Re Thomson

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Joseph Anthony Thomson

2021 IIROC 19

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

Heard: September 14, 2021 via videoconference
Decision: September 14, 2021
Written Reasons: September 22, 2021

Hearing Panel:
Martin L. Friedland, C.C., Q.C. (Chair), Richard E. Austin and Charles F. Macfarlane
Appearance:
Rob DelFrate, Senior Enforcement Counsel, IIROC
Anna K. Markiewicz and Melissa MacKewn, for Joseph Anthony Thomson
Joseph Anthony Thomson (present)

REASONS FOR DECISION

Introduction

¶ 1 Enforcement Staff of the Investment Industry Regulatory Organization of Canada ("IIROC") and the Respondent Joseph Anthony Thomson ("Thomson" or "the Respondent") entered into the attached Settlement Agreement, dated August 10, 2021. The Settlement Agreement was presented to the Hearing Panel for acceptance at an electronic hearing on September 14, 2021. The Respondent appeared at the Hearing. The Respondent's Counsel and Enforcement Staff of IIROC jointly recommended that the Hearing Panel accept the Settlement Agreement.

¶ 2 The Respondent admits in the Settlement Agreement that he acted in a manner contrary to Dealer Member Rules 38.5(c), 42, 1300.1 (a), (o), (p), (q), and (s) as well as Consolidated Rule 1400 in connection with the sale of Preference Shares of PACE Financial Ltd. and First Hamilton Holdings Inc. to clients of Pace Securities Corp. These rules require registrants to deal with conflicts of interest in a fair and equitable manner; to observe high standards of ethics and conduct in the transaction of business and not engage in business conduct that is unbecoming; and to use diligence to ensure orders are suitable for clients and within the bounds of good business practice.

¶ 3 After hearing Counsel for IIROC and Counsel for the Respondent and considering the material filed, the

Hearing Panel issued an order accepting the Settlement Agreement. These are our reasons for making that order.

Agreed Facts

¶ 4 The Respondent was the Chief Executive Officer ("CEO") and Ultimate Designated Person ("UDP") of PACE Securities Corp ("PSC"), which was a wholly-owned subsidiary of PACE Savings and Credit Union Limited.

¶ 5 PSC has been a Dealer Member of IIROC since 2013. The Respondent founded PSC and has always been its UDP and CEO. He was also the Chief Financial Officer ("CFO") of PSC from June 2013 until July 2019 and was approved in the IIROC category "Registered Representative-Portfolio Manager" from May 2015 to May 2020.

¶ 6 The facts are set out in greater detail in Part III of the attached Settlement Agreement. They are described in brief in an "Overview" in paragraphs 3 to 6 of the Settlement Agreement. Paragraph 3 states that "the Respondent agrees with the facts as set out in Part III of this Settlement Agreement."

¶ 7 Between 2017 and 2019, PSC offered Preference Shares through an Offering Memoranda in two companies: PACE Financial Ltd. ("PFL") and First Hamilton Holdings Inc. ("FHHI") (collectively "Preference Shares" or "Shares"). The Respondent held roles with both companies. He was the sole officer and director of PFL and was a director, CEO and majority shareholder of FHHI.

¶ 8 The Respondent's relationship with both companies was disclosed in the Offering Memoranda, but as stated in the Settlement Agreement (paragraph 4), the Respondent "failed to fully consider the implications of the conflicts or address them in a fair, equitable and transparent manner, consistent with the best interests of PSC's clients, in respect of his role in executing Management Agreements, including fee arrangements, between PSC and PFL […] as required by Dealer Member Rule 42." Fee arrangements are set out in paragraphs 43 to 51 of the Settlement Agreement.

¶ 9 The Settlement goes on to state (paragraph 5): "In addition, as the portfolio manager of the underlying investments of PFL, Thomson failed to take sufficient steps to ensure that the investments were at all times made in accordance with the terms of the PFL Offering Memorandum with respect to the use of leverage." Leverage is discussed in paragraphs 18, 31, and 53-54 of the Settlement Agreement.

¶ 10 Further, the Settlement Agreement states (paragraph 6): "Thomson failed to ensure that the sale of PFL and FHHI to certain PSC clients was suitable and matched the risk tolerances and objectives set out in the clients' account documentation."

¶ 11 In July 2018, IIROC Enforcement opened an investigation on the basis of a referral from IIROC Debt Market Surveillance. In May 2020, PSC, PFL and FHHI were wound up. The Respondent and all employees ceased employment with PSC. The Respondent has not been registered with IIROC since then and PSC's membership in IIROC was suspended as a result of the winding up.

¶ 12 PFL sold approximately $16.3 million of Preference Shares, including $10.7 million to PSC clients. FHHI sold approximately $29.8 million of Preference Shares, including $12.8 million to PSC clients.

¶ 13 In both cases, PSC sold the Shares to a broad range of clients, many of whom had no, or inadequate, tolerance for risk as well as limited investment knowledge. Over half of the PSC clients who purchased Shares had no indication of high-risk tolerance on their account documentation.

¶ 14 The Respondent's business plan for each offering was to invest in Canadian and US debt instruments and, as profits were earned and taxes and dividends paid, net retained earnings could be used for equity investments. The plan was to invest in debt instruments with a weighted average of "B" or better. (In the case

of PFL at least 50% would be "B" or better.) The rating agencies consider such a weighting to be highly speculative. Moreover, leverage was used by both funds which made the Shares even more speculative.

¶ 15 The Respondent admits in the Settlement Agreement that the Preference Shares were high-risk investments. In fact, the PFL and FHHI Offering Memoranda referred to the Shares as "highly speculative", involving a "high degree of risk" and suitable for investors "who can afford a total loss of their investment." The Respondent failed to appreciate the risks and erroneously considered the Shares to be medium-risk products.

¶ 16 The Shares greatly decreased in value. The COVID-19 pandemic contributed significantly, in the Respondent's view, to the decrease in value of certain underlying holdings of the PFL and FHHI funds, which, in turn, significantly contributed to the losses incurred by those portfolios.

¶ 17 As a result of a civil settlement entered into between various parties, $40 million is being paid to approximately 700 Preference Shareholders of PFL and FHHI. This reflects a recovery by Preference Shareholders of over 85% of the amount invested in PFL and FHHI. The civil settlement was reached following a lengthy multi-party mediation and was approved by the Ontario Superior Court on July 30, 2021.

Contraventions

¶ 18 The Contraventions agreed to by the Respondent and set out in paragraph 68 of the Settlement Agreement are as follows:

(i) Between June 2017 and June 2019, the Respondent as the UDP of PSC failed to identify and address existing and potential material conflicts of interest in a fair, equitable and transparent manner, and consistent with the best interest of PSC's clients, contrary to Dealer Member Rule 42.

(ii) Between June 2017 and June 2019, the Respondent as portfolio manager failed to take all necessary steps to ensure that investments in PFL for which he was the portfolio manager, were made in accordance with the terms of the applicable Offering Memorandum, contrary to Consolidated Rule 1400.

(iii) Between June 2017 and June 2019, Thomson, as UDP, failed to supervise the activities of PSC to ensure compliance with IIROC requirements and failed to use due diligence to ensure that all orders accepted and recommendations made were suitable for clients and within the bounds of good business practice, contrary to Dealer Member Rules 38.5(c), 1300.1(a), (o), (p), (q) and (s).

Terms of Settlement

¶ 19 As set out in paragraph 69 of the Settlement Agreement, the Respondent agreed to the following sanctions and costs:

a) A prohibition of approval as an Ultimate Designated Person for five years, commencing on July 31, 2021;

b) A prohibition of approval as a Registered Representative for one year, commencing on July 31, 2021; and

c) Costs in the amount of $100,000.

Standard for Reviewing a Settlement Agreement

¶ 20 A hearing panel can either accept or reject a settlement agreement. It cannot modify it. The standard

for reviewing a settlement agreement was well-stated in a Pacific District decision, *Re Johnson* 2012 IIROC 19, where the panel stated: "The test applicable to a decision whether to accept or reject a settlement is well-known. Simply put, a panel should accept such an agreement unless it considers the penalty provided for clearly to fall outside a reasonable range of appropriateness."

¶ 21 There are many similar statements – see, for example, *Re Mackie Research and McCarthy* 2019 IIROC 28 – all stemming from *Re Milewski,* [1999] I.D.A.C.D. no. 17, where the panel stated:

> 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.

¶ 22 *Re Cavalaris* 2017 IIROC 04 (at paragraph 19) also set out a high standard required to reject a settlement agreement:

> Settlements are to be supported as a means of encouraging negotiation and compromise to arrive at an expeditious resolution of appropriate disciplinary proceedings. Accordingly, a joint submission in the regulatory context would be rejected only where the proposal, if accepted, would lead to the conclusion that the regulatory scheme had broken down or was otherwise not in the public interest.

¶ 23 Another IIROC panel, in *Re Donnelly* 2016 IIROC 23, rightly observed in accepting a settlement agreement (paragraphs 7 and 8):

> It is usually in the public interest that matters be settled where possible rather than be determined through contested hearings. The reasons for this are often that an earlier determination of a dispute is better than a later determination. Settlements are usually less expensive than contested litigation, and there is less congestion in the dispute settling system when matters are taken out of the system through settlements. Finally where both parties agree, the result is often more palatable to the parties and society than in a contested hearing where the winner takes all.
>
> For these reasons, a panel considering the acceptance of a settlement agreement will try to reach a determination of acceptance. It will recognize that settlements are often hotly debated with much compromise and give-and-take between the parties in order to reach an acceptable position agreeable to both parties. Furthermore, the panel will recognize that it is not privy to all the facts and the motivations and considerations that each of the parties have in coming to a solution of the dispute that is agreeable to them.

¶ 24 The hearing panel in *Re Donnelly* went on to say in paragraph 29: "Where both parties to a settlement agreement are represented by counsel, and have the means to undergo a contested hearing, but have reached a settlement, it is unlikely that a panel would ever conclude that the settlement was unfair and not reasonable."

¶ 25 In the present case, both sides were represented by experienced counsel and there were lengthy negotiations.

Why the Panel Approved the Settlement Agreement

¶ 26 The Respondent's conduct in the present case was serious. He was responsible for many unsophisticated investors losing most of their investment in the Shares they purchased. Many of the persons who purchased the Shares had not indicated that they were interested in highly speculative securities. This

was not a few investors. There were about 700 persons who stood to lose most of their investment.

¶ 27 There were, however, some mitigating factors. IIROC Staff recognize, in paragraph 60 of the Settlement Agreement, that "Thomson believed that PFL and FHHI were medium-risk investments." The conduct in this case, Counsel for IIROC told us was "reckless" or "careless", not wilful. As stated in paragraph 65 of the Settlement Agreement, "Thomson believed that he was acting reasonably, in the best interest of investors." The present case is therefore far different from cases where there was intent to defraud clients.

¶ 28 Further, although the misconduct continued for several years, the misconduct in issue, rather than being a pattern, was an initial set of errors which were repeated multiple times.

¶ 29 The Respondent did not receive any improper benefit from his actions.

¶ 30 It should also be noted that this is the first time that the Respondent has faced a disciplinary hearing.

¶ 31 The principal consideration in mitigation in the present case is that the Respondent was a key player in helping those who were harmed to recover most of their loss. Paragraph 67 of the Settlement Agreement states: "Thomson helped facilitate the civil settlement to the benefit of all investors in PFL and FHHI such that substantial investor restitution has been achieved." The civil settlement, following a five-day mediation, we were told, would not have occurred without the Respondent's agreement. Counsel for IIROC told us the Respondent's contribution was "absolutely critical." As noted earlier, compensation of $40 million was paid to approximately 700 Preference Shareholders of PFL and FHHI. This reflects a recovery by Preference Shareholders of more than 85% of the amounts invested in PFL and FHHI.

¶ 32 The Panel does not know precisely what the Respondent contributed to the civil settlement. The civil settlement agreement stipulates that the contributions would not be made public. Little was said about it in the present Settlement Agreement.

¶ 33 The Panel asked Counsel for IIROC and the Respondent if they could expand on the Respondent's contribution to the civil settlement. In response, Counsel prepared the following statement for our use: "The Court approved a settlement contributed to by various parties and their insurers, including Mr. Thomson's insurer, which required the participation, consent, and approval of Mr. Thomson. Further, to facilitate the resolution, Mr. Thomson, among others, released all claims to the remaining assets in FHHI and PSC, among other entities involved in the civil proceedings." They further noted: "The civil settlement does not include admission of liability by any party."

¶ 34 A number of cases were cited to us by Counsel for IIROC, but no case is similar to the present case, which is unique, particularly with respect to the extent of the civil settlement and the Respondent's intent. (See *Re Sutton* 2018 ONSEC 42, *Re Phillips and Wilson* 2013 IIROC 52, *Re Sammy* 2016 IIROC 04 and 16, *Re Cavalaris* 2017 IIROC 04, *Re Rowan* 2009 LNONOSC 941, and *Re Sanjiv Sawh* 2012 ONSEC 27). We have also examined the IIROC Sanction Guidelines.

¶ 35 The Respondent is to pay costs of $100,000. In the Panel's experience, this is a very significant sum for costs.

¶ 36 It should also be noted that the Respondent has not been an Approved Person with IIROC since May 2020, which would likely have substantially affected his income during that period.

¶ 37 IIROC Staff took into account, as has the Panel, the fact that by entering into a Settlement Agreement, there is a recognition of wrongdoing, a saving of time and costs, and the removal of the uncertainty of a contested hearing.

¶ 38 Moreover, there is a prohibition of approval as a Registered Representative for one year, commencing July 31, 2021, and a five-year prohibition of approval as a UDP, commencing on July 31, 2022. These are significant penalties.

¶ 39 In sum, the price that the Respondent has paid because of his misconduct provides a substantial specific deterrent to the Respondent and a significant general deterrent to the industry.

¶ 40 The Panel approved the Settlement Agreement. We believe that the penalty does not fall outside a reasonable range of appropriateness.

Dated at Toronto this 22 day of September 2021.

Martin L. Friedland

Richard E. Austin

Charles F. Macfarlane

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Investment Industry Regulatory Organization of Canada ("IIROC") will issue a Notice of Motion to announce that it will hold a settlement hearing to consider whether, pursuant to Section 8215 of the Consolidated Enforcement, Examination and Approval Rules of IIROC, a hearing panel ("Hearing Panel") should accept the settlement agreement ("Settlement Agreement") entered into between the staff of IIROC ("Staff") and Joseph Anthony Thomson ("Respondent").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement in accordance with the terms and conditions set out below.

PART III – AGREED FACTS

3. For the purposes of this Settlement Agreement only, the Respondent agrees with the facts as set out in Part III of this Settlement Agreement.

Overview

4. Between 2017 and 2019, PACE Securities Corp ("PSC") offered preferred shares of PACE Financial Ltd. ("PFL") and First Hamilton Holdings Inc. ("FHHI") to its clients. Thomson was the Chief Executive Officer ("CEO") and Ultimate Designated Person ("UDP") of PSC and also held roles with PFL and FHHI. PSC and Thomson's relationships with PFL and FHHI were disclosed in Offering Memoranda. However, Thomson failed to fully consider the implications of the conflicts or address them in a fair, equitable and transparent manner, consistent with the best interests of PSC's clients, in respect of his role in executing Management Agreements, including fee arrangements, between PSC and PFL on behalf of both parties, as required by Dealer Member Rule 42.

5. In addition, as the portfolio manager of the underlying investments of PFL, Thomson failed to take sufficient steps to ensure that the investments were at all times made in accordance with the terms of the PFL Offering Memorandum with respect to the use of leverage.

6. Thomson failed to ensure that the sale of PFL and FHHI to certain PSC clients was suitable and matched the risk tolerances and objectives set out in the clients' account documentation.

Background

7. PSC has been a Dealer Member since June 2013 and was a wholly owned subsidiary of PACE Savings & Credit Union Limited ("PACE Credit Union").

8. Thomson founded PSC and has always been its UDP and CEO. Thomson was also the Chief Financial Officer ("CFO") of PSC from June 2013 until July 2019. Thomson was approved in the IIROC category "Registered Representative - Portfolio Manager" from May 2015 to May 2020.

9. In July 2018, IIROC Enforcement opened an investigation on the basis of a referral from IIROC Debt Market Surveillance.

10. In May 2019, IIROC Business Conduct Compliance raised concerns with PSC about the firm's governance and compliance with certain IIROC requirements. Shortly thereafter, PSC undertook to cease distributing FHHI to clients.

11. On May 14, 2020, PSC and PFL, along with two related companies, made an application to the Ontario Superior Court of Justice, and were granted an order winding up the companies pursuant to the Business Corporations Act (Ontario) ("OBCA") and the Canada Business Corporations Act ("CBCA"). Thomson and all employees ceased employment with PSC as a result of the order. Thomson has not been registered with IIROC since.

12. On May 21, 2020, FHHI, along with four related companies, made a similar application and was granted an order winding up the company pursuant to the OBCA and CBCA.

13. On May 21, 2020, PSC's membership in IIROC was suspended as a result of its winding up.

14. On July 30, 2021, the Ontario Superior Court of Justice approved a settlement of certain claims made by investors in respect of their acquisition of preference shares issued by PFL and FHHI. Pursuant to the settlement, approximately 700 preference shareholders of PFL and FHHI, including clients of PSC, were compensated in the amount of $40 million in connection with their investments in PFL and FHHI.

The Issuers

(i) PFL

15. By Confidential Offering Memorandum (the "PFL OM") dated June 27, 2017, PFL offered Series A 5% Cumulative Redeemable Retractable Non-voting Term Preference Shares (the "PFL Preference Shares") as an exempt distribution without a prospectus. The PFL OM was drafted with the benefit of legal advice. PFL had no capital other than the proceeds of sale from the PFL Preference Shares.

16. PFL was a wholly owned indirect subsidiary of PSC and, at the time, Thomson was the sole officer and director of PFL.

17. PFL's business plan was to invest in debt instruments. The PFL OM stated that, among other things, PFL would invest in Canadian and US debt instruments with at least 50% of the portfolio rated "B" or better.

18. The PFL OM did not disclose the potential use of leverage.

19. The PFL Preference Shares were offered at $10 each (subsequently there was a 2 for 1 split) and had a fixed term of 5 ½ years, with limited liquidity provisions. The PFL Preference Shares paid base dividends of 5% with an additional 2% bonus dividend payable at the discretion of PFL depending on performance.

PFL paid a commission of 3% for sales of PFL Preference Shares that was deducted from the proceeds of the offering.

20. The PFL Preference Shares were redeemable in December 2022.

21. The PFL OM described an investment in the PFL Preference Shares as "highly speculative" and suitable only for investors "who can afford a total loss of their investment". The PFL OM also noted that PFL's business "involves a high degree of risk, which a combination of experience, knowledge and careful evaluation may not be able to overcome."

22. As per the PFL OM, PFL appointed PSC as the investment manager (the "Manager") to manage the PFL investment portfolio. Thomson was the portfolio manager in charge of the PFL investments and made the investment decisions in the PFL account. As Manager, PSC was entitled to asset management fees and performance fees.

23. PFL sold approximately $16.3 million of PFL Preference Shares, including $10.7 million to PSC clients. PFL has not issued any additional PFL Preference Shares since May 2018.

(ii) FHHI

24. FHHI was incorporated on February 2, 2018. Thomson was a director of FHHI, its CEO, and its majority shareholder.

25. By Confidential Offering Memorandum dated March 19, 2018, FHHI offered Series A 7% Cumulative Non-voting Preference Shares (the "FHHI 7% Preference Shares") as an exempt distribution without a prospectus.

26. By Confidential Offering Memorandum dated April 30, 2018, FHHI offered 5% Cumulative Redeemable Retractable Non-voting Preference Shares (the "FHHI 5% Preference Shares") as an exempt distribution without a prospectus.

27. The FHHI Offering Memoranda (the "FHHI OMs") for both the FHHI 7% Preference Shares and the FHHI 5% Preference Shares (collectively, the "FHHI Preference Shares") were substantially similar. The FHHI OMs were drafted with the benefit of legal advice.

28. FHHI's founding capital was $10,001 and its only other assets were the proceeds of sale from the FHHI Preference Shares.

29. FHHI's primary business plan was to invest in debt instruments and, as profits were earned, and taxes and dividends paid, net retained earnings could be used for equity investments.

30. The FHHI OMs stated that, among other things, FHHI would invest in Canadian and US debt instruments with a weighted average rating of "B" or better.

31. The FHHI OMs disclosed that leverage could be used.

32. The FHHI 7% Preference Shares OM provided for the possibility that FHHI 7% Preference Shares would be listed on a Canadian stock exchange by December 2020. However, if the FHHI 7% Preference Shares were not listed by December 2020, they became redeemable in December 2023.

33. The FHHI 5% Preference Shares were for a fixed term of 5 and 3/4 years and redeemable in December 2023.

34. The FHHI Preference Shares were offered as part of a unit priced at $10 per unit, with $9.50 allocated to each FHHI Preference Share and $0.50 allocated to a warrant. FHHI 7% Preference Shares paid base

dividends of 7% and FHHI 5% Preference Shares paid base dividends of 5%. FHHI paid a commission of 10% for sales of the FHHI Preference Shares that was deducted from the proceeds of the offering.

35. The FHHI OMs described the investment in the FHHI Preference Shares as "a risky investment", "highly speculative" and suitable only for investors "who can afford a total loss of their investment". The FHHI OMs also noted that FHHI's business "involves a high degree of risk, which a combination of experience, knowledge and careful evaluation may not be able to overcome."

36. As per the FHHI OM, FHHI appointed PSC as Manager to manage the FHHI investment portfolio. Thomson was the portfolio manager in charge of the FHHI investments and made the investment decisions in the FHHI account. As Manager, PSC was entitled to asset management fees and performance fees, in addition to selling commissions.

37. As of June 2019, FHHI had sold approximately $29.8 million of FHHI Preference Shares, including $12.8 million to PSC clients. FHHI has not issued any additional FHHI Preference Shares since July 2019.

Conflicts of Interest

38. At the time PFL was established and its PFL Preference Shares offered for sale to PSC clients, Thomson was its sole officer and director, the President, CEO and a promoter. PFL was, indirectly, a wholly owned subsidiary of PSC.

39. Thomson was an officer and director, the President, CEO, a promoter and the majority common shareholder of FHHI.

40. Thomson was also the President, CEO, UDP, and director of PSC, which was the Manager of the PFL and FHHI accounts, and he was the portfolio manager for the accounts.

41. PSC and Thomson's roles in PFL and FHHI were disclosed in the Offering Memoranda.

42. Thomson had a responsibility to take reasonable steps to identify all potential material conflicts of interest and to ensure, whether disclosed or not, that conflicts of interest were addressed in a fair, equitable and transparent manner, and consistent with the best interests of PSC's clients.

PFL Management Fees

43. PSC generated fees from PFL.

44. The PFL OM provided for PFL to enter a Management Agreement with PSC as the Manager. The PFL OM stated that PFL expected to pay two types of fees to PSC:

    a. asset management fees of 0.25% per month or 3.0% per annum; and

    b. performance fees of 50% of profits earned.

45. PSC entered into three Management Agreements with PFL dated August 20, 2017, December 28, 2017, and March 16, 2018, respectively. Thomson signed all three Management Agreements on behalf of both PSC and PFL, which established the fees that PFL would pay to PSC.

46. The information provided to PFL Preference Shareholders about the fees was set out in the PFL OM. The Management Agreements were not provided to PSC clients who purchased PFL Preference Shares and provided for a modified fee structure to that which was set out in the PFL OM. These changes resulted in a fixed monthly fee payable to PSC instead of a variable fee based on the assets as outlined in the PFL OM. These changes potentially increased the management and performance fees paid to PSC.

47. Notice of the changes to the fees was not provided to PSC clients prior to the changes. The changes to fees were also not disclosed to PSC clients who purchased PFL Preference Shares after the changes had been made.

48. The changes to fees were referenced in notes contained in the PFL financial statements, issued in November 2019 and provided to PFL investors.

49. This did not constitute prominent, specific, clear and meaningful disclosure of the conflict to PSC clients.

50. Thomson acknowledges that he failed to fully consider the implications of the conflicts or address them in a fair, equitable and transparent manner, consistent with the best interests of PSC's clients, in respect of his role in executing Management Agreements, including fee arrangements, between PSC and PFL on behalf of both parties.

51. In total, between September 2017 and May 2019, PSC charged and was paid fees of $2,420,983.

Failure to invest in accordance with the provisions of the Offering Memoranda

52. The PSC Management Agreements with PFL and FHHI incorporated the PFL and FHHI OMs as the source of account objectives in lieu of preparing separate managed account agreements. Accordingly, all investments made by Thomson in each account were required to be in accordance with the provisions of the PFL and FFHI OMs.

(i) Leverage

53. The PFL OM did not disclose the potential use of leverage. Nonetheless, Thomson used leverage in the PFL account. At times, the margin borrowing in the PFL account was approximately 2.5 times the equity in the account. This use of leverage was contrary to the disclosure contained in the PFL OM.

54. The use of margin was disclosed in the notes of the PFL financial statements dated November 29, 2018 and October 1, 2019. It was also disclosed in investor letters dated January 14, 2019 and June 24, 2019 which were issued based on legal advice.

Suitability

55. PFL and FHHI were high-risk investments. The PFL and FHHI OMs referred to the PFL and FHHI Preference Shares as "highly speculative", involving a "high degree of risk", and suitable for investors "who can afford a total loss of their investment."

56. The PFL OM stated that at least half of its portfolio would be invested in debt instruments rated with a "B" rating or better. Similarly, the FHHI OMs stated that the weighted average of its portfolio would be invested in debt instruments rated with a "B" rating or better.

57. The rating refers to rating scales used by industry-accepted bond rating agencies such as DBRS, Moody's, S&P, and Bloomberg Composite Index. Each agency rates debt instruments along a spectrum of risk based primarily on the obligor's capacity to meet its financial commitments.

58. The rating agencies rate "B" grade investments as highly speculative.

59. In addition, both the PFL and FHHI portfolios utilized leverage which increased the potential risks associated with an investment in the PFL and FHHI Preference Shares.

60. Thomson believed that PFL and FHHI were medium-risk investments.

61. PSC advisors sold PFL and FHHI to a broad range of clients, many of whom had no, or inadequate,

tolerance for risk as well as limited investment knowledge.

62. Of the approximately $10.7 million of PFL Preference Shares sold to PSC clients, $5.2 million was sold to clients that had no indication of high-risk tolerance on their account documentation. Of these, five clients whose risk tolerance was documented as 100% low purchased 16,767 PFL Preference Shares in their accounts, for total proceeds of $167,670.

63. Of the approximately $12.8 million of FHHI Preference Shares sold to PSC clients, $7 million was sold to clients that had no indication of high-risk tolerance on their account documentation. Of these, three clients whose risk tolerance was documented as 100% low purchased 15,325 FHHI Preference Shares in their accounts, for total proceeds of $153,250.

64. Thomson failed to appreciate the risks and erroneously considered PFL and FHHI to be medium-risk products when they were high-risk. As a result, purchases of PFL and FHHI were unsuitable for certain clients, having regards to their documented personal circumstances, stated risk tolerance and investment objectives.

Respondent's Position

65. Thomson believed that he was acting reasonably, in the best interests of investors.

66. The COVID pandemic contributed significantly to the decrease in value of certain underlying holdings of the PFL and FHHI funds, which, in turn, significantly contributed to the losses incurred by those portfolios.

67. Thomson helped facilitate the civil settlement to the benefit of all investors in PFL and FHHI such that substantial investor restitution has been achieved.

PART IV – CONTRAVENTIONS

68. By engaging in the conduct described above, the Respondent committed the following contraventions of IIROC's Rules:

    (i) Between June 2017 and June 2019, the Respondent as the UDP of PSC failed to identify and address existing and potential material conflicts of interest in a fair equitable and transparent manner, and consistent with the best interests of PSC's clients, contrary to Dealer Member Rule 42.

    (ii) Between June 2017 and June 2019, the Respondent as portfolio manager failed to take all necessary steps to ensure that investments in PFL for which he was the portfolio manager, were made in accordance with the terms of the applicable Offering Memorandum, contrary to Consolidated Rule 1400.

    (iii) Between June 2017 and June 2019, Thomson, as UDP, failed to supervise the activities of PSC to ensure compliance with IIROC requirements and failed to use due diligence to ensure that all orders accepted and recommendations made were suitable for clients and within the bounds of good business practice, contrary to Dealer Member Rules 38.5(c), 1300.1(a), (o), (p), (q) and (s).

PART V – TERMS OF SETTLEMENT

69. The Respondent agrees to the following sanctions and costs:

    a) A prohibition of approval as an Ultimate Designated Person for five years, commencing on July 31, 2021;

b) A prohibition of approval as a Registered Representative for one year, commencing on July 31, 2021; and

c) Costs in the amount of $100,000.

70. If this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees to pay the amounts referred to above within 30 days of such acceptance unless otherwise agreed between Staff and the Respondent.

PART VI – STAFF COMMITMENT

71. If the Hearing Panel accepts this Settlement Agreement, Staff will not initiate any further action against the Respondent in relation to the facts set out in Part III and the contraventions in Part IV of this Settlement Agreement, subject to the provisions of the paragraph below.

72. If the Hearing Panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Rule 8200 against the Respondent. These proceedings may be based on, but are not limited to, the facts set out Part III of this Settlement Agreement.

PART VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT

73. This Settlement Agreement is conditional on acceptance by the Hearing Panel.

74. This Settlement Agreement shall be presented to a Hearing Panel at a settlement hearing in accordance with the procedures described in Sections 8215 and 8428, in addition to any other procedures that may be agreed upon between the parties.

75. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing, unless the parties agree that additional facts should be submitted at the settlement hearing. If the Respondent does not appear at the settlement hearing, Staff may disclose additional relevant facts, if requested by the Hearing Panel.

76. If the Hearing Panel accepts the Settlement Agreement, the Respondent agrees to waive all rights under the IIROC Rules and any applicable legislation to any further hearing, appeal and review.

77. 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 based on the same or related allegations.

78. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.

79. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IIROC will post a full of copy of this Settlement Agreement on the IIROC website. IIROC will also publish a summary of the facts, contraventions, and the sanctions agreed upon in this Settlement Agreement.

80. If this Settlement Agreement is accepted, the Respondent agrees that neither [he/she/it] nor anyone on [his/her/its] behalf, will make a public statement inconsistent with this Settlement Agreement.

81. The Settlement Agreement is effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

82. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.

83. A fax or electronic copy of any signature will be treated as an original signature.

DATED this "10th" day of "August", 2021.

"Witness"	"Joseph Thomson"
Witness	Respondent
	"Rob DelFrate" "August 12, 2021"
Witness	Rob DelFrate Senior Enforcement Counsel on behalf of Enforcement Staff of the Investment Industry Regulatory Organization of Canada

The Settlement Agreement is hereby accepted this "14" day of "September", 2021 by the following Hearing Panel:

Per: "Martin Friedland"
Panel Chair

Per: "Richard Austin"
Panel Member

Per: "Charlie Macfarlane"
Panel Member