:

Verbal Complaints

- Generally, clients should be advised to put their concerns in writing. In any event, it is recommended that the employee receiving the verbal complaint maintain detailed notes, including the date and time of the complaint.
- Employees must report the receipt of any verbal client complaint to their respective Branch Manager or immediate supervisor.

...

Employees MUST NOT under any circumstances, respond to a client complaint on their own. Employees MUST NOT offer to settle or settle client complaints without the knowledge or participation of the Compliance Department. Failure to comply with this policy may lead to disciplinary measures, including termination of employment. Employees MUST NOT speak to clients about outstanding complaints. Any client queries regarding outstanding complaints must be referred to Compliance.

42. The Respondent did not report PL's and YC's verbal complaints to HSBC. Further, the Respondent settled their complaints without the knowledge or participation of HSBC's Compliance Department.

The KA Account

43. On or about October 8, 2003, KA and his wife YA opened a joint investment account at a Vancouver branch office of HSBC (the KA Account).

44. The Client Application Form for the KA Account indicated, among other things, that:

- KA was a 71 year old retiree;
- YA was a 68 year old retiree;
- KA and YA had a joint annual income of \$40,000; and
- KA and YA had a joint total net worth of \$1,000,000.

45. At all material times, the Respondent was the registered representative who was responsible for the KA Account.

46. KA made all investment decisions regarding the KA Account.

Purchase of Farm Credit Canada Extendible Range Notes

47. On January 18, 2005, the Respondent spoke with KA regarding potential investments. The Respondent recommended that KA purchase Farm Credit Canada Extendible Range Notes (the Farm Credit Notes).

48. The Farm Credit Notes had, among other things, the following features:

Issuer	Farm Credit Canada
Denomination	Canadian Dollars
Extendible Feature	Maturity date of May 21, 2006, unless extended by the issuer. Maximum maturity date of November 21, 2011.
Interest Payment	The first two quarterly payments were guaranteed. After the first two quarterly periods, any given quarterly interest payment could amount to zero if the three month Canadian dollar bankers acceptance rate was not within a pre-determined range.

49. KA agreed to purchase the Farm Credit Notes. As a result on November 21, 2005, the Respondent purchased \$50,000 of Farm Credit Notes for the KA Account.

Payment of Compensation to KA

50. As of August 22, 2006, the Farm Credit Notes ceased paying interest. KA verbally complained to the Respondent that the fact that he was no longer receiving interest payments from the Farm Credit Notes was causing him some financial hardship. On August 21, 2007 the Respondent paid KA \$750.

51. The Respondent did not report KA's verbal complaint to HSBC. Further, the Respondent settled KA's complaint without the knowledge or participation of HSBC's Compliance Department.

V. Terms of Settlement

52. 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*.

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

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

55. 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.

56. 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.

57. 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.

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

59. 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.

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

61. 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.

62. This Settlement Agreement may be signed in counterparts and by facsimile.

AGREED TO by the Respondent at the City of Coquitlam in the Province of British Columbia, this 31st day of May, 2010.

“WITNESS SIGNATURE”
WITNESS

“HUNG FAI RAYMOND KWOK”
HUNG FAI RAYMOND KWOK

AGREED TO by Staff at the City of Vancouver, in the Province of British Columbia, this 22nd day of June, 2010 .

“WITNESS SIGNATURE”

WITNESS

“LORNE HERLIN”

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

ACCEPTED this 29th day of July, 2010, by the following Hearing Panel:

Per: “Alison Narod”
Panel Chair
Per: “Doug Stewart”
Panel Member
Per: “Lloyd Costley”
Panel Member

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