Re iA Private Wealth Inc.

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

iA Private Wealth Inc.

2021 IIROC 22

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

Heard: July 29, 2021, in Montreal, Quebec
Decision: July 29, 2021
Reasons for decision: October 6, 2021

Hearing Panel:
Jean Martel Ad.E., Chair, François Gervais, and Danielle LeMay
Appearances:
Rob DelFrate, Senior Enforcement Counsel, for IIROC
David DiPaolo and Maureen Doherty, for iA Private Wealth Inc.

DECISION RESPECTING ACCEPTANCE OF THE SETTLEMENT AGREEMENT

¶ 1 On July 29, 2021, this panel ("**Hearing Panel**" / "**Panel**" / "**we**") has held a settlement hearing electronically to consider whether, under Rule 8200 of the *Consolidated Enforcement, Examination and Approval Rules* ("**Consolidated Rules**") of the Investment Industry Regulatory Organization of Canada ("**IIROC**"), we should accept or reject a settlement agreement ("**Settlement Agreement**" / "**Agreement**") entered into by iA Private Wealth Inc. ("**IAPW**" / "**Respondent**") and the Enforcement Staff of IIROC ("**Staff**") on July 9 and 13, 2021, respectively. The text of the Agreement executed under Section 8428 of the Consolidated Rules is appended to this decision.

¶ 2 IAPW is an IIROC Dealer Member ("**Dealer" / "firm"**) having its head office in Québec. Even though the hearing was held in that province, it was exceptionally conducted in English with the Panel's consent, as agreed between the parties under Section 8411(3) of the Consolidated Rules.

¶ 3 In Part IV of the Settlement Agreement, IAPW recognizes that it has contravened the provisions of Section 38.1 of IIROC Dealer Member Rule 38, *Compliance and Supervision* ("**Rule 38.1**"), by failing to establish and maintain a system ("**supervisory system**" / "**system**") to supervise the activities of its employees that is

reasonably designed to achieve compliance with IIROC requirements.[1]

¶ 4 At the close of the hearing, after reviewing the agreed facts, considering the precedents and authorities submitted to us, and hearing the respective oral submissions of counsel for the parties, our Panel has deliberated on the whole, determined that the penalties agreed to in the Settlement Agreement were reasonable in the circumstances, and exercised the authority granted upon it by Section 8215(5) of the Consolidated Rules, to accept this Agreement with reasons to follow.

¶ 5 This decision describes our reasons for doing so.

I. THE SETTLEMENT AGREEMENT

1.1 The admitted contraventions

¶ 6 In Paragraph 4 of the Settlement Agreement, the Respondent recognizes that it has failed for many years – from April 1, 2014 to early 2019 – (the "relevant period") to properly supervise certain employees who were acting as its registered representatives (the "non-compliant representatives"): Donald (Don) McFarlane, Kevin Price, Colin Baird, Duncan Roy, and Sheron Crane (see pars. 4 and 66 of the Agreement). As this supervision was lacking, numerous and significant violations of IIROC requirements were committed by the non-compliant representatives.

¶ 7 The circumstances in which those violations took place indicate that at the time, the Respondent was not complying with its regulatory duties pursuant to the terms of Rule 38.1,[2] hence its admission, in Paragraph 74 of the Agreement, to have failed to establish and maintain a system to supervise the activities of its employees reasonably designed to achieve compliance with IIROC requirements, contrary to that Dealer Member Rule ("Rule").

¶ 8 The purpose of such an internal supervisory system is to ensure that the Dealer and each of its partners, directors, officers, representatives, employees and agents (collectively, its "employees") are governed, managed and monitored, and conduct themselves in compliance with all applicable IIROC requirements. When operated as required, the system provides assurance that the Dealer's business conduct stay within the bounds of ethics, fair trading and integrity in the securities industry, that its clients are getting the regulatory protections that they are entitled to, that governance of its firm is structured correctly and driven by the right compliance culture, and that its financial condition remains stable.

¶ 9 To be considered reasonably designed to achieve compliance with the IIROC requirements, a supervisory system must meet a set of minimum standards referred to in Paragraphs (i) to (vii) of Rule 38.1, Part I of IIROC Dealer Member Rule 2500, Minimum Standards for Retail Customer Account *Supervision,* and Rule and Policy 7.1 of the *Universal Market Integrity Rules* ("**UMIR Rules**"). Some of these standards are of particular relevance to the facts of this case where the Respondent, however, is only sought for breaches to Rule 38.1. They require the system to be able to achieve the following objectives:

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[1] In this decision, the expressions "**IIROC requirements**" and "**requirements**" refer not only to the existing IIROC Dealer Member Rules, but also to all other IIROC Rules, laws, regulations, rules and policies applicable to a Dealer's securities and standardized derivatives business.

[2] Rule 38.1 lays down the principle that:

> ***38.1*** *A Dealer Member must establish and maintain a system to supervise the activities of each partner, Director, Officer, Registered Representative, Investment Representative, employee and agent of the Dealer Member that is reasonably designed to achieve compliance with the Rules of the Corporation* [IIROC] *and all other laws, regulations and policies applicable to the Dealer Member's securities and commodity futures business. (our addition: capitalized terms refer to Rules definitions).*

a) establish, adopt and update from time to time, as may be required, documented policies and procedures ("**policies and procedures**") allowing the Dealer to supervise the conduct of its employees and their compliance with requirements when they pursue activities in any business in which the firm is engaged;

b) provide reasonably designed means of ensuring that employees understand their responsibilities under the policies and procedures;

c) designate supervisors ("**supervisors**"), including a head of trading, with appropriate qualifications and authority to carry out the oversight responsibilities assigned to them by the policies and procedures, notably on client accounts, margin credit and trading;

d) be fully and adequately enforced by sufficient personnel and other resources; and

e) establish follow-up and review procedures to ensure that the supervisors are executing their functions properly.

¶ 10 These standards require that a supervisory system be based on two building blocks: first, an internal compliance framework that appropriately self-regulates the Dealer and its activity; and second, the diligent application and enforcement of that framework.

¶ 11 The "framework" component of the system is the body of provisions prescribing obligations, processes, systems and controls consistent with all the IIROC requirements that the firm and its employees have to follow. Under the UMIR Rules, these provisions must notably incorporate trading supervision arrangements enabling the firm to supervise its trading activities and order execution practices adequately.

¶ 12 The supervisory component – the internal oversight and enforcement, by the Dealer's supervisors, of the policies and procedures underlying the framework – is equally essential, because it is only when the firm ascertains that its framework is observed that it may get a reasonable assurance that its employees are duly supervised and complying with the corresponding requirements.

¶ 13 In this context, if the policies and procedures of the firm do not reflect the applicable requirements correctly or if their internal application is negligent or interfered with by inadequate lines of authority within the firm, the supervisory system of the Dealer will not be properly designed to achieve compliance with requirements, within the meaning of Rule 38.1.

¶ 14 In light of the above, let us see how the agreed facts of this case substantiate the infringements that the Respondent has admitted.

1.2 The agreed facts

¶ 15 These facts, to which the Hearing Panel must limit its consideration in a settlement hearing context, are described in Part III of the Settlement Agreement.

¶ 16 They show that during the relevant period, the design of the Respondent's supervisory system was deficient and hampered the capacity of its firm to achieve regulatory compliance in certain key areas of its business. This deficiency is evidenced by the circumstances in which the non-compliant representatives committed a wide range of requirement violations over that period, and the inadequate manner in which IAPW's system has coped with the situation as it was unfolding.

¶ 17 Before we turn our attention to the conduct of the other non-compliant representatives, we will first review the facts relating to Donald (Don) McFarlane's compliance issues, which we have found particularly

conclusive.

(i) McFarlane-related issues

¶ 18 McFarlane is the most prominent offender of the group of non-compliant representatives. In 2000, he co-founded an independent brokerage—McFarlane Gordon Inc. – where he cumulated the responsibilities of representative, officer and director for many years. That brokerage is merged with the Respondent on April 1, 2014, where begins the relevant period.

¶ 19 At IAPW, he is a prized recruit. While he is a successful representative controlling an enviable book of business, he cumulates the functions of Managing Director of the Private Client Group of IAPW from 2014 to 2018. He also participates to its governance at the highest level, as a member of its Board of Directors and Vice-Chairman from 2014 to 2017.

¶ 20 His client base is retail. It includes mostly high net worth, sophisticated investors with a good investment knowledge and a high level of tolerance to risk. He advises also a smaller number of clients who clearly do not fit this description.[3] McFarlane recommends investment strategies that typically require his clients to engage in significant volumes of margin trading, an activity that IAPW needs to monitor very closely under the requirements applicable to Dealers.

¶ 21 To both meet his personal objectives and implement these strategies, McFarlane maintains several personal non-client accounts ("PRO accounts") with IAPW and actively trades in them.

¶ 22 His conduct during the relevant period raises many compliance issues that the Respondent addresses in ways that are quite telling about the quality of design of its supervisory system.

Suitability

¶ 23 McFarlane repeatedly breaches the IIROC requirements regarding suitability as he is providing services in relation to the client accounts.

¶ 24 Under Dealer Member Rule 1300, Supervision of Accounts (Rules 1300.1(p), (q), and 1300.2), an IIROC Dealer must ensure that the recommendations that it makes to a retail client to purchase, sell, exchange or hold a security, and the orders that it accepts from a client, are suitable in light of factors described in the Know-Your-Client ("KYC") information that the accountholder provides to the Dealer in his new client account form ("NCAF").[4] Secondly, when these suitability determinations are made, the Dealer has to verify the suitability of all positions held in the client account that the recommendation or order relates to. And finally, the Dealer needs to provide the client with appropriate advice in response to these suitability reviews (Rule 1300.1(s)).

¶ 25 Under Subsection (c) of Rule 2500, Minimum Standards for Retail Customer Account Supervision, IAPW's compliance with the suitability requirements comes under the primary responsibility of McFarlane, in his capacity as representative assigned to the client accounts. Therefore, it is up to him, on behalf of the firm, to interact with his clients, collect and make sure that the KYC information contained in their NCAF is kept current, and exercise due diligence, based on that information, to offer them the suitability protections provided in the IIROC requirements.

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[3] Client A is an example on point. Her KYC information and the conditions under which she has received from Dealers, through MacFarlane, investment advice and market trading services over the years are described in paras. 24 and ss. of the Settlement Agreement.

[4] These factors include the current financial situation of the client, investment knowledge, objectives and time horizon for investing, tolerance to risk and the current composition and risk level of client's portfolio (Rules 1300.1(p) and (q)).

¶ 26 As for the Respondent, it lies upon it to adequately supervise McFarlane's conduct, through its supervisors, to verify that he properly exercises these responsibilities.

¶ 27 IAPW badly fails at that task. The Agreement points out that even though its supervisors are simply monitoring "routinely"[5] McFarlane's activities, they nonetheless discover, on numerous occasions, that the holdings booked in many of his client accounts are unsuitable as misaligned with the KYC information of their holders.

¶ 28 In all these cases, IAPW chooses to resolve the compliance issues in ways that are either inconsistent with the requirements or eluding their true purpose and intent:

a) the option to modify the asset composition of the accounts to realign their allocation and risk levels on the KYC information of the holders is not retained, assuming it is even considered;

b) instead, McFarlane decides to proceed the other way around and to apply a purely record-based solution by modifying the NCAFs of the clients, with no objection from his supervisors;

c) even though there is no indication that the clients' life circumstances or objectives have materially changed, the NCAFs are modified to increase their KYC risk tolerance levels and align them with the higher risk levels of the holdings that the supervisors have previously determined to be unsuitable;[6]

d) the supervisors generally approve these NCAF updates without conducting any further inquiries – other than getting a representation from McFarlane that he has discussed the corresponding riskier strategies with the clients – to determine whether the clients' KYC information has changed, or if the suitability determinations made at the time to support McFarlane's recommendations were in keeping with this information;[7]

e) no special supervision of McFarlane's trading in his client accounts appears to have been subsequently conducted by the firm, notwithstanding indications that this would have been desirable.

This manner of resolving issues, by preferring technical compliance solutions over the actual fulfilment of regulatory duties, was inconsistent with the operation of a well-designed supervisory system within the provisions of Rule 38.1.

¶ 29 While McFarlane service-providing to clients continues to cause multiple suitability problems, IAPW's supervisors continue to treat him in the same complacent and accommodating manner. They go no further to verify the recommendations that caused the unsuitable holdings to be booked in the first place in the accounts.

¶ 30 These gaps in the application of the Respondent's system caused the business misconduct of McFarlane in suitability matters and as we will now see, in his trading activities, to continue unfettered and

[5] Settlement Agreement, para. 19.

[6] As the case of Client A shows, these "updates" to increase the risk levels determined in a client's NCAF could be performed repeatedly, as needed for the firm's records to demonstrate suitability of the positions held in her account.

[7] As Part II of Rule 2500 would indicate.

their harmful effects on many clients to endure.[8]

Trading supervision issues

¶ 31 The Settlement Agreement shows that McFarlane initiates various questionable, often non-compliant, trading activities through the Respondent as a participating organization in the markets. These activities are described in paragraphs 31 to 52, 64 and 65 of the Agreement. They are commonly carried in, or in a combination of, McFarlane's PRO accounts, other IAPW non-client (pro) accounts, and client accounts assigned to McFarlane.

¶ 32 They involve different types of suspicious trading practices:

a) trading in a McFarlane PRO account alongside McFarlane client accounts;

b) trading between a McFarlane PRO account and a McFarlane client account;

c) entering trades in a McFarlane PRO account in priority to trades in IAPW client accounts;

d) entering, and having executed, high volumes of buy and sell orders on the shares of four small-cap listed issuers[9] (the "**small-cap stocks**") while these volumes are representing abnormally high percentages of both the total trading activity of the Respondent and the overall market trading volume in these small-cap stocks;

e) through this concentrated trading pattern, possibly creating an artificial price or a misleading appearance of activity in the small-cap stocks.

¶ 33 From the standpoint of supervision, these trading activities, and the steps taken by McFarlane's for the relevant client orders to be accepted and executed on the market, are all susceptible of giving rise to a vast array of basic business conduct, market conduct and trade compliance issues, notably in terms of client priority obligations (Rule 29.3A, Business Conduct, and UMIR Rule and Policy 5.3), conflicts of interest (Rule 42.1(1), Conflicts of Interest), and manipulative and deceptive activities in a marketplace (UMIR Rule 2.2(2), Manipulative and Deceptive Activities). As such, these activities effectively attract the attention of the Respondent's supervisors, who warn McFarlane on several occasions to cease those trading practices that are non-compliant. But he does not cease to, and they let him get away with it.

¶ 34 As these activities were beginning to raise red flags, the firm's supervisors could have submitted them to much closer monitoring, or even considered imposing enhanced supervision to McFarlane at some point pursuant to the provisions of Rule 2500 (Part I(C)(4)), while the firm would take steps to determine if the activities should be limited in whole or in part and if so, to enforce those limitations. But they did neither, while they knew that McFarlane was continuing his questionable or plainly prohibited practices.

¶ 35 As a result, the Respondent did not adequately apply its supervisory system, by failing to:

a) correctly identify and address the potential harm that these McFarlane trading practices could inflict to its clients, and to the other participants to the markets where the relevant orders were

[8] The substantial number of complaints that IAPW received from former McFarlane's clients after he had passed away is ample proof of this (see *infra*, paras. 69-70).

[9] These issuers are Minnova Corp., Avidian Gold Corp., Intercontinental Gold and Metals Ltd., and Corvus Gold Inc. In Minnova's case, for example, 86 % of all buy orders and 73 % of all sell orders executed on this small cap stock over a two-year period have been made by MacFarlane and his clients, representing around 95 % of all IAPW-related trading in this stock. That should have been of concern, quite obviously, to a reasonable and informed supervisor who is or should have been aware of the relevant circumstances.

entered and filled; and

b) prevent that some or all of these practices be executed in breach of applicable IIROC requirements.

Margin supervision

¶ 36 The strategies recommended by McFarlane call for his clients to engage in significant volumes of margin trading. He also does trade heavily on margin himself. This activity generates two types of issues in McFarlane PRO and client accounts: recurrent undermargining, and improper qualification of assets as collateral security for margin lending purposes.

¶ 37 On the first type of issue, paragraph 53 of the Settlement Agreement indicates that "Between 2014 and 2019, a number of McFarlane's client accounts, as well as his personal accounts, […] At times, […] became undermargined to a significant extent. […] While IAPW followed up with McFarlane several times to work on bringing the accounts onside, the accounts ended up falling offside again." After pointing out that IAPW had an obligation to properly ensure that the margin issues in these accounts were rectified within a reasonable time, this paragraph adds that the firm did not honour that obligation.

¶ 38 This lack of vigilance steadily allows margin shortfalls to reemerge from time to time in the accounts, to remain outstanding for extended terms in some cases, and to become financially significant for IAPW.

¶ 39 The agreed facts (paras. 54 to 57 of the Agreement) show that in September 2014, twenty-three of McFarlane's personal and client accounts were undermargined by over $1,000,000, including margin shortfalls of $269,000 in his PRO accounts remaining outstanding for periods ranging from 1 to 17 days, and $219,000 in client accounts remaining outstanding for periods ranging from 3 to 158 days. In May 2015, McFarlane's PRO accounts were undermargined by over $560,000 for periods ranging from 7 to 17 days. In May 2016, his PRO and client accounts were undermargined by over $1,900,000 and in October 2018, by over $2,000,000, which had come to represent at the time a significant 36 % portion of IAPW's total outstanding margin.

¶ 40 That was substantial credit granted. Staff indicates that IAPW's compliance framework included proper systems to identify the margin shortfalls and address them with McFarlane, that margin calls were made and that the accounts were ultimately brought onside. That part of the Respondent's supervisory system seems to have worked relatively well and to be applied adequately, even though a lot of interaction with McFarlane was needed to get the accounts back onside.

¶ 41 The problem was that these undermargining sequences kept coming back because no supervisory follow-ups were conducted, and no internal application measures were taken to prevent them and limit the firm's credit risk.

¶ 42 The second type of margin issues resulted from the unsupervised qualification by the Respondent of private corporate debentures and promissory notes as collateral for margin lending purposes in McFarlane's PRO and client accounts. These issues originated before 2019, and are described in the following terms in paragraph 59 of the Settlement Agreement:

> *IAPW permitted these securities to be used as collateral for margin lending purposes. As a result, clients were able to access greater margin than that to which they were entitled. Specifically, 16 of McFarlane's client and personal accounts received excess loan value based on these private corporate debentures totaling approximately $3,500,000. At the time this margin was provided, IAPW took no steps to limit this excess loan value.*

¶ 43 Here again, the firm is mistakenly assuming a lot of credit risk and consequently, of financial loss. This situation gets worse at the end of the relevant period in 2019. IAPW determines that the above-mentioned private securities should not have been accepted as collateral, and issues margin calls to cover the excess value of loans that have been drawn. As a result, several McFarlane's PRO and client accounts become undermargined by over $6,000,000 at the end of March 2019, an amount that includes a margin shortfall of over $778,000 in McFarlane's PRO accounts.

(ii) Issues related to the other non-compliant representatives

¶ 44 IAPW also admits, in paragraph 67 of the Settlement Agreement, that it has failed to properly supervise the conduct of the four non-compliant representatives other than McFarlane.

¶ 45 These representatives recognized many contraventions in settlement agreements with IIROC, including unsuitable investments, use of margin by elderly clients, use of excessive short-term trading and unsupervised client communications. The agreements containing their admissions of misconduct were accepted by hearing panel decisions in Re Price 2017 IIROC 54, Re Baird 2019 IIROC 19, Re Roy 2018 IIROC 11, and Re Crane 2019 IIROC 14.

¶ 46 Their breaches of requirements, like McFarlane's, contribute to establishing that during the relevant period, the quality and design of the Respondent's supervisory system were not up to the standards prescribed by the IIROC Rules.

1.3 The agreed sanctions

¶ 47 The Respondent has agreed to the following sanctions:

a) a fine of $350,000; and

b) $25,000 in costs.

¶ 48 Staff pointed out in the Agreement (para. 73), and submitted to us orally at the hearing, that these amounts have been reduced in consideration of the excellent cooperation of the Respondent in resolving the matter before us. The parties agreed to this reduction in an early resolution offer ("ERO") on the following terms.

¶ 49 On February 2, 2015, the IIROC Staff issued a policy statement on Credit for Cooperation, stating that respondents would be given credit for the purposes of sanctions where they show this kind of cooperation of very high quality. Examples of the expected cooperation are given in the policy statement. They include:

- prompt and detailed self-identification of suspected or uncovered misconduct;
- early self-identification of contraventions followed by thorough internal reviews, the results of which are promptly shared with the Staff;
- substantial assistance to the Staff's investigation by obtaining and providing evidence or testimony from persons beyond the jurisdiction of IIROC; and
- whether the cooperation led to an early resolution of the matter.

¶ 50 The extent of credit that Staff may give a respondent under that 2015 policy statement, however, is not predetermined and may still vary depending upon factors other than the quality of the cooperation itself.

¶ 51 The IIROC Staff Policy Statement – Early Resolution Offers ("ERO Policy Statement"), effective April 1,

2021, offers more predictability on that point to Dealers to achieve three public interest goals:[10] promote the timely resolution of cases, increase the application of the Credit for Cooperation policy, and encourage them to implement timely compensation and remedial measures.

¶ 52 Under the ERO Policy Statement, if a Dealer demonstrates to the IIROC Staff a level of cooperation that Staff determines to be "proactive and exceptional" in the resolution of a disciplinary matter, the Dealer may qualify to receive an ERO from IIROC. If the Dealer receives an ERO and accepts it to settle the matter, the Dealer will be granted a 30 % reduction on the sanctions that Staff would otherwise seek to obtain.

¶ 53 The ERO itself is an agreement to agree on settlement terms that the Staff proposes an allegedly offending Dealer to recognize. These terms are, among others:

- the IIROC requirements that Staff believes have been contravened by the Dealer;
- the admissions of fact that are deemed required to obtain the sanction rebate; and
- the reduced sanctions that Staff is prepared to agree to in a subsequent settlement agreement.

When the Dealer accepts the ERO, the relevant contraventions, facts and sanctions agreed in it are reflected in the subsequent settlement agreement between the Dealer and IIROC, and become subject to acceptance by an IIROC hearing panel in the usual way.[11]

II. THE ACCEPTABILITY OF THE AGREEMENT

2.1 The Acceptability Criteria

¶ 54 The decision to accept or reject a settlement agreement comes at the end of a well-defined process that calls for the Hearing Panel to analyze the agreed facts, assess the mitigating and aggravating factors that they allow to identify, examine if these factors are appropriately reflected into the agreed sanctions, and refer to penalty precedents provided in comparable cases.

¶ 55 For the settlement agreement to be accepted, the penalties agreed by the parties have to meet a standard of reasonableness which consists in being reasonably fair, appropriate, and significant enough to inspire deterrence, as determined by the hearing panel.

¶ 56 The agreed sanctions must be fair and reasonable given the circumstances of the case. Accordingly, they will be if they can be deemed commensurate with the seriousness of the Respondent's contraventions, that is, not too lenient or harsh to the point of being unreasonable.

¶ 57 The appropriateness of the agreed sanctions is crucial to the acceptability of a settlement agreement. It is established when the hearing panel, after consideration of the respondent's misconduct, determines that the sanctions are not "clearly falling outside a reasonable range of appropriateness."[12]

¶ 58 This principle that the agreed sanctions should be held appropriate and should not be rejected unless they clearly fall outside a reasonable range of appropriateness, is specific to settlement proceedings. In these proceedings, as opposed to contested cases where the panel simply has to impose the sanctions that it deems

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[10] On this point, see the authorities cited in footnote 13.

[11] As indicated in s. 6 of the ERO Policy Statement, "*A settlement agreement agreed to pursuant to an Early Resolution Offer is subject to acceptance by a hearing panel.*"

[12] This test has been used by a constant line of decisions in matters of settlement hearings since its initial formulation in *Re Milewsky* [1999] I.D.A.C. No. 17.

correct, the sanctions to be vetted by the panel have already been agreed to the satisfaction of the parties, who are in the best-informed position to do so in the circumstances. In addition, the panel must consider that settlements provide public interest benefits[13], and give way to a resolution whose certainty is important and should not be disturbed lightly.[14]

¶ 59 Finally, the Hearing Panel has to be satisfied that the sanctions are such that they will operate as an adequate deterrent, thereby contributing to prevention or discouraging the repetition, by the Respondent specifically and within the securities industry in general, of requirement breaches of the type of those submitted to our consideration in these settlement proceedings.

¶ 60 As counsel for Staff rightly indicated in his submissions, addressing these three categories of considerations should permit to reach a balanced outcome:

> *Given the standard of "reasonableness",* [that] *the penalties set forth in the Settlement Agreement strike a reasonable balance between fairness to the Respondent in the circumstances and the need to protect the investing public, the industry membership, the integrity of the discipline process, the integrity of the securities markets and prevention of a repetition of the offense.*[15]

2.2 Aggravating and mitigating factors' assessment

¶ 61 The nature and seriousness of the Respondent's contraventions may be evaluated by correlating them with the number and gravity of requirement violations that its supervisory system could not prevent or address while it was improperly designed.

¶ 62 This way of approaching the agreed facts, using the IIROC Sanction Guidelines as guidance, allowed us to identify the following mitigating and aggravating factors, which we have considered in our determination of the reasonability of the sanctions in this case.

(i) Aggravating factors

¶ 63 Our analysis of the agreed facts has revealed the following factors, which are aggravating in our view:

a) the substantial number of offending representatives (five in total) that the Respondent's supervisory system has failed to adequately supervise;

b) the grave misconduct in which McFarlane could engage in various areas of the business without any adequate supervisory response by the Respondent;

c) the long time that this lacking supervision has permitted the misconduct to continue;

d) the substantial harm caused to various and numerous stakeholders, *e.g.* clients of the non-compliant representatives (especially the non-sophisticated ones, who were vulnerable),

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[13] *Re Cavalaris*, préc., para. 19; the hearing panel in *Re Donnelly* (2016 IIROC 23, paras. 7-8), rightly observed on this point, as cited with approbation in *Re Edward Jones* 2016 IIROC 42, para. 27, that "*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*."

[14] See *R. v. Anthony-Cook*, [2016] SCC 43, Moldaver J., and the discussion in *Re Cavalaris* 2017 IIROC 04, paras. 17-18; and *Re Richardson GMP & Pytak* 2020 IIROC 41, para. 41.

[15] *Re Bereskin* 2010 IIROC 37, para. 5.

participants to the equity market where irregular trading practices were executed, the securities industry, the general public, and IAPW itself;

e) the extent of the uncontrolled margin issues that persisted in McFarlane's PRO and client accounts, both in terms of dollar amounts and recurrence;

f) the extent to which inappropriate trading practices were allowed to be executed through the Respondent, without adequate controls and internal enforcement measures being applied; and

g) the inadequacy of the trading supervision function within the Respondent's firm, in connection with the trading concentration practices in small-caps stocks and the possible creation of artificial prices or misleading appearance of activity in these stocks.

¶ 64 We also believe that in the circumstances of this case, the accumulation of functions and powers over McFarlane's head from the moment McFarlane Gordon Inc. merged with the Respondent has come to be an aggravating factor over time.

¶ 65 As a member of the Respondent's board of directors for three years while he was constantly breaching the rules, McFarlane was in conflict with the interests that he had to defend as a director with respect to regulatory compliance.[16] This conflict was bound to bring him to adversely influence the compliance culture of the firm from within its governance structure and senior management team.

¶ 66 One can imagine the kind of reception that the Respondent's board was reserving at the time to the Chief Compliance Officer of the firm, with McFarlane in attendance, when the CCO was carrying out his obligation to report on the serious compliance deficiencies that he was encountering with the non-compliant representatives (especially McFarlane) and the corrective measures that needed to be taken in response.[17]

¶ 67 The intimidation that this governance anomaly was allowing McFarlane to exercise no doubt induced, among his supervisors, this attitude of negligent complacency and restraint that transpires from the facts when they were called to enforce the firm's supervisory system against him. We strongly believe that this contributed to undermine the Respondent's capacity to supervise McFarlane's conduct efficiently.

(ii) Mitigating factors

Remedial measures

¶ 68 The Respondent has implemented several remedial measures to compensate clients that have suffered losses as a result of the non-compliant representatives' misconduct. Counsel for the parties submitted that these measures should be viewed as mitigating factors. We agree.

¶ 69 IAPW treated very seriously the 30 complaints filed by McFarlane's clients. It immediately reported the complaints to IIROC and conducted a broad and thorough investigation into the issues that they raised.

¶ 70 Over the course of 2019 to 2021, IAPW entered into settlement agreements for a global amount

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[16] UMIR Policy 7.1 indicated that "[…] *The board of directors of a Participant is responsible for the overall stewardship of the firm with a specific responsibility to supervise the management of the firm. On an ongoing basis, the board of directors must ensure that the principal risks for non-compliance with Requirements have been identified and that appropriate supervision and compliance procedures to manage those risks have been implemented* […]."

[17] Rule 38.8 provides that the board of directors of a Dealer must review the report of its chief compliance officer, determine what actions are necessary to rectify any compliance deficiencies noted in the report, ensure that such actions are carried out, and maintain records of the actions it determines to be necessary and the monitoring to ensure that those actions are carried out.

exceeding $5,600,000 with the vast majority of complainants – 26 out of 30 – with one of them who went to OBSI, leaving only four complaints unresolved. Other indemnities were paid to settle claims arising from the misconduct of the non-compliant representatives other than McFarlane. We recognize that this effort was substantial and responsible.

New Policies and Procedures

¶ 71 To prevent similar misconduct from its other advisors prospectively and increase the quality of the regulatory supervision function within its firm, notably in matters of irregular trading practices, IAPW has adopted and implemented 17 training modules. These help the advisors to get better acquainted with the requirements that they have to comply with, and to be more sensitive to their application in their interactions with clients.

¶ 72 In addition, the Respondent has updated its internal self-regulatory framework by adopting new policies and procedures in the margin and trading supervision areas, relating to:

- margin concentration
- trade review
- securities concentration
- margin and
- pricing and margin eligibility.

Structural Changes

¶ 73 IAPW has implemented significant structural changes to address the compliance deficiencies that could have contributed to the failure to supervise McFarlane and the other non-compliant representatives. These include appointing a new Ultimate Designated Person (see Dealer Member Rule 38.5) in October 2018, hiring a new credit manager overseeing margining practices in February 2019, and hiring a new Chief Compliance Officer in March 2019. Moreover, the reporting lines have been changed within the firm. The tier 1 personnel assigned to performing trade reviews daily and monthly now reports directly to the Chief Compliance Officer, as opposed to the business line previously. As for the Credit department, it now reports to Operations instead of the business line.

¶ 74 The Respondent also adopted policies to prevent an advisor from being appointed to the firm's board of directors. This remedial measure is as significant as it is fitting in the context of the aggravating factors that we just discussed.

¶ 75 The time, efforts and money that the Respondent has devoted to developing and implementing these remedial measures demonstrate a true determination to amend itself and to reestablish more solidly its compliance status in areas where an increased level of supervisory vigilance was needed. As was said in Re Edward *Jones* 2016 IIROC 42 (pars. 31), we believe that "*The end result is a better system of supervision"* for the Respondent.

Cooperation of IAPW with IIROC

¶ 76 Counsel for Staff represented that the cooperation with IIROC that the Respondent has shown to bring this matter to resolution should be a mitigating factor in our consideration of the sanctions. We share this view.

¶ 77 The Settlement Agreement indicates (paras. 71-72) that the Respondent was proactive in its cooperation, forthcoming with Staff in respect of the issues raised in the Settlement Agreement, transparent on the complaints received from McFarlane's clients – it notified IIROC of their receipt, conducted a thorough and in-depth investigation of all issues identified with Staff, provided the investigation report to IIROC in a timely manner with supporting documentation – and that this greatly assisted Staff in its investigation of these issues.

¶ 78 Prior to the conclusion of the Settlement Agreement, Staff made a discretionary determination that IAPW's cooperation in this connection had been "proactive and exceptional" within the meaning of its policy statement on Credit for Cooperation, which qualified IAPW to conclude with IIROC an ERO that has defined the essential terms of this Agreement (see on this point para. 48 and ss. of this decision).

2.3 Our determination of acceptability

The Respondent's misconduct

¶ 79 To be held fair and reasonable, the sanctions convened in the Settlement Agreement must be commensurate with the seriousness of the admitted contraventions.

¶ 80 In this case, the Respondent is an IIROC Dealer which has operated a flawed supervisory system over several years. This system was missing key policies and procedures, and its application and enforcement were not diligent enough to adequately supervise the activities of its employees in different functions and business areas, including compliance supervision. That is why it was not reasonably designed to achieve compliance with IIROC requirements, which made it contravene the provisions of Rule 38.1.

¶ 81 Such a contravention is inherently serious. When admitted by the Dealer, it qualifies per se its entire supervisory function as structurally incapable of ensuring compliance. But to evaluate the reasonability of the sanctions to be imposed as a result, the severity of the contravention has to be assessed against the facts of each case, by considering notably:

a) the nature and number of infractions to requirements that have occurred despite the Dealer's supervisory system being in place;

b) the circumstances in which these infractions have been committed;

c) whether these facts establish a presumption that the lesser the system has worked to prevent or resolve these infractions, the more it may have failed to prevent or resolve other infringements.

¶ 82 If the demonstrations of systemic incapacity are various, evident and widespread, the Panel will conclude that the system was a total failure, to paraphrase the language used in Re Edward Jones 2016 IIROC 42 (para. 29). If not, the Panel will evaluate what more could and should have been done for the system to achieve regulatory compliance.

¶ 83 The circumstances in which the five non-compliant representatives – a rather substantial number for a firm of this size – were allowed for years to breach key IIROC requirements in various ways repeatedly, conclusively show that negligence in the application and enforcement of the Respondent's supervisory system was the main reason why that system failed to achieve its compliance goals.

¶ 84 The infractions committed by these representatives were numerous, frequent, sometimes obvious, and part of the trade in McFarlane's case. Some of them would have been unmissable by an adequately designed supervisory system. They have gravely exposed various stakeholders to risk or loss, notably clients of

the non-compliant representatives, the participants to a recognized Canadian equity market, the securities industry, the general public, and the Respondent itself.

¶ 85 Even though the supervisors of the Respondent and ultimately, the senior officers to whom they were reporting, were aware of many of these infringements, they failed to acknowledge and respond to these breaches with appropriate corrective action.

¶ 86 Our review of the aggravating factors also reveals that it is by omission to act in a timely manner on all three fronts of internal supervision, management and governance, that the Respondent allowed the harmful conduct of the non-compliant representatives to slip through the compliance safety net that its supervisory system was supposed to put in place, apply, and enforce.

¶ 87 There was negligence, but no dishonesty, malfeasance or search for a financial benefit on the part of the Respondent. We have also found that the efforts that IAPW has deployed to compensate client losses, put its supervisory house in order in cooperation with IIROC, and lay the ground for more solid management and governance structures to better support the regulatory compliance function within its firm, are particularly commendable.

¶ 88 We have concluded that this whole situation was not a total supervisory failure on the part of the Respondent, but merely a case where more could or should have been done.

The case law

¶ 89 We have already discussed the standard of reasonableness that the agreed penalties have to meet for the Settlement Agreement to be acceptable and, as well, the criteria and principles that our Panel has to apply to ensure that this standard is met.[18] We also want to refer to the penalty benchmarks provided in the case law submitted to us by Staff in our evaluation.

¶ 90 The Hearing Panel was referred to four settlement cases to demonstrate that the agreed sanctions – a fine of $350,000 and $25,000 in costs – are reasonable in the circumstances of this case. These cases are Re Richardson GMP & Pytak 2020 IIROC 41, Re Edward Jones 2016 IIROC 42, Re Scotia Capital 2017 IIROC 15 ("Scotia 2017"), and Re Scotia Capital 2015 IIROC 27 ("Scotia 2015"). They all involve, among other infractions, failures of the Dealers to meet the requirements of Rule 38.1, as demonstrated by infractions somewhat similar to the ones found here.

¶ 91 In Richardson GMP (RGMP), the Dealer was held to have failed to supervise the activities of two representatives for extended periods of time. The representatives had breached suitability requirements with clients. The supervisors of the firm had been unable to identify that these clients' stated risk tolerances and investment objectives were misaligned with the personal and financial information found in their NCAFs. They also failed to question NCAF upgrades that the representatives had initiated to increase the stated risk tolerance and the high-risk portion of the clients' portfolio even as they were ageing.

¶ 92 A major mitigating factor in RGMP's case was the significant amount of time, effort and resources deployed by the Dealer to enhance and heighten its compliance structure and implement substantial measures to address the deficiencies that could have caused its supervision to lack. These remedial measures were so extensive that they demonstrate, beyond the representatives' contraventions that triggered the proceedings, that RGMP's supervisory system was in worse shape than the one of the Respondent. We believe that this is why higher-level sanctions of $500,000 in fine and costs of $50,000 have been agreed in

[18] Paras. 55 and ss. of this decision.

this case, and were accepted as reasonable by the hearing panel.

¶ 93 In Edward Jones, five specific contraventions to suitability requirements by representatives (so, a lot less than in this case), and allegations of insufficient supervision of their activities and client accounts, led the Dealer to admit having derogated to Rules 38.1 and 2500, Minimum Standards for Retail Customer Account Supervision. The firm had reviewed and approved certain KYC information and trades of clients without sufficient inquiries regarding suitability reviews. Like in IAPW's case, the firm had deemed these inquiries to be satisfied by updating the KYC information, without going further.

¶ 94 On the mitigating side, the Dealer was held to have reacted quickly to the allegations regarding its failure to supervise its representatives adequately. It improved its procedures and tools for KYC information collection and suitability reviews, and trade supervision. Several new tools and enhanced systems were built into its system to identify trading patterns and isolated issues. Over $4,000,000 were committed by Edward Jones to fund technological, system and process upgrades to its compliance and field supervision departments in Canada. These remedial measures exceeded considerably those taken by the Respondent. Edward Jones settled for a fine of $250,000 and costs in the sum of $50,000.

¶ 95 In Scotia 2017, a single portfolio manager representative was involved in contrast to five in the present case. Scotia was accused of having failed to supervise his activities adequately over two years. Forty-seven clients served by the representative had exceeded their stated risk tolerance levels, and the accounts of some of them had been allowed to stay offside for several months.

¶ 96 The representative was also trading heavily in high-risk small-cap stocks, using trading practices between PRO and client, managed and non-managed, accounts similar to McFarlane's.[19] The Dealer was held to have failed to ensure that an appropriate supervisory system was in place to identify potential conflicts of interest in this trading activity, since the firm was unable to determine whether the small-cap stock purchases executed for the representative's clients had been creating liquidity allowing him to realize a higher price on the sale of his own personal holdings of such stocks.

¶ 97 Rather than a pattern of misconduct or numerous instances of different misconduct by the representative, the panel found that the issue, in that case, lied primarily in the fact that the Dealer was allowing the same or similar infractions to repeat, like in McFarlane's margin issues. Scotia paid over $3,500,000 to compensate the clients affected by the representative's misconduct, thereby reducing the harm to clients and the marketplace's reputation. Therefore, the damage done was of lower magnitude than in IAPW's case, where a global amount exceeding $5,600,000 in compensation has been paid so far. Under the accepted settlement, Scotia had to pay $185,000 in fine and $10,000 in costs.

¶ 98 In the last case submitted to us, the Scotia 2015 matter, DWM Securities Inc. ("DWM")[20] had failed to establish and maintain a supervisory system that was adequate to ensure that clients were qualified to purchase shares of investment funds ("Exempt Funds") under prospectus exemptions, contrary to Rules 38.1, 1300.1(a) and 2500.

¶ 99 DWM's advisors had sold a large number of Exempt Funds to clients over the course of approximately eight years, without noting in their files that they were qualified to purchase them without a prospectus. When Scotia discovered these omissions after merging with DWM, it launched an internal review of some

[19] As described above in para. 32 of this decision.

[20] DMW later amalgamated with the respondent Scotia Capital.

10,000 client files to determine what corrective action should be taken. The review took one year to complete, considering its scope and complexity.

¶ 100 The matter was reported to IIROC, and Scotia shared the results of its review with Staff. This very focused but complex issue at the same time was finally corrected, and again in that case, the cooperation and remedial measures taken by the Dealer were found to be strong mitigating factors by the hearing panel. Scotia was said to have inherited the problem from DWM, which was effectively the case. Nonetheless, IIROC imposed a remediation plan for the firm to compensate persons affected by any losses suffered, and the Dealer paid a fine of $500,000 in settlement with no cost payment, while the internal fines imposed on its employees on account of this matter were be given to charity. Our Hearing Panel was of the view that this precedent involved much more numerous contraventions that were equally or more serious, which suggested that higher sanctions were appropriate.

The reasonability of the sanctions

¶ 101 After considering the agreed facts and the aggravating and mitigating factors that they have allowed us to identify, and taking into account the precedents that we just discussed and other case law, the Hearing Panel concluded that the sanctions agreed in the Settlement Agreement were reasonable as fair, clearly not falling outside a reasonable range of appropriateness, and significant enough to inspire deterrence.

¶ 102 We have made these determinations based on the sanctions agreed in the Settlement Agreement as required by the Consolidated Rules, not those sanctions that Staff would have sought to get the Agreement accepted if an ERO with IAPW had not reduced them by 30 %. However, in our assessment of the quality of the cooperation shown to IIROC by the Respondent as a mitigating factor, we have taken into account that such cooperation had been found "proactive and exceptional" enough, within the meaning of the IIROC policy statement on *Credit for Cooperation*, for Staff to agree to the ERO with the Respondent.

III. CONCLUSIONS

¶ 103 **FOR ALL THESE REASONS, THE HEARING PANEL:**

CONFIRMS its decision made on July 29, 2021 to accept the Settlement Agreement appended to this decision and to order the following penalty and costs to be paid by the Respondent:

a) a $350,000 fine; and

b) costs in the amount of $25,000, to be applied to the costs incurred by IIROC in this matter.

Dated this 6 day of October 2021, in Montreal, Quebec.

Jean Martel

François Gervais

Danielle LeMay

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Investment Industry Regulatory Organization of Canada ("IIROC") will issue a Notice of Application 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 iA Private Wealth Inc. ("IAPW" or "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, the Respondent agrees with the facts as set out in Part III of this Settlement Agreement.

Overview

4. iA Private Wealth Inc. ("IAPW" or "Respondent") failed to properly supervise registered representatives particularized herein, predominantly Donald (Don) McFarlane, a former director of IAPW.

5. The underlying activity included unsuitable investment recommendations to clients, high concentration and trading volumes in small issuers, and the improper use of margin in client accounts.

6. IAPW became aware of these issues following the receipt of multiple client complaints. IAPW immediately self-reported the misconduct to IIROC and undertook an internal investigation. IAPW has since entered into settlement agreements with a number of the complainants, implemented revised policies and procedures and implemented a new compliance structure in an effort to prevent similar misconduct in the future.

Registration History

7. McFarlane Gordon Inc. was founded in 2000. It was a subsidiary of Jovian Capital Corp. ("Jovian") and was re-branded as MGI Securities ("MGI") in 2005.

8. IAPW has been a Dealer Member since 2005.

9. In October 2013, Jovian (and therefore MGI) was acquired by Industrial Alliance Insurance and Financial Services Inc. MGI was amalgamated with Industrial Alliance Securities Inc. on April 1, 2014.

10. In 2021, Industrial Alliance Securities Inc. changed its name to IA Private Wealth Inc.

Donald McFarlane

11. McFarlane began his career in the investment management industry as a registered representative at a bank-owned brokerage. In 2000, McFarlane co-founded an independent brokerage—McFarlane Gordon Inc.

12. McFarlane was a Registered Representative and Officer at MGI and was on the Board of MGI for many years. Along with being a Registered Representative, McFarlane was a Director and Vice-Chairman of IAPW from April 1, 2014 to May 2, 2017 and Managing Director, Private Client Group from April 1, 2014 to April 30, 2018.

13. On March 3, 2019, McFarlane passed away.

Supervision of McFarlane

14. At all times, IAPW was responsible for supervising the activities of all its registered representatives,

including McFarlane. IAPW failed to meet its supervision obligations of McFarlane in the following areas:

(i) Suitability

15. IAPW did not meet its obligations to conduct adequate supervision of McFarlane with respect to the suitability of the holdings in his client accounts.

16. McFarlane's business generally included the use of margin and investments in higher risk securities. This often included junior gold companies and private corporate debentures.

17. McFarlane's book of business was historically comprised mainly of high net worth and sophisticated clients that had a high-risk tolerance. For that reason, McFarlane's investment strategies typically required that these clients engage in a significant volume of margin trading.

18. On numerous occasions, IAPW supervisors identified instances in which the holdings in a client account were unsuitable for the client based on the Know-Your-Client ("KYC") information set out in that client's New Client Account Form ("NCAF"). Instead of reducing the higher risk holdings in the account, McFarlane instead had the client's NCAF updated to align with the account holdings. These updates were generally approved without any further inquiries, despite no indication of changes to the clients' personal or financial circumstances.

19. IAPW supervisors routinely monitored McFarlane's activities and raised concerns, but he consistently assured IAPW by updating client KYCs and advising that he had discussed the strategies with his clients.

20. After McFarlane passed away, IAPW received a number of complaints from his former clients about his trading activity in their accounts (the "Complaints"). IAPW received a total of 30 Complaints, which were from 17 groups of complainants who held accounts at IAPW that were serviced by McFarlane (the "Complainants"). In the Complaints, the Complainants variously alleged that McFarlane:

    a) undertook investment strategies in their accounts that led to funds being invested in securities that lost significant value over time;

    b) undertook investment strategies in their accounts that were unsuitable; and

    c) executed trades in their accounts (sometimes using margin) without their authorization.

21. IAPW treated the Complaints very seriously. IAPW immediately reported the Complaints to IIROC and conducted a broad and thorough investigation into the issues that were raised.

22. Over the course of 2019 to 2021, IAPW entered into settlement agreements with the vast majority of Complainants - 26 out of 30 Complainants, with one Complainant who went to OBSI, leaving only 4 Complaints unresolved.

23. Many of the Complainants were professionals and business people. Most of them were high net worth individuals and were identified on their respective NCAFs as having good or sophisticated investment knowledge. A small number of them had limited investment knowledge and were not high net worth. All of the Complainants had strong personal relationships with McFarlane going back decades that led them to maintain investment accounts serviced by him for many years. Some of the Complainants trusted McFarlane and relied entirely upon his investment recommendations.

24. A small number of the Complainants were less sophisticated. For example, one client ("Client A") opened accounts with MGI and McFarlane in January 2008. At the time, she was 69 years old and retired. Her annual income was listed on her NCAF as $35,000, her liquid assets as $300,000 and fixed assets as

$350,000. Her investment objectives and risk tolerance was listed as 50% "Moderate to higher-risk, income-producing securities" and 50% "Moderate-risk, growth-oriented securities" and her investment knowledge was listed as "Limited". The NCAF also noted that McFarlane was a close personal friend of Client A and had known her for over 30 years.

25. In May 2008, Client A's account was amended to add margin to one of her accounts. In addition, her risk tolerance was increased to 100% high risk.

26. In March 2012, Client A's NCAF was updated. At this time, she was 73 years old. Her income level was now listed at $27,000, her liquid assets at $1,080,000 (an increase of over $700,000) and fixed assets of $760,000.

27. Through March 2012 to March 2017, Client A held some speculative securities, including junior gold stocks. These securities were recommended by McFarlane and Client A never raised an issue with her holdings.

28. In March 2017, Client A's NCAF was again updated. At this time, she was 78 years old. Her income level was still listed at $27,000, her liquid assets at $250,000 and her fixed assets at $1,750,000. Her investment objectives were changed to "Max. Growth/Speculative" and her risk tolerance to "Very High". In addition, a comment on this update indicated "client doesn't require account for income purposes; used for speculation".

29. There is no indication that IAPW questioned the appropriateness of these changes for Client A. Further, despite the inclusion of a note stating that the client did not require the funds for income purposes", Client A stated that her IAPW accounts represented the majority of her investment assets and that she consistently made monthly withdrawals of $1,500 from the accounts to pay for living expenses.

30. From the initial opening of the accounts, Client A made withdrawals totaling more than her contributions to the account. However, her accounts also experienced significant changes in value, including a drop of over 55% between January and March 2019. In any event, the Respondent entered into a settlement with Client A

(ii) Trading in Minnova, Avidian, Intercontinental and Corvus

31. Between January 2017 and March 2019, McFarlane and his clients accounted for a significant percentage of trading activity in four issuers: Minnova Corp., Avidian Gold Corp., Intercontinental Gold and Metals Ltd. and Corvus Gold Inc.

Minnova

32. Between January 2017 and March 2019, McFarlane and his clients represented 86.55% of the total buy volume of shares of Minnova, a Canadian Securities Exchange listed security. This represented 95.13% of IAPW's buy volume in Minnova.

33. During that same period, McFarlane and his clients represented 73.91% of the total sell volume in Minnova. This represented 96.69% of IAPW's sell volume in Minnova.

34. Of the total shares traded in Minnova during that period, 72.72% were transactions between IAPW accounts as purchasers and IAPW accounts as sellers.

35. In addition, of the total shares traded in Minnova, 20.93% were trades between IAPW non-client accounts (i.e. Pro Accounts) and IAPW client accounts.

36. IAPW did not properly identify and address the potential harm that McFarlane's trading activity in Minnova shares presented. IAPW also did not properly identify and address the potential harm caused by the significant trading between client and non-client accounts in Minnova.

Avidian

37. In addition, between January 2017 and March 2019, McFarlane and his clients represented 73.30% of the total buy volume in Avidian, a Canadian Securities Exchange listed security. This represented 91.00% of IAPW's buy volume in Avidian.

38. During that same period, McFarlane and his clients represented 52.39% of the total sell volume in Avidian. This represented 90.42% of IAPW's sell volume in Avidian.

39. Of the total shares traded in Avidian during that period, 49.81% were transactions between IAPW accounts as purchasers and IAPW accounts as sellers.

40. In addition, of the total shares traded in Avidian, 18.69% were trades between IAPW non-client accounts (i.e. Pro Accounts) and IAPW client accounts.

41. IAPW did not properly identify and address the potential harm that McFarlane's trading activity in Avidian shares presented. IAPW also did not properly identify and address the potential harm caused by the significant trading between client and non-client accounts in Avidian.

Intercontinental

42. Between January 2018 and March 2019, McFarlane and his clients represented 61.49% of the total buy volume of shares of Intercontinental, a Canadian Securities Exchange listed security. This represented 98.85% of IAPW's buy volume in Intercontinental.

43. During that same period, McFarlane and his clients represented 59.03% of the total sell volume in Intercontinental. This represented 99.74% of IAPW's sell volume in Intercontinental.

44. Of the total shares traded in Intercontinental during that period, 41.74% were transactions between IAPW accounts as purchasers and IAPW accounts as sellers.

45. In addition, of the total shares traded in Intercontinental, 25.31% were trades between IAPW non-client accounts (i.e. Pro Accounts) and IAPW client accounts.

46. IAPW did not properly identify and address the potential harm that McFarlane's trading activity in Intercontinental shares presented. IAPW also did not properly identify and address the potential harm caused by the significant trading between client and non-client accounts in Intercontinental.

Corvus Gold

47. Between January 2017 and March 2019, McFarlane and his clients represented 28.68% of the total buy volume of shares of Corvus, a Canadian Securities Exchange listed security. This represented 87.06% of IAPW's buy volume in Corvus.

48. During that same period, McFarlane and his clients represented 15.84% of the total sell volume in Corvus. This represented 90.27% of IAPW's sell volume in Corvus.

49. Of the total shares traded in Corvus during that period, 12.68% were transactions between IAPW accounts as purchasers and IAPW accounts as sellers.

50. In addition, of the total shares traded in Corvus, 5.53% were trades between IAPW non-client accounts

(i.e. Pro Accounts) and IAPW client accounts.

51. IAPW did not properly identify and address the potential harm that McFarlane's trading activity in Corvus shares presented. IAPW also did not properly identify and address the potential harm caused by the significant trading between client and non-client accounts in Corvus.

52. McFarlane and his clients represented a significant volume of trading in these four securities, both as a percentage of the total market and as a percentage of IAPW's total activity in these securities. This trading may have created an artificial price or a misleading appearance of activity for these securities which IAPW did not properly identify. IAPW did not take appropriate steps to determine whether this activity was appropriate.

(iii) Margin Usage

53. Between 2014 and 2019, a number of McFarlane's client accounts, as well as his personal accounts, employed margin. At times, these accounts became undermargined to a significant extent. IAPW was required to ensure that the margin issues in these accounts were rectified within a reasonable time. While IAPW followed up with McFarlane several times to work on bringing the accounts onside, the accounts ended up falling offside again. IAPW did not properly ensure that McFarlane's accounts remained onside.

54. In September 2014, twenty-three of McFarlane's personal and client accounts were undermargined by over $1,000,000. This included a margin shortfall of $269,000 in his personal accounts that had remained outstanding for periods ranging from 1 to 17 days. It also included margin shortfalls in client accounts of up to $219,000 that had remained outstanding for periods ranging from 3 to 158 days.

55. In May 2015, McFarlane's personal accounts were undermargined by over $560,000 that had remained outstanding for periods ranging from 7 to 17 days.

56. In May 2016, McFarlane's personal and client accounts were undermargined by over $1,900,000.

57. In October 2018, McFarlane's personal and client accounts were undermargined by over $2,000,000. This represented over 36% of IAPW's total outstanding margin at the time.

58. Although the margin issues in his personal and client accounts were ultimately addressed, they were not addressed in a timely manner by IAPW. Further, at times these margin issues were addressed by McFarlane by trading between himself and his clients as outlined above in paragraph 31 to 52.

(iv) Margin on private securities

59. In addition, a number of McFarlane's clients held private corporate debentures. Until February 2019, IAPW permitted these securities to be used as collateral for margin lending purposes. As a result, clients were able to access greater margin than that to which they were entitled. Specifically, 16 of McFarlane's client and personal accounts received excess loan value based on these private corporate debentures totaling approximately $3,500,000. At the time this margin was provided, IAPW took no steps to limit this excess loan value.

60. As noted above, in 2018, IAPW made significant corporate changes that resulted in an enhanced focus on credit and compliance.

61. In January 2019, IAPW examined McFarlane and McFarlane's clients' private corporate debentures and private promissory notes and determined that they were not eligible to serve as collateral for margin.

62. Following this correction to the margin eligibility of these private corporate debentures, a number of McFarlane's personal and client accounts became undermargined and margin calls were issued.

63. At the end of March 2019, McFarlane's personal and client accounts were undermargined by over $6,000,000. This included a margin shortfall of over $778,000 in his personal accounts.

(v) Client Priority

64. Between June 2016 and January 2019, McFarlane entered numerous trades in his personal account prior to trades in client accounts.

65. Although IAPW repeatedly warned McFarlane that this type of conduct was not permitted, he continued to enter trades in advance of clients. At times, he did so on a daily basis, without sufficient steps being taken by IAPW to limit these trades.

Supervision of other Registered Representatives

66. Between December 2017 and April 2019, four Registered Representatives of IAPW entered into settlement agreements with IIROC in which they admitted to breaching IIROC Rules. The four Registered Representatives were Kevin Price, Colin Baird, Duncan Roy and Sheron Crane. This misconduct included unsuitable investments, unsuitable use of margin by elderly clients, excessive short-term trading and unsupervised client communications. All of the misconduct took place at IAPW, both before and after the amalgamation with MGI.

67. IAPW failed to properly supervise the conduct of these four Registered Representatives. The misconduct led to significant client losses which have been compensated by IAPW. In addition to the disciplinary sanctions imposed by IIROC, IAPW imposed internal disciplinary measures as well.

Remedial Measures

68. In 2018, IAPW made significant corporate changes that resulted in an enhanced focus on credit and compliance. In January 2019, IAPW examined McFarlane and McFarlane's clients' private corporate debentures and private promissory notes and determined that they were not eligible to serve as collateral for margin as it was not consistent with IIROC rules. Accordingly, IAPW informed McFarlane that it would remove the margin from the accounts and issue corresponding margin calls that he and his clients would have to cover at risk of IAPW selling out the securities in the accounts. Over the next several months, as McFarlane worked with his clients to attempt to cover the margin calls, the size of the margin calls grew significantly due to the decline in the value of some securities in which his clients were largely invested.

69. Since 2019, IAPW has spent a significant amount of time, effort and resources to enhance and strengthen its compliance structure. It has implemented significant measures to address the compliance deficiencies that could have contributed to the failure to supervise McFarlane and the other Registered Representatives.

70. To prevent this conduct from occurring in the future, IAPW did the following.

(i) Client Complaints

- As noted above, IAPW received 30 Complaints in relation to McFarlane's conduct.
- IAPW acknowledged all complaints in a timely manner.

- To date, IAPW has settled 26 of the Complaints and paid out $5,778,763.68 in compensation to the Complainants.

(ii) New Policies and Procedure

- IAPW implemented several new policies and procedures to ensure that McFarlane's conduct is prevented by any other registered representative in the future.
- Since mid-2019, IAPW has implemented 17 training modules on compliance for all advisors.
- The policies and procedure were implemented in 2019 and continue to be updated and added to as necessary.
- They include (but are not limited to):
    a. a new margin concentration policy (April 2019);
    b. new trade review procedures (2019);
    c. securities concentration policy;
    d. margin policy (March 2019); and
    e. pricing and margin eligibility policy (2019).

(iii) Structural Changes to Organization

- As noted above, IAPW has spent a significant amount of time, effort and resources to enhance and strengthen its compliance structure. It has implemented significant measures to address the compliance deficiencies that could have contributed to the failure to supervise McFarlane and the other Registered Representatives. These include, but are not limited to, the following:
    a. harmonized its compliance systems against the different entities to ensure consistency and best compliance;
    b. advisors are no longer permitted to be on the IAPW board;
    c. tier one now reports directly to the CCO in May 2019;
    d. in October 2018, IAPW appointed a new Ultimate Designated Person;
    e. in March 2019, IAPW hired a new Chief Compliance Officer;
    f. in November 2018, IAPW hired a new credit manager and Credit began reporting to Operations in February 2019.

Cooperation of IAPW & Early Resolution

71. IAPW demonstrated proactive cooperation and has been forthcoming with IIROC Staff in respect of the issues raised in this settlement agreement. As soon as IAPW received the Complaints, it notified IIROC and conducted a thorough and in-depth investigation of all issues it identified.

72. IAPW provided the investigation report, with supporting documentation, to IIROC in a timely manner which greatly assisted Staff in its investigation.

73. Enforcement Staff have agreed to a 30% reduction of the fine it would otherwise have sought based on

the cooperation provided by the Respondent, the remedial measures implemented and the compensation provided to clients to date. These factors led to an early resolution of this matter.

PART IV – CONTRAVENTIONS

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

IA Private Wealth Inc. failed to establish and maintain a system to supervise the activities of its employees reasonably designed to achieve compliance with IIROC requirements, contrary to Dealer Member Rules 38.1.

PART V – TERMS OF SETTLEMENT

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

    a. A fine in the amount of $350,000; and

    b. Costs in the amount of $25,000.

76. 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

77. 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.

78. 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

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

80. 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.

81. 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.

82. 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.

83. 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.

84. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has

been accepted by the Hearing Panel.

85. 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.

86. 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.

87. 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

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

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

DATED this "9th" day of "July", 2021.

"Moira Simo"

Name: Moira Simo, SVP & CCO

On behalf of iA Private Wealth Inc.

"Dated this 13th day of July 2021"

"Rob DelFrate"

Witness

Rob DelFrate

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

The Settlement Agreement is hereby accepted this "29" day of "July", 2021 by the following Hearing Panel:

Per: "Jean Martel"

Panel Chair

Per: "Danielle Le May"

Panel Member

Per: "François Gervais"

Panel Member

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