Re Scotia Capital

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Scotia Capital Inc.

2021 IIROC 37

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

Heard: December 17, 2021 in Toronto, Ontario via videoconference
Decision: December 17, 2021
Reasons for Decision: March 23, 2022

Hearing Panel:
Thomas J. Lockwood, Q.C., Chair, Selwyn Kossuth and Peter Dymott
Appearances:
Sally Kwon, Enforcement Counsel
David DiPaolo, for Scotia Capital Inc.

REASONS FOR DECISION

INTRODUCTION

¶ 1 Enforcement Staff of the Investment Industry Regulatory Organization of Canada ("IIROC") and Scotia Capital Inc. ("Respondent") entered into the attached Settlement Agreement, dated December 16, 2021.

¶ 2 The Settlement Agreement was presented to the Hearing Panel for acceptance on December 17, 2021.

¶ 3 IIROC Consolidated Rule 8428 relates to Settlement Hearings and provides, in part, as follows:

2) If a settlement agreement is made before a notice of hearing is issued, a settlement hearing must be commenced by a notice of application.

3) Enforcement Staff must serve the respondent with, and file, a commencing notice for a settlement hearing and must file copies of the settlement agreement at least seven days prior to the date of the settlement hearing, unless the hearing on the merits has commenced and the hearing panel orders otherwise.

4) A commencing notice for a settlement hearing must contain:

i. the date, time and location of the settlement hearing,

ii. the identity of the respondent,

iii. a statement of the purpose of the hearing,

iv. the general nature of the allegations addressed by the settlement

agreement, and

v. whether it is proposed that the settlement hearing be an oral hearing, electronic hearing or written hearing.

5) A settlement agreement must not be open for inspection by the public unless it has been accepted by a hearing panel.

¶ 4 In the case before us, the Notice of Application for Settlement Hearing ("Notice") was dated December 10, 2021. The Notice complied with Consolidated Rule 8428(4). However, the Settlement Agreement itself was dated December 16, 2021 and, thus, on the surface, did not comply with Rule 8428(3).

¶ 5 This issue was dealt with at the opening of the proceedings.

¶ 6 The parties jointly advised the Hearing Panel as follows:

a) They wished the Settlement Hearing to proceed.

b) They would consent to the abridgement of any applicable time periods.

c) The Notice of Application for Settlement Hearing provided that the hearing was not open to the public but that the Settlement Agreement would be made public if it was accepted by the Hearing Panel.

d) The publication of the Notice of Application had caused speculation in the marketplace.

e) It was, therefore, in the public interest for the Settlement Hearing to proceed so that the public could be advised if the Settlement Agreement had been accepted or rejected by the Hearing Panel.

¶ 7 After briefly considering the matter, the Hearing Panel was, unanimously, of the view that the Settlement Hearing should proceed and that any required abridgement of time would be made pursuant to the powers granted to the Hearing Panel in Consolidated Rule 8404(2)(ii).

¶ 8 Due to the existence of COVID-19, and with the consent of the parties, the Settlement Hearing was conducted electronically by videoconference.

¶ 9 Enforcement Staff and the Respondent jointly recommended that the Hearing Panel accept the Settlement Agreement.

¶ 10 The Hearing Panel then considered the provisions of the Settlement Agreement. After hearing submissions, both as to the applicable law and as to why this particular Settlement Agreement met the appropriate criteria, the Hearing Panel retired to consider whether we were in a position to accept the Settlement Agreement on the basis of the material before us.

¶ 11 After carefully considering the Settlement Agreement and the submissions of the parties, the Hearing Panel unanimously accepted the Settlement Agreement. We made an Order to this effect on December 17, 2021. At that time, we advised that written reasons would follow. These are those Reasons for Decision.

SETTLEMENT AGREEMENT

¶ 12 At all material times, the Respondent was a Member of IIROC, with its Head Office located in Toronto, Ontario.

¶ 13 In the Settlement Agreement, the Respondent admitted that it committed the following contraventions of IIROC's Rules:

> "Between 2010 and 2019, the Respondent failed to establish and maintain a system of controls and supervision to ensure client fee arrangements were accurately recorded in its fee management

systems and clients were charged appropriately, contrary to IIROC Dealer Member Rules 38.1 and 2500."

¶ 14 Enforcement Staff and the Respondent agreed to a settlement in which the Respondent would pay a fine of $140,000 and costs to IIROC in the sum of $5,000.

¶ 15 The Respondent also agreed to a Remediation Plan to identify all clients who may have been adversely impacted by the Fee Issue, as hereinafter described, and fully remedy those clients with opportunity costs included. The amount of the remediation is $32,348,719.64 (inclusive of tax and opportunity costs) in respect of 38,979 accounts.

¶ 16 It was agreed that, if the Settlement Agreement was accepted by the Hearing Panel, the Respondent would pay the amounts described above within 30 days of such acceptance, unless otherwise agreed between Enforcement Staff and the Respondent.

FEE ISSUE

¶ 17 As outlined in the Settlement Agreement, when a client opens an account with the Respondent, the agreed upon client fees are recorded on a fee agreement. The fee agreement generally covers multiple accounts, is often filled out by the advisor by hand, and has multiple fields where fees have to be entered. The fees in the agreements are then manually entered by the advisor team onto an online fee calculator system, which is then used to generate the fees paid by clients.

¶ 18 In or around 2017, the Respondent discovered a small number of instances where fees charged to clients in fee-based accounts differed from the fees documented in the clients' signed fee agreements which resulted in some accounts being overcharged, some being undercharged and some having no impact.

¶ 19 In response to these identified errors, in early 2018, the Respondent implemented a 10% sampling control test to flag discrepancies between new client fee agreements and the fee calculator. As a result of the sampling, approximately 24 fee agreements, over a one-month period, were identified as potentially requiring amendments by the advisor team.

¶ 20 During the course of a 2018 IIROC business conduct compliance examination, IIROC identified three instances where certain fee-based accounts did not match the rates shown on signed client fee agreements.

¶ 21 Contemporaneously, the Respondent was the subject of a 2019 routine external financial audit. In that audit, inconsistencies between signed client fee agreements and the rates charged to clients were noted resulting in potential overcharges or undercharges of fees to clients.

¶ 22 As such, in 2019, the Respondent reviewed 1,000 randomly selected client accounts and identified 31 accounts where the fees charged to clients were higher than the agreed amounts as reflected in the applicable fee agreements. The 31 overcharges totaled $15,433 for the sample period of one year ($7,000 being for one account).

¶ 23 In light of these findings, the Respondent engaged counsel and Deloitte LLP ("Deloitte") to assist in proactively ascertaining the scope of the Fee Issue and any potential impact to the Respondent's clients. The Respondent also proactively reported the matter to IIROC Staff.

¶ 24 In addition, the Respondent put in place interim and long-term plans to address the Fee Issue, including conducting a 100% manual review of all signed fee agreements. In any given month, the Respondent reviews approximately 11,000 new or amended fee agreements to ensure that the rates entered into the fee calculator system accurately reflect the agreements reached with clients. If they do not match, the Respondent asks the advisor team to explain and correct, as applicable. Additional interim and long-term process enhancements are also being implemented and developed.

¶ 25 The Respondent, with the assistance of Deloitte, conducted an in-depth review in order to ascertain

which clients have been impacted by the Fee Issue, to ensure that the fee calculator system (current and new) accurately reflected the fee agreements reached with clients, and to remediate any clients who were overcharged as a result of the Fee Issue (the "Review").

¶ 26 The Review included reviewing all applicable fee agreements maintained electronically as well as in advisors' files since 2010, when the fee calculator system came into existence. In certain instances, advisors have been provided with an opportunity to provide explanations for any identified discrepancies by way of documented fee agreements not previously identified (e.g., if there was a missing agreement or whether they filled out a wrong form). No advisor conduct issues have been identified in the course of the Review.

¶ 27 As a result of the Review, the following errors were identified as having caused the discrepancy between client fee arrangements and the fees charged to clients:

a) fee agreements that were filled out incorrectly; and

b) data input errors.

¶ 28 In addition, a New Fee Calculator has been fully implemented for the calendar Q3 2021 billing period. All existing fee-based accounts have been migrated to the New Fee Calculator. All fee rates entered into the New Fee Calculator are reviewed as part of the Remediation Plan to ensure that they reflect the fees documented in the signed client fee agreements.

¶ 29 The New Fee Calculator eliminates the need for manual data entry by allowing for the automatic interface of fee data directly from the client onboarding system. This functionally will be implemented in 2022 and will eliminate the issue of transposition errors between the written fee agreements and the recorded fee rate on the fee calculator system.

FAILURE TO SUPERVISE

¶ 30 In the Settlement Agreement, the Respondent agreed that the Respondent's advisors have frontline responsibility for ensuring that clients are charged appropriate fees.

¶ 31 The Respondent agreed that it failed to establish and maintain a system of controls that was adequate:

a) To reasonably ensure that its advisors were properly filling out the applicable fee agreements and that the information transposed to the fee calculator system was accurate and consistent with the fee agreement reached with clients; and

b) To detect the Fee Issue in a timely manner, which resulted in certain clients being overcharged fees for several years.

MITIGATING FACTORS

(I) Proactive and Exceptional Cooperation and Early Resolution

¶ 32 The Respondent self-reported the issue to IIROC in December 2019 and conducted the Review to correct any ongoing issues and remediate clients, while providing Enforcement Staff with regular progress updates. The Respondent promptly shared the detailed findings of its Review with Enforcement Staff, providing substantial assistance to Enforcement Staff's investigation. The Respondent demonstrated proactive and exceptional cooperation and has been forthcoming with Enforcement Staff in respect of the issues raised in the Settlement Agreement.

¶ 33 Enforcement Staff has agreed to a 30% reduction of the fine it would otherwise have agreed to based on the proactive and exceptional cooperation by the Respondent, the remedial measures implemented, the compensation to clients, and the Respondent's willingness to resolve this matter in a timely manner. These factors led to an early resolution of this matter.

(II) Corrective Action Initiated

¶ 34 The Respondent initiated a full and complete review of fee agreements dating back to 2010 as described herein after the identified instances of inconsistencies.

¶ 35 As described above, the Respondent immediately implemented an interim and entirely manual review whereby management checks each and every fee agreement and ensures that it is correctly prepared and accurately transposed onto the fee calculator system. The manual review will continue to ensure that fees are accurately captured in the agreements until the new onboarding system is in place.

¶ 36 Of its own violation, the Respondent took additional steps to ensure a thorough review of the issue. These initiatives include, but are not limited to, the following:

a) hiring an independent consultant, Deloitte, to assist with the review methodology and analysis of inconsistencies between fee agreements and the fee calculator system;

b) development and roll out of a comprehensive advisor outreach action plan to ensure completeness of the review and enhance its training of advisors; and

c) fee agreement enhancements to reduce the occurrences of incorrect agreements.

¶ 37 The Respondent's New Fee Calculator, in addition to the link to the new onboarding system, will ensure that the correct fee is implemented into the system with limited room for human error.

¶ 38 The Respondent has advised Enforcement Staff that instances of inconsistencies were not limited to overcharges. Undercharges were also observed. No action will be taken with respect to them.

THE LAW

¶ 39 Rule 38 of the IIROC Dealer Member Rules deals with Compliance and Supervision. Rule 38.1 provides, in part, as follows:

> 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 and all other laws, regulations and policies applicable to the Dealer Member's securities and commodity futures business. . . .

¶ 40 The Rule then goes on to provide a set of minimum conditions for a supervisory system.

¶ 41 Rule 2500 sets out, in detail, the Minimum Standards for Retail Customer Account Supervision.

¶ 42 In the case before us, the Respondent admitted that it committed contraventions of both of the Rules.

PRINCIPLES AND FACTORS REGARDING THE ACCEPTANCE OF SETTLEMENT AGREEMENTS

¶ 43 Investor protection is the primary goal of securities regulation. Settlements play an important and necessary role in meeting this objective.

> *Pezim v. British Columbia (Superintendent of Brokers),* [1994] 2 S.C.R. 557 at para. 59.

¶ 44 In our view, the role of a hearing panel in a settlement hearing is not the same as its role in making a penalty determination after a contested hearing. In a contested hearing, the hearing panel attempts to determine the correct penalty. In a settlement hearing, the hearing panel takes into account the settlement process itself and the fact that the parties have agreed to the penalties set out in the settlement agreement. In our view, a hearing panel should not interfere lightly in a negotiated settlement and should not reject a settlement agreement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.

¶ 45 When determining whether a penalty agreed upon by the parties is appropriate, the Hearing Panel may also consider the IIROC Sanction Guidelines, which came into effect as of February 2, 2015.

¶ 46 The Guidelines are not mandatory but are intended to promote consistency, fairness and transparency by providing a framework to guide the exercise of discretion in determining sanctions which meet the general sanctioning objectives.

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

¶ 48 It was clear to us that the parties before us were ably represented by counsel. Each side had the means to undergo a contested hearing if thought appropriate. The settlement was the result of extensive negotiations and represented a result which both sides had concluded was agreeable to them.

EARLY RESOLUTION

¶ 49 As pointed out in the Settlement Agreement (*supra* paras. 32-33), Enforcement Staff agreed to a 30% reduction of the fine that it otherwise would have agreed to based on the delineated actions of the Respondent.

¶ 50 Under IIROC's Staff Policy Statement on Early Resolution Offers, the following criteria must be met:

a) whether the extent, scope and harm of the misconduct, non-compliance, or regulatory breach has been sufficiently determined;

b) the extent to which the subject has demonstrated proactive and exceptional cooperation in accordance with the IIROC Staff Policy Statement on Credit for Cooperation (for example, prompt and detailed self-identification of misconduct, the sharing of internal investigations with Staff, and substantial assistance to Staff's investigation by obtaining and providing evidence in a timely manner);

c) the extent to which the non-compliance which is the subject matter of the case has been remedied or will be remedied;

d) where there are clients' losses, compensation must be paid;

e) where there has been a financial benefit, the full amount of the profit or loss avoided must be disgorged;

f) in the case of individuals, whether they have been internally disciplined; and

g) whether the subject, through counsel, an agent or otherwise, has expressed a willingness to resolve the matter in a timely manner.

PREVIOUS DECISIONS MADE IN SIMILAR CIRCUMSTANCES

¶ 51 Enforcement Staff provided the Hearing Panel with a number of precedent decisions seeking to show that the proposed resolution is within the reasonable range of appropriateness with regards to other decisions made by IIROC hearing panels in similar circumstances.

¶ 52 The following cases were reviewed:

a) *Re IPC Securities* 2016 IIROC 32

b) *Re Raymond James* 2019 IIROC 8

c) *Re PEAK Securities* 2020 IIROC 36

d) *Re Worldsource Securities* 2018 IIROC 48

e) *Re IA Private Wealth Inc.* 2021 IIROC 22

f) *Re Canaccord Genuity Corp.* 2021 IIROC 35.

DECISION

¶ 53 After a thorough review of the factors by which we should be guided, and the facts of this case, as reflected in the Settlement Agreement, we were, unanimously, of the view that this Settlement Agreement was reasonable and in the public interest and should be accepted by the Hearing Panel. We so informed the parties at the conclusion of the Settlement Hearing.

Dated at Toronto, Ontario this 23rd day of March 2022.

Thomas J. Lockwood

Selwyn Kossuth

Peter Dymott

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 Scotia Capital Inc. ("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. When a client opens an account with the Respondent, the agreed upon client fees are recorded on a fee agreement. The fee agreement generally covers multiple accounts, is often filled out by the advisor by hand, and has multiple fields where fees have to be entered. The fees in the agreements are then manually entered by the advisor team onto an online fee calculator system, which is then used to generate the fees paid by clients.

5. As described below, in or around 2017, the Respondent discovered a small number of instances where fees charged to clients in fee-based accounts differed from the fees documented in the clients' signed fee agreements which resulted in some accounts being overcharged, some being undercharged and some having no impact.

6. In 2019, the Respondent identified that the issue was likely broader than a few client accounts and commenced the within remediation project (the "Fee Issue").

7. The predominant cause of the Fee Issue were various errors which resulted in discrepancies between the fee agreement reached with the client and the fees actually charged to those clients. The most commonly identified errors are summarized herein.

8. As described below, the Respondent has developed substantial and widespread interim and long-term process enhancements to remedy the Fee Issue and prevent it from occurring again, including implementing a new fee calculator system (the "New Fee Calculator") which will eliminate the need for

individual employees of the Respondent to populate the fee agreement by hand and then transpose it manually onto the fee calculator system.

9. The Respondent, working with Deloitte LLP ("Deloitte"), has also developed a comprehensive remediation plan to identify all clients who may have been adversely impacted by the Fee Issue and fully remedy those clients, with opportunity cost (the "Remediation Plan").

The Respondent

10. At all material times the Respondent was a Member of IIROC, with its head office located in Toronto, Ontario.

Identification of Issue and Internal Review of Client Documentation Deficiencies

11. In 2017, as a result of an internal audit, the Respondent identified a small number of discrepancies between fees recorded on agreements and those entered into the fee calculator.

12. In response to these identified errors, in early 2018, the Respondent implemented a 10% sampling control test to flag discrepancies between new client fee agreements and the fee calculator. As a result of the sampling, approximately 24 fee agreements, over a one month period, were identified as potentially requiring amendments by the advisor team.[1]

13. During the course of a 2018 IIROC business conduct compliance examination (with results released in 2019), IIROC identified three instances where certain fee-based accounts did not match the rates shown on signed client fee agreements.

14. Contemporaneously, the Respondent was the subject of a 2019 routine external financial audit. In that audit, inconsistencies between signed client fee agreements and the rates charged to clients were noted resulting in potential overcharges or undercharges of fees to clients.

15. As such, in 2019, the Respondent reviewed 1,000 randomly selected client accounts and identified 31 accounts where the fees charged to clients were higher than the agreed amounts as reflected in the applicable fee agreements. The 31 overcharges totalled $15,433 for the sample period of one year ($7,000 being for one account).[2]

Proactive Identification

16. In light of these findings, the Respondent engaged counsel and Deloitte to assist it in proactively ascertaining the scope of the Fee Issue and any potential impact to the Respondent's clients. The Respondent also proactively reported the matter to IIROC Staff.

17. In addition, the Respondent put in place interim and long term plans to address the Fee Issue including conducting a 100% manual review of all signed fee agreements. In any given month, the Respondent reviews approximately 11,000 new or amended fee agreements to ensure that the rates entered into the fee calculator system accurately reflect the agreements reached with clients. If they do not match, the Respondent asks the advisor team to explain and correct, as applicable. Additional interim and long-term process enhancements are also being implemented and developed.

18. The Respondent also prioritized the implementation project for the New Fee Calculator, as further described below.

Remediation

19. The Respondent has proactively committed to:

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[1] If there were any overcharges resulting from this sampling, they will be remediated as part of the within Remediation Plan.

[2] See footnote above.

(a) remediating clients who may have been overcharged as a result of the Fee Issue (defined above as the "Remediation Plan"); and

(b) implementing controls to prevent the Fee Issue from occurring in the future.

20. The amount of remediation is $32,348,719.64 (combined CAD, USD, EUR and inclusive of tax and opportunity costs) in respect of 38,979 accounts.

(i) Client Remediation

21. The Respondent, with the assistance of Deloitte, conducted an in-depth review in order to ascertain which clients have been impacted by the Fee Issue, to ensure that the fee calculator system (current and new) accurately reflected the fee agreements reached with clients, and to remediate any clients who were overcharged as a result of the Fee Issue (the "Review").

22. The Review included reviewing all applicable fee agreements maintained electronically as well as in advisors' files since 2010, when the fee calculator system came into existence. In certain instances, advisors have been provided with an opportunity to provide explanations for any identified discrepancies by way of documented fee agreements not previously identified (e.g. if there was a missing agreement, whether they filled out a wrong form). No advisor conduct issues have been identified in the course of the Review.

***(ii)* Issue Remediation**

23. As a result of the Review, the following errors were identified as having caused the discrepancy between client fee agreements and the fees charged to clients:

(a) fee agreements that were filled out incorrectly; and

(b) data input errors.

24. The Respondent has implemented the Remediation Plan to address the above errors.

25. In addition, the New Fee Calculator has been fully implemented for the calendar Q3 2021 billing period. All existing fee-based accounts have been migrated to the New Fee Calculator. All fee rates entered into the New Fee Calculator are reviewed as part of the Remediation Plan to ensure that they reflect the fees documented in the signed client fee agreements.

26. The New Fee Calculator eliminates the need for manual data entry by allowing for the automatic interface of fee data directly from the client onboarding system. This functionality will be implemented in 2022 and will eliminate the issue of transposition errors between the written fee agreements and the recorded fee rate on the fee calculator system.

27. Training to the advisors and teams has occurred throughout the Remediation Plan to ensure fee agreements are prepared correctly.

Failure to Supervise

28. The Respondent's advisors have frontline responsibility for ensuring that clients are charged appropriate fees.

29. The Respondent failed to establish and maintain a system of controls that was adequate:

(a) to reasonably ensure that its advisors were properly filling out the applicable fee agreements and that the information transposed to the fee calculator system was accurate and consistent with the fee agreement reached with clients; and

(b) to detect the Fee Issue in a timely manner, which resulted in certain clients being overcharged fees for several years.

Mitigating Factors

(i) Proactive and Exceptional Cooperation and Early Resolution

30. The Respondent self-reported the issue to IIROC in December 2019 and conducted the Review to both correct any ongoing issues and remediate clients while providing Enforcement Staff with regular progress updates. The Respondent promptly shared the detailed findings of its Review with Enforcement Staff, providing substantial assistance to Enforcement Staff's investigation. The Respondent demonstrated proactive and exceptional cooperation and has been forthcoming with Enforcement Staff in respect of the issues raised in this settlement agreement.

31. Enforcement Staff has agreed to a 30% reduction of the fine it would otherwise have agreed to based on the proactive and exceptional cooperation by the Respondent, the remedial measures implemented, the compensation to clients, and the Respondent's willingness to resolve this matter in a timely manner. These factors led to an early resolution of this matter.

(ii) Corrective Action Initiated

32. The Respondent initiated a full and complete review of fee agreements dating back to 2010 as described herein after the identified instances of inconsistencies.

33. As described above, the Respondent immediately implemented an interim and entirely manual review whereby management checks each and every fee agreement and ensures that it is correctly prepared and accurately transposed onto the fee calculator system. The manual review will continue to ensure fees are accurately captured on the agreements until the new onboarding system is in place.

34. Of its own volition, the Respondent took additional steps to ensure a thorough review of the issue. These initiatives include, but are not limited to, the following:

    (a) hiring an independent consultant, Deloitte, to assist with the review methodology and analysis of inconsistencies between fee agreements and the fee calculator system;

    (b) development and roll out of a comprehensive advisor outreach action plan to ensure completeness of the review and enhance its training of advisors; and

    (c) fee agreement enhancements to reduce the occurrences of incorrect agreements.

35. The Respondent's New Fee Calculator, in addition to the link to the new onboarding system, will ensure that the correct fee is implemented into the system with limited room for human error.

36. The Respondent advises Staff that instances of inconsistencies were not limited to overcharges. Undercharges were also observed and no action will be taken with respect to them.

(iii) Remediation Plan

37. As described above, the Respondent has voluntarily developed and is implementing a Remediation Plan that is based on client transaction information contained in its books and records. The Respondent intends to pay clients who were overcharged between 2010 and 2021 (Respondent's Q1) as a result of the Fee Issue.

38. Any fees that are not deposited by former clients and/or are *de minimis* in amount (less than $25.00) will be donated to a charity without claiming the donation as a deduction such that the Respondent will not benefit from the fees.[3]

PART IV – CONTRAVENTIONS

[3] There are 9,820 accounts which had a *de minimis* amount associated with them for a total of $72,885 (CAD and USD).

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

Between 2010 and 2019, the Respondent failed to establish and maintain a system of controls and supervision to ensure client fee agreements were accurately recorded in its fee management systems and clients were charged appropriately, contrary to IIROC Dealer Member Rules 38.1 and 2500.

PART V – TERMS OF SETTLEMENT

40. The Respondent agrees to a fine of $140,000 and costs of $5,000.

41. The Respondent agrees to report on the execution of the Remediation Plan (as defined above in paragraph 9 to Staff by January 31, 2022 and as thereafter required by Staff to ensure the Remediation Plan is completed satisfactorily.

42. 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

43. 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.

44. 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

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

46. 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.

47. 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.

48. 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.

49. 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.

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

51. 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.

52. If this Settlement Agreement is accepted, the Respondent agrees that neither he nor anyone on his

behalf, will make a public s inconsistent with this Settlement Agreement.

53. 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

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

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

DATED this “16” day of “December”, 2021.

“Witness”	“Todd Barnes”
Witness	Respondent
“Witness”	“Sally Kwon”
Witness	Sally Kwon Enforcement Counsel on behalf of Enforcement Staff of the Investment Industry Regulatory Organization of Canada

The Settlement Agreement is hereby accepted this “17” day of “December”, 2021 by the following Hearing Panel:

Per: “Thomas Lockwood”
Panel Chair

Per: “Peter Dymott”
Panel Member

Per: “Selwyn Kossuth”
Panel Member

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