

Re Fortrade Canada Ltd.

IN THE MATTER OF:

**The Investment Dealer and Partially Consolidated Rules and the Dealer Member Rules
and**

Fortrade Canada Limited

2024 CIRO 36

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: February 21, 2024 in Toronto, Ontario
Decision: March 11, 2024

Hearing Panel:

Donna Campbell, Chair, Ron Smith and Nick Pallotta

Appearances:

Sylvia Samuel, Senior Enforcement Counsel

Rob DelFrate, Senior Enforcement Counsel

Caitlin Sainsbury & Natalia Vandervoort, for Fortrade Canada Limited

REASONS FOR ACCEPTANCE OF SETTLEMENT AGREEMENT

OVERVIEW

¶ 1 Enforcement Staff of the Canadian Investment Regulatory Organization (Staff or CIRO, respectively) brought an application before the Hearing Panel, pursuant to Section 8215 and 8428 of the Investment Dealer and Partially Consolidated Rules, prior to January 1, 2023, known as the Investment Industry Regulatory Organization of Canada (IIROC) Rules (the Investment Dealer Rules), seeking acceptance of a Settlement Agreement dated February 14, 2024 (the Settlement Agreement), between Staff and the Respondent, Fortrade Canada Limited (the Respondent or Fortrade).

¶ 2 Fortrade was and is an order execution only (OEO) Dealer Member and conducted its business through Client Managers or Support Representatives, who were not Regulated Persons (collectively, Fortrade Agents). Clients communicated with Fortrade Agents through emails or telephone calls.

¶ 3 The Respondent admitted that:

- Between December 2020 and July 17, 2022, Fortrade made recommendations to clients, contrary to the Investment Dealer Rule 1400 (and prior to that, the Dealer Member Rules); and
- Between January 2020 and November 2022, Fortrade failed to establish and maintain a supervisory system that was reasonably designed to achieve compliance with CIRO requirements and failed to retain adequate records to demonstrate compliance with CIRO requirements, contrary to Dealer Member Rule 38.1 (from January 2020 to December 2021)

and Investment Dealer Rules 3800 and 3900 (after January 2022).

¶ 4 CIRO and the Respondent agreed to the following sanctions and costs:

- (a) payment of a fine in the amount of \$2,000,000;
- (b) costs of \$100,000;
- (c) payment of US\$703,478.91 to clients with unresolved recommendation-related complaints received as of July 7, 2023 and representing net losses incurred by the clients up to the date of the Temporary Order of November 9, 2022 (Temporary Order);
- (d) creation of a fund of US\$6,000,000 (the Fund) to be used to make payments to Eligible Clients¹ who make a claim on the Fund;
- (e) retention, in Ontario, Canada, of telephone call recordings of calls with clients for seven years from the date of each call; and
- (f) the Temporary Order remaining in effect until Fortrade has satisfied the terms set out in subparagraphs 4(a), (b), and (c) above, and notice has been provided to Eligible Clients in respect of their ability to make a claim to the Fund described in 4(d).

¶ 5 A Settlement Book, containing the Settlement Agreement, applicable regulations and caselaw, and Staff Submissions (Submissions), were filed with the Hearing Panel and relied upon by the parties in their submissions.²

¶ 6 After reviewing Staff's written Submissions, and hearing from Staff and counsel for the Respondent, the Hearing Panel accepted the Settlement Agreement. The reasons for doing so are set out below.

Agreed Facts

¶ 7 The Settlement Agreement is attached to this Decision. Part III of the Settlement Agreement contains the Agreed Statement of Facts (Agreed Facts), upon which this Decision is based.

Fortrade Canada Limited, Fortrade Clients and Contracts for Difference

¶ 8 Fortrade was admitted to membership as a non-resident Dealer Member on January 30, 2020, and is currently registered in all provinces and territories except Quebec. Fortrade's head office is in London, England.

¶ 9 Fortrade offers online trading services for trading contracts for differences (CFD) to retail customers holding OEO accounts. All Fortrade client accounts are OEO accounts. A CFD is an agreement to exchange the difference between the opening and closing price of an underlying asset (such as shares, indices and commodities) at the closing of the contract without owning the asset.

¶ 10 The majority of Fortrade clients were unsophisticated investors, with income levels less than \$50,000, liquid assets of less than \$25,000, limited trading knowledge and no previous CFD trading experience.

¶ 11 CFDs are derivatives, typically traded over the counter, and are complex, high-risk products. Fortrade's website includes a risk warning about trading in CFDs.

Client Complaints, Staff's Investigation and Temporary Order

¶ 12 On September 15, 2021, Staff notified Fortrade that an investigation was being commenced following complaints from two Fortrade clients which raised concerns that Fortrade Agents were providing recommendations to clients.

¹ Defined in subparagraph 51(d)(i) of the Settlement Agreement.

² Staff's statement in para. 68 of the Submissions that certain admitted misconduct "may be characterized as reckless with respect to regulatory requirements" was the subject of argument. On this point, Fortrade's counsel made oral submissions and filed a brief of caselaw. A consideration of whether the misconduct can be characterized as reckless is found at paragraphs 57 – 66 of these reasons.

¶ 13 On June 20, 2022, Staff requested Fortrade provide recordings of all phone calls, copies of all emails and other electronic communications between Fortrade clients, staff, agents and representatives for the period between May 20, 2022 and July 17, 2022. Staff also requested Fortrade preserve all documents that might be relevant to the investigation.

¶ 14 On June 28, 2022, Fortrade responded and advised that telephone recordings were automatically deleted after one week, and provided recordings of calls from June 12, 2022 to July 17, 2022. Despite Staff's request, Fortrade failed to retain recordings of calls from July 18, 2022 to October 27, 2022.

¶ 15 A review of the limited call recordings and the emails showed Fortrade Agents made recommendations to clients in connection with trading CFDs. Staff applied for a Temporary Order.

¶ 16 On November 9, 2022, a Temporary Order was granted the terms of which had been agreed to by Fortrade and Staff. The Temporary Order sets out a number of terms and forms Appendix A to the Settlement Agreement.

Recommendations and Improper Communications with Fortrade Clients

¶ 17 Paragraphs 24 and 26 of the Settlement Agreement set out some of the statements made by Fortrade Agents to clients, culled from voice recordings and email, which establish Fortrade engaged in making recommendations to clients notwithstanding that the Investment Dealer Rules (and the antecedent Dealer Member Rules) prohibit Dealer Members from providing recommendations to clients holding OEO accounts.

¶ 18 The recommendations made could be expected to have influenced the investment decisions of the clients.

¶ 19 The call recordings also demonstrate that Fortrade Agents engaged in improper communications with clients. Paragraph 29 of the Settlement Agreement details the representations made, and information provided, by Fortrade Agents which constituted improper communications.

Failure to Establish and Maintain a Supervisory System and to Retain Adequate Records

¶ 20 Fortrade failed to establish and maintain a supervisory system that was reasonably designed to achieve compliance with CIRO requirements and failed to retain adequate records to demonstrate compliance with CIRO requirements.

¶ 21 Fortrade was required to conduct an account opening appropriateness review, which would involve an assessment of the investment knowledge and trading experience of a potential client. In some instances, Fortrade did not follow its own appropriateness review procedures and failed to follow up on the results of the reviews.

¶ 22 Fortrade knew or ought to have known that clients were seeking advice and relying upon the recommendations of Fortrade Agents. Fortrade failed to take adequate steps to identify or adequately address the fact that recommendations were being made by Fortrade Agents.

¶ 23 Fortrade's review of client communications was inadequate, and it failed to maintain adequate records of its supervisory review of Fortrade Agents.

Client Losses and Compensation

¶ 24 There were 17 client complaints claiming that Fortrade Agents had made investment recommendations, the reliance upon which caused the clients to suffer losses. Fortrade acknowledged the complaints in a timely manner.

¶ 25 Fortrade has agreed to establish a fund to make payments to those clients who held accounts during the period January 2020 to November 9, 2022 (the date of the Temporary Order) and suffered a net loss. Staff and Fortrade agree that a reasonable approximation of the amounts obtained as a result of the contraventions of CIRO requirements is US\$6,000,000 (Fund). Details of the administration of the Fund are

contained in Appendix B to the Settlement Agreement.

¶ 26 Fortrade has agreed to pay US\$703,478.91 to clients with unresolved recommendation-related complaints received as of July 7, 2023 and representing net losses incurred by the clients up to the date of the Temporary Order.

Remedial Measures

¶ 27 Fortrade has agreed that all client calls (inbound or outbound) will be handled by the Chief Compliance Officer (CCO) or by seconded representatives of Fortrade, who will be supervised by the CCO.

¶ 28 Fortrade has agreed to revise its policies and procedures relating to the review of clients calls and related record keeping, as well as procedures for detailing how any issues identified in the calls are escalated and remediated, to bring them into compliance with CISO requirements.

¶ 29 CISO's Business Conduct Compliance Staff will conduct a compliance examination in CISO's Fiscal Year 2025 compliance cycle (April 1, 2024 – March 31, 2025) to ensure continuing compliance with CISO requirements.

Framework for Reviewing a Settlement Agreement

¶ 30 Under subsection 8215(5) of the IDPC Rules, a hearing panel may accept or reject the settlement agreement. The factual foundation for the hearing panel's decision is the agreed facts set out in the settlement agreement. The role of a hearing panel is to satisfy itself that the sanctions proposed by the parties fall within a reasonable range of appropriateness. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range. A hearing panel will reflect the public interest benefits of the settlement process in its consideration of specific settlements: *Re Milewski*, 1999 I.D.A.C.D No. 17, p. 10.

¶ 31 Settlements are in the public interest and should be encouraged. They are often hotly debated with both parties compromising their positions to reach a mutually acceptable position. The panel will recognize that it is not privy to all the facts, motivations and considerations animating each party and culminating in the proposed settlement: *Re Donnelly* 2016 IIROC 23, paras. 7-8.

¶ 32 Settlements allow the crafting of sanctions which could not be ordered by a hearing panel following a contested hearing (subsection 8215(4) of the IDPC). This allows the parties scope to craft sanctions which are responsive to the circumstances of a particular case, and by doing so, to further the public interest benefits inherent in the settlement process.

CISO Sanction Guidelines and Their Application in this Case

The Sanction Guidelines

¶ 33 The CISO Sanction Guidelines (Sanction Guidelines) 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.³

¶ 34 The determination of the appropriate sanction is discretionary and depends on the facts of the particular case. Hearing panels may consider other applicable principles and factors in addition to those listed when determining the relevant aggravating and mitigating factors, and may rely on previous decisions when determining what sanctions should be imposed.⁴

¶ 35 The purpose of sanctions in a regulatory proceeding is to protect the public interest by deterring future conduct that may harm the capital markets. Sanctions should be significant enough to prevent and discourage future misconduct by the respondent (specific deterrence) and to deter others from engaging in similar misconduct (general deterrence). Any sanction imposed must be proportionate to the conduct at

³ CISO Sanction Guidelines, February 2024 (Sanction Guidelines)

⁴ *Ibid.*, p. 2

issue and should be reduced or increased depending on the relevant mitigating and aggravating factors. The hearing panel should also consider sanctions imposed for similar contraventions in similar circumstances.⁵

¶ 36 Part I of the Sanction Guidelines sets out general principles to provide a framework to be considered in connection with imposition of sanctions. Part II sets out an illustrative and non-exhaustive list of key factors to be considered when determining the appropriate sanctions.

The Hearing Panel's Assessment of the Proposed Sanctions

¶ 37 The Hearing Panel accepts that the proposed sanctions fall within the framework of the following general principles in that they are:

- preventative in nature, protect the public, strengthen market integrity and improve business standards,
- ensure the Respondent does not benefit financially from the misconduct, and
- reflect the totality of the misconduct in the cumulative sanctions.

Summary of Aggravating and Mitigating Factors

¶ 38 In considering the appropriateness of the sanctions, the Hearing Panel considered the relevant aggravating and mitigating factors set out in the Sanction Guidelines when evaluating the conduct in this case.⁶

¶ 39 The key aggravating factors are:

- the misconduct involved multiple clients who sustained significant losses over a period of 22 months;
- the majority of the clients were unsophisticated investors with income levels of less than \$50,000, liquid assets of less than \$25,000, limited trading knowledge and no previous CFD trading experience;
- the misconduct continued for a protracted period of time because the Respondent had inadequate procedures in place to detect and halt the misconduct, and at times failed to follow its internal procedures;
- the misconduct was highly profitable for the Respondent while harmful to its clients;
- the Respondent failed to keep telephone call recordings for a three month period despite a request from CIRO to preserve documents, preventing the conduct on those recordings from being reviewed by CIRO's investigators and available as evidence to a Hearing Panel;
- the Respondent failed to follow regulatory guidance regarding OEO accounts which prohibits Dealer Members from providing recommendations to OEO account holders⁷; and
- the Respondent harmed market integrity when it provided recommendations to clients holding OEO accounts when as a Dealer Member it was prohibited from doing so.

¶ 40 The key mitigating factors are:

- the Respondent has no disciplinary history;

⁵ *Ibid.*, p. 4

⁶ *Op.Cit.*, p. 7-8

⁷ Subsection 1201(1) of the Investment Dealer Rules defines OEO account as an account where (i) the client is solely responsible for making all investment decisions, and (ii) the Dealer Member provides no recommendations to the client regarding their investment decisions. Guidance Note GN-3400-21-003 *Guidance on Order Execution Only Account Services and Activities* defines recommendation as any communication to an investor that could reasonably be expected to influence an investor's investment decision and the types of activities that amount to recommendations.

- the Respondent has agreed to make substantial payments to the clients who have been harmed;
- the Respondent has agreed to pay a substantial fine and significant costs;
- the Respondent has agreed to remedial measures designed to prevent a recurrence of the misconduct;
- the Respondent agreed to and has complied with the restrictive requirements of the Temporary Order since its imposition on November 9, 2022, and consents to keeping them in place until certain conditions are met⁸; and
- the Respondent has admitted to misconduct and agreed to the imposition of sanctions.

Consideration of Proposed Sanctions

¶ 41 As noted earlier, a settlement agreement allows the parties to agree to sanctions which a hearing panel could not impose following a disciplinary proceeding.⁹

¶ 42 Of particular significance to the Hearing Panel was the compensation offered to clients, which is approximately US\$6.7 million. The emphasis upon the return of funds to clients is appropriate, given the circumstances surrounding the loss of those funds.

Calculation of the Fund Size

¶ 43 In lieu of an order for disgorgement, Fortrade has agreed to establish a fund to make payments to clients who held accounts during the period of December 2020 to November 2022. The amount of the Fund is US\$6,000,000 which the parties estimate is a reasonable approximation of the amounts obtained by Fortrade as a result of contraventions of CIRO requirements.

¶ 44 The Hearing Panel is satisfied that it is not possible to determine with any accuracy which recommendations may have been relied upon and which may have led to losses. The Hearing Panel accepts the reasonable approximation of the amounts obtained and finds it is in the public interest to approve this amount as being a reasonable and justifiable compromise between the parties.

Caselaw Cited in Support of the Proposed Sanctions

¶ 45 The Sanction Guidelines state any sanctions should be similar to sanctions imposed for similar contraventions in similar circumstances.¹⁰ The Hearing Panel acknowledges the difficulty in establishing a range of sanctions for conduct which has not commonly been the subject of consideration by this regulator, particularly when negotiating a settlement.

¶ 46 A number of cases were submitted in support of the sanctions. It was clear from a review of them that the sanctions proposed by the parties fell within the ambit of sanctions imposed in somewhat similar circumstances or established that the proposed sanctions were superior in size and effect to those which could be imposed following a merits hearing.

¶ 47 In *Re TD Waterhouse Canada*, TD Waterhouse failed to include position cost information in client statements as required. The hearing panel accepted that a sanction must be significant enough that it is more than the cost of doing business and of a magnitude sufficient to ensure effective deterrence.¹¹ When considering the quantum of the fine it levied, the hearing panel viewed it as a severe sanction, which was

⁸ The conditions are: it has satisfied the terms set out at subparagraphs 51(a), (b) and (c) of the Settlement Agreement and notice has been provided to Eligible Clients in respect of their ability to make a claim to the Fund described in subparagraph 51(d) of the Settlement Agreement.

⁹ Rule 8209(1)(i)-(ix) of the IDPC Rules set out the sanctions which may be imposed following a hearing.

¹⁰ Sanction Guidelines, p. 4

¹¹ *Re TD Waterhouse Canada* 2020 IIROC 09, at para. 51

reasonable in all the circumstances of the case.¹²

¶ 48 In this matter, the proposed fine is \$2,000,000. When considering the quantum of the fine, the Hearing Panel is mindful of the other amounts Fortrade will pay in recognition of the significant harm caused by its contravention of CIRO requirements and rules, and accepts the reasonableness of the fine when taking into consideration all of proposed sanctions.

¶ 49 In *Re Thomson*,¹³ Joseph Anthony Thomson was the founder of a Dealer Member and its Chief Executive Officer and Ultimate Designated Person. For a period, he was also the Chief Financial Officer. For two years, preference shares were offered by the Dealer Member to clients in two companies in which Thomson played significant roles. In addition to failing to address conflicts of interest, the respondent failed to ensure the shares were appropriately characterized as high risk and matched the risk tolerance and investment objectives of the clients who purchased them. The shares decreased significantly in value.

¶ 50 A civil settlement was reached with a number of parties, the result of which was 700 holders of the preferred shares recovered \$40 million or approximately 85% of the amounts invested. Thomson played a significant role in the civil settlement, and the recovery by clients of most of their losses was a mitigating factor in assessing the proposed sanctions against him.¹⁴

¶ 51 Similarly, the Hearing Panel accepts that a principal mitigating factor in this case is the Fund made available to clients by Fortrade.

¶ 52 No additional fines or monetary penalties were assessed against Thomson because of his efforts, however, costs of \$100,000 were agreed upon. The Thomson hearing panel characterized the costs to be paid as “a very significant sum for costs.”¹⁵ This Hearing Panel agrees with that characterization and accepts the payment of \$100,000 in costs to be appropriate in this case also.

¶ 53 In *Re VRK Forex & Investments Inc.*,¹⁶ the respondents engaged in the business of trading securities and advising, both without being registered and without an exemption, contrary to the Securities Act (Ontario). The respondents promoted CFDs, provided advice concerning CFD trading and conducted trading. At least 19 investors deposited \$3.8 million on the trading platforms recommended by the respondents and lost an aggregated of approximately \$1.9 million.

¶ 54 The financial penalties imposed by the Capital Markets Tribunal (CMT) included an administrative penalty of \$250,000, disgorgement of \$430,000 (commissions, profit sharing payments and commission rebates) and costs of \$200,000.

¶ 55 As noted by the CMT, disgorgement is not restitution.¹⁷ It is the removal of any financial benefit generated by the misconduct at issue. None of the financial penalties imposed by the CMT offered restitution to investors for their losses. Like CIRO hearing panels, the sanctions the CMT can impose following a merits hearing do not include orders for restitution.

¶ 56 The Settlement Agreement before this Panel focuses upon the restitution of investors and illustrates how collaboration between the parties can yield sanctions which are responsive to the needs of investors, and which could not be imposed at a sanctions hearing.

Whether Certain Misconduct was Intentional, Willfully Blind or Reckless: Staff Submissions para. 68

¶ 57 As noted in the Sanction Guidelines, an aggravating factor is whether misconduct was intentional, willfully blind or reckless.¹⁸ Staff argued that certain of Fortrade’s conduct “may be characterized as reckless

¹² *Ibid.*, para 79. The maximum fine is \$5 million, the fine imposed on TD Waterhouse was \$4 million.

¹³ *Re Thomson* 2021 IIROC 19

¹⁴ *Ibid.*, para. 31

¹⁵ *Ibid.*, para. 35

¹⁶ *Re VRK Forex & Investments Inc.* 2022 ONCMT 28

¹⁷ *Ibid.*, para. 69

¹⁸ Sanction Guidelines, Part II, Key Factor 4

with respect to regulatory requirements.” The conduct Staff points to as “reckless” was Fortrade’s failure to do a comprehensive review of the activities and communications of the Fortrade Agents, and failure to flag or appropriately follow up on the recommendations contained in emails and calls.¹⁹

¶ 58 Fortrade challenged the submission and filed three authorities to support its contention that Fortrade’s conduct could not be characterized as reckless. Two of the cases dealt with individual registrants and one with a Dealer Member, and two of the three cases were settlement hearings.²⁰

¶ 59 Any characterization of the conduct of a respondent is based upon the evidence of that conduct. In a settlement hearing, the evidence is drawn exclusively from the settlement agreement.

¶ 60 Of particular interest to the Hearing Panel was *Re Barber* and *Re Gravitas Securities*, two cases which dealt with findings made on the basis of the agreed facts contained in the settlement agreements.

¶ 61 In *Re Barber*, the hearing panel declined to make a finding that a registered representative was intentional, willfully blind or reckless with respect to regulatory requirements as there were no evidence regarding the representative’s state of mind. There was a finding that the conduct was negligent.²¹

¶ 62 In *Re Gravitas Securities*, the hearing panel found the agreed upon facts established the conduct of a third party resulted in the contravention of regulatory requirements and there was no evidence to support a finding of recklessness against the respondent Dealer Member. In that case the conduct of the Dealer Member was characterized as primarily negligent in nature.²²

¶ 63 In this matter, the agreed evidence in the Settlement Agreement is:

- Fortrade knew or ought to have known that some clients were seeking advice and relying on the recommendations provided by Fortrade Agents. Notwithstanding that the available call recordings and emails contained recommendations, Fortrade failed to flag or appropriately follow-up in respect of these call recordings or emails.
- Given the role of the Fortrade Agents and their active role in communicating with clients, Fortrade was required to do a more fulsome and comprehensive review of the activities and communications of the Fortrade Agents. Instead there was inadequate review of the client communications, both in the number of telephone calls reviewed and the absence of clear records of what was reviewed and the review process.²³

¶ 64 As noted in para. 57 of these Reasons, Staff’s view is the conduct above “may be characterized as reckless with respect to regulatory requirements.”

¶ 65 After careful consideration of the evidence and the case law and keeping in mind the limitations of making such findings on the basis of an agreed statement of facts, the Hearing Panel was of the view that conduct is more accurately characterized as negligent.

¶ 66 In arriving at this conclusion, the Hearing Panel took into account that the admitted conduct took place over a period of time, beginning the same year that Fortrade became a Dealer Member and continuing until CIRO became involved and the Temporary Order was put in place. As a Dealer Member offering OEO accounts, it was incumbent upon Fortrade to have adequate procedures to review client communications, to document those reviews and to ensure that the regulatory requirements prohibiting the offering of recommendations were followed. Fortrade failed to do so for an extended period of time and was negligent in doing so.

¹⁹ Staff Submissions on Settlement Hearing, para. 68

²⁰ Settlement Book of Authorities, *Re Barber* 2023 CIRO 4; *Re Gravitas Securities* 2020 IIROC 5; *Re DiCostanzo* 2022 IIROC 24

²¹ *Re Barber*, *ibid.*, para. 23(4)

²² *Re Gravitas*, *ibid.*, para. 23-24

²³ Settlement Agreement, paras. 34, 35, 38. Staff cites paras. 35 and 38 only. It was the Hearing Panel’s view that para. 34 provided context for para. 35 and considered it as part of the relevant evidence.

Conclusion of the Hearing Panel

¶ 67 As noted previously, the purpose of sanctions is to restrain future conduct that may harm the capital markets through the imposition of sanctions which are significant enough to prevent and discourage future misconduct by the respondent (specific deterrence) and to deter others from engaging in similar misconduct (general deterrence). Sanctions are not intended to be punitive but to correct and prevent misconduct, and to protect and maintain the integrity of the capital markets.

¶ 68 The Hearing Panel finds that the proposed sanctions fall within a reasonable range of appropriateness and that in all the circumstances, the proposed sanctions are proportionate, fair and reasonable, and will act as deterrents to both the Respondent and other members of the industry.

¶ 69 The Hearing Panel accepts the Settlement Agreement.

Dated at Toronto, Ontario this 11th day of March 2024.

“Donna Campbell” _____

Donna Campbell, Chair

“Ron Smith” _____

Ron Smith, Member

“Nick Pallotta” _____

Nick Pallotta, Member

Settlement Agreement

IN THE MATTER OF THE INVESTMENT DEALER AND PARTIALLY CONSOLIDATED RULES AND THE DEALER MEMBER RULES

AND

FORTRADE CANADA LIMITED

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

¶ 1 The Canadian Investment Regulatory Organization (“CIRO”)ⁱ will issue a Notice of Application to announce a settlement hearing pursuant to sections 8215 and 8428 of the Investment Dealer and Partially Consolidated Rules (the “Investment Dealer Rules”) to consider whether a hearing panel should accept this Settlement Agreement between Enforcement Staff and Fortrade Canada Limited (“Fortrade” or the “Respondent”).

PART II – JOINT SETTLEMENT RECOMMENDATION

¶ 2 Enforcement 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 In November 2022, a hearing panel granted a temporary order (the “**Temporary Order**”), attached as “Appendix “A”, which required that Fortrade comply with the requirements applicable to order execution only accounts, not open new client accounts, not seek the deposit of additional funds into existing client accounts, and provide Enforcement Staff with telephone call recordings and other forms of client communication.

¶ 5 Fortrade, an order execution only (“**OEO**”) Dealer Member, conducted its business through Client Managers or Support Representatives who were not Regulated Persons (collectively, the “**Fortrade Agents**”).

¶ 6 The majority of Fortrade clients were unsophisticated investors, with income levels of less than \$50,000, liquid assets of less than \$25,000, limited trading knowledge, and no previous CFD trading experience.

¶ 7 Between December 2020 and July 2022, Fortrade Agents made recommendations in emails and telephone calls with clients notwithstanding that the Investment Dealer Rules (and prior to that, the Dealer Member Rules) prohibit Dealer Members from providing recommendations to clients holding OEO accounts. Fortrade Agents also engaged in other improper communication with clients, including encouraging or persuading clients to deposit funds into their trading accounts in order to complete trades based on the recommendations they provided.

¶ 8 Fortrade failed to establish a supervisory system that was reasonably designed to comply with regulatory requirements by failing to follow its account appropriateness review procedures, failing to adequately review client communications, and failing to retain adequate records of its business and supervisory activities.

Background

¶ 9 Fortrade was admitted to membership as a non-resident Dealer Member on January 30, 2020 and is currently registered in all Canadian provinces and territories except Quebec. Fortrade’s head office is located in London, England.

¶ 10 Fortrade offers online trading services to retail customers holding OEO accounts for trading contracts for differences (“**CFDs**”) based on various underlying assets, including shares (Canadian, US, and internationally listed securities), indices, and commodities. All Fortrade client accounts are OEO accounts.

¶ 11 A CFD is an agreement to exchange, at the closing of the contract, the difference between the opening and closing price of the underlying asset, multiplied by the number of units of that asset detailed in the contract.

¶ 12 A CFD allows one to speculate on whether the price of the underlying asset will increase or decrease, without owning the underlying asset. CFDs are derivatives and are generally traded over-the-counter.

¶ 13 CFDs are recognized as complex, high-risk products. Fortrade’s website includes a risk warning about trading in CFDs.

¶ 14 Fortrade acts as both the counterparty and dealer to the trades with clients, and, in that capacity, “self-clears” such trades.

Staff’s Investigation and Temporary Order

¶ 15 On September 15, 2021, Enforcement Staff notified Fortrade that an investigation was being commenced related to complaints filed by two Fortrade clients. These two complaints raised concerns for

Enforcement Staff that Fortrade Agents may have been providing recommendations to clients.

¶ 16 By letter dated June 20, 2022, Enforcement Staff requested that Fortrade provide all recordings of phone calls between Fortrade staff, agents or representatives and its clients, as well as all emails or other electronic communications between Fortrade staff, agents or representatives and its clients for the period between May 20, 2022 and July 17, 2022.

¶ 17 Enforcement Staff also requested that Fortrade preserve all documents within its custody and control that may be relevant to the investigation, including client communications and related documents, documents related to client complaints, and documents related to supervisory review of client communications, including but not limited to phone calls.

¶ 18 On June 28, 2022, in response to this request, Fortrade advised Enforcement Staff that it retained telephone recordings for a period of one week, at which point, the recordings were automatically deleted. This reflected a change, as of December 2021, from Fortrade's prior policy, under which recordings were retained for one month.

¶ 19 Hence, Fortrade provided recordings of calls from June 14, 2022 to June 28, 2022 and then subsequently on a weekly basis until July 17, 2022. Notwithstanding Enforcement Staff's request, Fortrade failed to retain recordings of telephone calls that occurred between July 18, 2022 and October 27, 2022. As a result, during Enforcement Staff's investigation, only a limited number of calls were available for review.

¶ 20 The available call recordings and emails obtained by Enforcement Staff showed that Fortrade Agents made recommendations to clients in connection with trading CFDs.

¶ 21 As a result of concerns regarding Fortrade's conduct, in November 2022, Enforcement Staff sought a temporary order. Fortrade and Enforcement Staff agreed in principle to the terms of the Temporary Order, which was granted by a hearing panel on November 9, 2022.

¶ 22 To date, Enforcement Staff, in regular monthly reviews of client communications, have not identified any breaches of the terms of the Temporary Order by Fortrade.

Recommendations to Clients Holding OEO Accounts and Improper Communication with Clients

¶ 23 Enforcement Staff reviewed calls between Fortrade Agents and clients that occurred between June 14, 2022 and July 17, 2022. The available call recordings showed a pattern of Fortrade Agents making recommendations to clients, demonstrated by the following:

- (a) during unsolicited calls to clients, including to clients with little or no investment experience, recommendations made about specific trading strategies and market "opportunities;"
- (b) tailored recommendations based on clients' transaction history, including the clients' current account holdings or previous trades;
- (c) provided predictions on how a particular issuer, security, or market segment would or may likely perform in the future, including providing target prices;
- (d) provided profit calculations based on specific recommendations made to clients; and
- (e) made recommendations based on predictions and recommendations from Fortrade's research department.

¶ 24 For example, Fortrade Agents made the following statements:

- (a) "anything in mind that you would like to open as a first real trade or should I give you a couple of options with the capital you have on your account?"
- (b) "I'm calling because I see that you traded commodities before with us and if you'd like to try them again, I just received an opportunity on wheat, the agricultural product from our analyst. it's also connected for this war in Ukraine."

- (c) "gold - - alright - - active opportunity, alright, research team sees prices going up ... Gold is golden."
- (d) "I have a new opportunity on something, if you're interested in diversifying in Tesla, are you interested in trading Tesla? ... This is a brand new opportunity from this morning, alright. I mean you got available capital, you can put some money into Tesla if you want, so I can give you details what's going on."

¶ 25 As early as December 2020, there are also instances of emails in which certain Fortrade Agents contacted clients and made recommendations with respect to the purchase and sale of CFDs.

¶ 26 For example, emails from Fortrade Agents to clients, included the following statements:

- (a) "Current price of wheat is \$1,080 and our analysts expect it to reach the level of \$1,280 in the short run (next couple of days to weeks, worst case scenario months) because of the War in Ukraine."
- (b) "Natural Gas remains an active opportunity according to our analysts as they see very little chance that recent LNG terminal explosion and fact (news from yesterday) it will take months for it to be repaired could change the trend and have any long-lasting impact on the price as long as all other fundamentals remain the same." [sic]
- (c) "you will see when you start using more opportunities, especially on short-term (few days and weeks) you can expect 20% and more from one opportunity sometimes." [sic]

¶ 27 As set out above, Fortrade engaged in making recommendations to clients notwithstanding that the Investment Dealer Rules (and prior to that, the Dealer Member Rules) prohibit Dealer Members from providing recommendations to clients holding OEO accounts.

¶ 28 The recommendations made by Fortrade Agents in telephone calls and emails could be expected to have influenced the investment decisions of the clients.

¶ 29 The available call recordings also demonstrate that Fortrade Agents engaged in improper communication with clients by:

- (a) representing to clients that Fortrade was entitled or approved to provide the recommendations that it did;
- (b) representing to clients that they were privy to research and the work of analysts that supported the advice and recommendations and encouraged clients to trade based on them;
- (c) encouraging or persuading clients to deposit funds into their accounts to fund recommended trades;
- (d) providing positive information with respect to CFDs and trades in CFDs, without providing balanced information about the risks and overemphasizing the potential profit of certain trading strategies and, by extension, downplaying the potential for loss; and
- (e) telling clients that they may be missing out on profitable trades.

Failure to Supervise

¶ 30 Fortrade failed to establish a supervisory system reasonably designed to comply with regulatory requirements.

Account Appropriateness

¶ 31 Although Fortrade provides OEO services, it is required to conduct an account opening appropriateness review.

¶ 32 Fortrade agreed that its account opening procedures would involve an assessment of the depth of investment knowledge and trading experience of a potential client before an account is approved to be

opened.

¶ 33 However, in some instances, Fortrade breached its own account opening appropriateness review procedures, and failed to properly follow up on the results of account opening appropriateness reviews, on a reasonable basis while putting the clients' interests first.

Inadequate Review of Client Communications

¶ 34 Fortrade knew or ought to have known that some clients were seeking advice and relying on the recommendations provided by Fortrade Agents.

¶ 35 Notwithstanding that the available call recordings and emails contained recommendations, Fortrade failed to flag or appropriately follow-up in respect of these call recordings or emails.

¶ 36 Fortrade failed to take adequate steps to identify or adequately address the fact that recommendations were being made by Fortrade Agents.

Inadequate Supervision Records

¶ 37 Fortrade failed to adequately review client communication and maintain adequate records of its supervisory review of the Fortrade Agents.

¶ 38 Given the role of the Fortrade Agents and their active role in communicating with clients, Fortrade was required to do a more fulsome and comprehensive review of the activities and communications of the Fortrade Agents. Instead, there was inadequate review of the client communications, both in the number of telephone calls reviewed and the absence of clear records of what was reviewed and the review process.

Client Complaints

¶ 39 Fortrade received 17 complaints from clients claiming that Fortrade Agents had made investment recommendations and that they had suffered losses as a result of relying on those investment recommendations.

¶ 40 Fortrade acknowledged the complaints in a timely manner.

¶ 41 As set out below, the clients who complained to CIRO as of July 7, 2023 regarding recommendations made to them by Fortrade Agents, whose complaints have not been resolved, will be compensated by Fortrade for a total of US\$703,478.91, representing net losses sustained in the clients' accounts prior to the date of the Temporary Order.

Establishment of a Compensation Fund

¶ 42 Enforcement Staff and Fortrade agree that a reasonable approximation of the amounts obtained as a result of the contraventions of CIRO requirements is US\$6,000,000.

¶ 43 As detailed in subparagraph 51(d) below, in lieu of an order for disgorgement, Fortrade has agreed to establish a fund to make payments to clients who held accounts during the period January 2020 to November 2022 and suffered a net loss.

¶ 44 This return of funds to clients who experienced losses demonstrates Fortrade's recognition of the potential harm to its clients as a result of the recommendations, contraventions of its policies and procedures, and supervisory failings, including failure to adequately review and retain telephone recordings.

Remedial Measures

¶ 45 Fortrade has agreed that all client calls (inbound or outbound) will be handled by the CCO or by seconded representatives of Fortrade to whom the CCO delegates the function and whom the CCO undertakes to supervise.

¶ 46 Fortrade has agreed to revise its policies and procedures with respect to the review of client calls and related record keeping, as well as procedures for detailing how any issues identified in the calls are escalated and remediated.

¶ 47 CIRO's Business Conduct Compliance ("BCC") Staff will conduct a compliance examination in CIRO's Fiscal Year 2025 compliance examination cycle (April 1, 2024-March 31, 2025) to ensure continuing compliance with CIRO requirements, including, but not limited to, a review of the supervision of any Fortrade Agents, and a review and sampling of telephone calls.

Additional Factors

¶ 48 Fortrade has never been the subject of any disciplinary proceedings commenced by CIRO.

¶ 49 Fortrade has agreed to make substantial payments to clients as detailed in this Settlement Agreement.

PART IV – CONTRAVENTIONS

¶ 50 By engaging in the conduct described above, the Respondent committed the following contraventions of CIRO requirements:

- (i) Between December 2020 and July 17, 2022, Fortrade made recommendations to clients, contrary to Rule 1400 of the Investment Dealer Rules.
- (ii) Between January 2020 and November 2022, Fortrade failed to establish and maintain a supervisory system that was reasonably designed to achieve compliance with CIRO requirements and failed to retain adequate records to demonstrate compliance with CIRO requirements, contrary to Dealer Member Rule 38.1 (January 2020 to December 2021) and Investment Dealer Rules 3800 and 3900 (from January 2022).

PART V – TERMS OF SETTLEMENT

¶ 51 The Respondent agrees to the following sanctions and costs:

- (a) a fine of \$2,000,000;
- (b) costs of \$100,000;
- (c) payment of US\$703,478.91 to clients with unresolved recommendation-related complaints received as of July 7, 2023 and representing net losses incurred by the clients up to the date of the Temporary Order;
- (d) Fortrade will create a fund of US\$6,000,000 (the "Fund")²⁴ to be used to make payments to Eligible Clients who make a claim to the Fund on the following terms and conditions:
 - i. "Eligible Clients" are clients who suffered a net loss in their account(s) from January 2020 to the date of the Temporary Order, excluding those clients who received compensation for recommendation-related complaints under subparagraph 51(c), and other clients whose complaints were finally resolved by Fortrade;
 - ii. A payment made to any Eligible Client from the Fund does not constitute an admission of wrongdoing on the part of Fortrade in respect of any individual Eligible Client;
 - iii. If the total claims to the Fund exceed US\$6,000,000 then distribution will be made on a pro-rata basis according to each Eligible Client's net losses to the date of the Temporary Order; and
 - iv. Any funds remaining in the Fund after payments to Eligible Clients will be paid as disbursement to CIRO within 30 days of dissolution of the Fund;
- (e) Fortrade will retain, in a location in Ontario, Canada, telephone call recordings of calls with Fortrade clients for seven years from the date of each call; and

²⁴ As set out more particularly in the Fund Plan attached as "Appendix B"

- (f) The Temporary Order remains in effect until Fortrade has satisfied the terms set out at subparagraphs 51(a),(b), and (c) above and notice has been provided to Eligible Clients in respect of their ability to make a claim to the Fund described in paragraph 51(d).

¶ 52 If this Settlement Agreement is accepted by the hearing panel, the Respondent agrees to pay the amounts referred to at subparagraphs 51(a), (b) and (c) above within 30 days of such acceptance unless otherwise agreed between Enforcement Staff and the Respondent.

PART VI – STAFF COMMITMENT

¶ 53 If the hearing panel accepts this Settlement Agreement, Enforcement 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.

¶ 54 If the hearing panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of this Settlement Agreement, Enforcement Staff may bring proceedings under Investment Dealer Rule 8200 against the Respondent. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement.

PART VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT

¶ 55 This Settlement Agreement is conditional on acceptance by the hearing panel.

¶ 56 This Settlement Agreement shall be presented to a hearing panel at a settlement hearing in accordance with sections 8215 and 8428 of the Investment Dealer Rules, in addition to any other procedures that may be agreed upon between the parties.

¶ 57 Enforcement Staff and the Respondent agree that this Settlement Agreement will form all 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.

¶ 58 If the hearing panel accepts this Settlement Agreement, the Respondent agrees to waive all rights under the Rules of CIRO and any applicable legislation to any further hearing, appeal and review.

¶ 59 If the hearing panel rejects this Settlement Agreement, Enforcement Staff and the Respondent may enter into another settlement agreement or Enforcement Staff may proceed to a disciplinary hearing based on the same or related allegations.

¶ 60 The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the hearing panel.

¶ 61 This Settlement Agreement will become available to the public upon its acceptance by the hearing panel and CIRO will post a copy of this Settlement Agreement on the CIRO website. CIRO will publish a notice and news release of the facts, contraventions, and the sanctions agreed upon in this Settlement Agreement and the hearing panel's written reasons for its decision to accept this Settlement Agreement.

¶ 62 If this Settlement Agreement is accepted, the Respondent agrees that neither they nor anyone on their behalf, will make a public statement inconsistent with this Settlement Agreement.

¶ 63 This Settlement Agreement is effective and binding upon the Respondent and Enforcement Staff as of the date of its acceptance by the hearing panel.

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

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

¶ 65 An electronic copy of any signature will be treated as an original signature.

DATED this 14th day of February, 2024

Fortrade Canada Limited

Per:

“Witness” _____

Witness

“N. Collison” _____

Name:

I have authority to bind the corporation.

“Sylvia Samuel” _____

Sylvia Samuel

Enforcement Counsel on behalf of Enforcement
Staff of the

Canadian Investment Regulatory Organization

The Settlement Agreement is hereby accepted this “21” day of “February” 2024 by the following Hearing panel:

Per: Donna Campbell _____

Panel Chair

Per: Ron Smith _____

Panel member

Per: “Nick Pallotta” _____

Panel member

APPENDIX A

IN THE MATTER OF:

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

AND

FORTRADE CANADA LIMITED

ORDER

WHEREAS on November 9, 2022, an application for a temporary order was made by Enforcement Staff (“Staff”) with notice to the Respondent, Fortrade Canada Limited (“Fortrade”), pursuant to Section 8211 and 8425 of the IIROC Rules,

AND UPON reviewing the Notice of Application issued November 4, 2022, the affidavit of Alex Oustinov sworn November 4, 2022, and the written submissions of Staff and of the Respondent filed and upon hearing submissions of counsel for Staff and counsel for the Respondent,

THIS HEARING PANEL ORDERS:

1. that Fortrade, by its agents, employees, directors, or otherwise, shall not make recommendations to

clients or prospective clients in connection with trading in securities or contacting any person, whether by email, telephone, SMS, or otherwise, for the purpose of soliciting or recommending trading with Fortrade and shall comply with the requirements applicable to an “order execution only account” as defined in subsection 1201(2) of the IROC Rules and conduct its activities consistent with the guidance set forth in Guidance Note GN-3400-21-003.

2. that Fortrade shall not open any new client accounts.
3. that Fortrade shall not seek the deposit of additional funds into existing client accounts, except that Fortrade may contact clients who have a margin deficiency to inform them of such margin deficiency.
4. that Fortrade shall provide to IROC Enforcement Staff monthly, within seven days of the last day of the previous month, audio recordings of all telephone calls with its clients during the previous month. In respect of the month of October 2022, Fortrade shall provide audio recordings of telephone calls with its clients still in its possession by November 16, 2022.
5. that Fortrade shall provide to IROC Enforcement Staff monthly, within seven days of the last day of the previous month, an audit trail of its monitoring of telephone calls and any other form of client communications, which audit trail shall include the number of communications sampled, the time, date and type of the communication, the name of the Fortrade representative, the name of the client, and any queries or other measures taken as a result of the monitoring. In respect of the month of October 2022, Fortrade shall provide the audit trail by November 16, 2022.
6. that this Temporary Order shall remain in effect until the conclusion of the hearing on the merits or until further order of a hearing panel.
7. that the time for service and filing of the Notice of Application and Application Record be and is hereby abridged so that this application is properly returnable on November 9, 2022.

DATED at Toronto, Ontario, this 9th day of November 2022.

Donna Campbell

Ron Smith

Selwyn Kossuth

APPENDIX B **Fund Plan**

This Fund Plan sets out the process by which the Fund is to be administered by Fortrade for the purpose of making payments to Eligible Clients.

1. Within **7 days** of the acceptance of the Settlement Agreement by the Hearing Panel, Fortrade will send out a notice (the “**Notice**”) to all Eligible Clients (as they are defined in the Settlement Agreement).
2. The Notice will be sent to each of the Eligible Clients using the last known email address available in Fortrade’s records.
3. To the extent a bounce-back is received from the email address, the Notice will be sent by mail to the last known address for the Eligible Client available in Fortrade’s records.
4. A follow-up reminder will be sent to Eligible Clients using the last known email address available in Fortrade’s records (i) 14 days following the delivery of the initial Notice, and (ii) 7 days prior to the expiry of the Claim Period (as defined below).
5. Eligible Clients will have **60 days** from the date of the Notice to make a claim to the Fund (“**Claim Period**”) in accordance with the directions in the Notice.

6. After the expiration of the Claim Period, Fortrade will calculate the total net losses of the Eligible Clients who made claims to the Fund in accordance with the Notice.
7. If the total of claims to the Fund exceeds \$6,000,000.00 USD then distribution to Eligible Clients will be made on a pro-rata basis according to each Eligible Client's net loss from January 30, 2020 to November 9, 2022.
8. If the total of claims to the Fund is less than \$6,000,000 USD then Eligible Clients will be paid 100% of their net losses from January 30, 2020 to November 9, 2022 and will, in that case, be required to provide a full and final release to Fortrade in the form attached as Appendix "A" to the Notice.
9. Fortrade will make payment to Eligible Clients by crediting their Fortrade accounts. If the total of claims to the Fund exceeds \$6,000,000, Fortrade will make payment to Eligible Clients within **30 days** of the expiry of the Claim Period. If the total of claims to the Fund does not exceed \$6,000,000, Fortrade will make payment to Eligible Clients within 30 days of receipt of the Release referred to in item 8, above.
10. All funds paid to Eligible Clients will be available immediately to be withdrawn from the client's Fortrade account at the client's option.
11. Any funds remaining in the Fund after payments are made to Eligible Clients will be paid as disgorgement to CIRO within **30 days** after payment to Eligible Clients is made.
12. Fortrade will report to CIRO Staff upon completion of each of the steps outlined in items 1, 6, 9, and 11 above, or as otherwise required by Staff.
13. Any of the timelines set out in the within Fund Plan may be modified on consent by CIRO Staff and Fortrade.

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ⁱ The Canadian Investment Regulatory Organization ("CIRO") has adopted interim rules that incorporate the pre-amalgamation regulatory requirements contained in the rules and policies of IIROC and the by-law, rules and policies of the MFDA (the "Interim Rules"). The Interim Rules include (i) the Investment Dealer and Partially Consolidated Rules, (ii) the UMIR and (iii) the Mutual Fund Dealer Rules. These rules are largely based on the rules of IIROC and the rules and certain by-laws and policies of the MFDA that were in force immediately prior to amalgamation. Where the rules of IIROC and the rules and by-laws and policies of the MFDA that were in force immediately prior to amalgamation have been incorporated into the Interim Rules, Enforcement Staff have referenced the relevant section of the Interim Rules. Section 1105 (Transitional provision) of the Investment Dealer and Partially Consolidated Rules sets out CIRO's continuing jurisdiction, including that CIRO shall continue the regulation of any person subject to the jurisdiction of the Investment Industry Regulatory Organization of Canada that was formerly conducted by the Investment Industry Regulatory Organization of Canada.