

IN THE MATTER OF:

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

AND

ALEXANDER GEORGE MITCHELL

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 Alexander George Mitchell (the “Respondent” or “Mitchell”).

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. The Respondent was a Branch Manager at a BMO Nesbitt Burns branch in Toronto. He was responsible for the supervision of a Registered Representative (“RR”), Nadir Janmohamed (“Janmohamed”), during the period of January 2009 to December 2012 (the “Relevant Period”).
5. Janmohamed engaged in a pattern of trading in DSC mutual funds for clients, where he sold DSC funds and then repurchased similar funds, which required the client to pay a redemption fee and caused the redemption period to re-set on the new fund purchases. This activity was detrimental to clients in some instances. In addition, Janmohamed frequently traded DSCs in client accounts by switching from one fund to another fund and then charging the client a switch fee, when the switch could have been effected without charging the client.
6. Janmohamed’s trading activity in DSC funds in numerous client accounts during the Relevant Period involved two main red flags from a supervisory perspective: (1) the amount and frequency of switch fees and (2) the redemption fees.
7. The Respondent queried the RR and made an effort to contact at least two of the RR’s clients but took insufficient action in response to the trading activity in Janmohamed’s client accounts during the Relevant Period.

Background

8. The Respondent had been in the industry since the late 1980s. During the Relevant Period, the Respondent was a Branch Manager and was himself a Registered Representative with BMO Nesbitt Burns (“BMONB”) at its Lakeview Branch. In 2014, the Respondent ceased to be a Branch Manager and as of January 2017, retired and is no longer an IIROC registrant.
9. In November 2016, an IIROC hearing panel accepted a settlement agreement between IIROC Staff and Janmohamed, in which the RR admitted to failing to use due diligence to ensure that the acceptance of orders for certain client accounts was within the bounds of good business practice, discretionary trading related to three clients and failure to know essential facts related to one client.

The Amount and Frequency of Switch Fees

10. Janmohamed often made switches between the same family of mutual funds in a client’s account and the client was charged a switch fee. On occasion, he purchased new DSC mutual funds in clients’ accounts that would re-set the redemption period.
11. Some clients said they were not informed by the RR of the switch fees. The switch fees were at times detrimental to the client because switches could have occurred without charging the client a fee. The amount of switch fees on various dates during the Relevant Period was significant, with the gross amount of switch fees totaling \$367,459 during the Relevant Period.

Inadequate Supervision of Switch Fees

12. The switch fees were indicated on the Daily Production Reports reviewed by the Respondent, with the indication “switch”. There were no written queries by the Respondent in 2009 or 2010 and only one written query in 2011, regarding switch fees.

The two written queries in 2012 were not sufficiently followed up on by the Respondent. During the Relevant Period, the Respondent did not adequately review or query the amount and frequency of switch fees.

The Redemption Fees

13. Mutual funds purchased on a DSC basis are usually subject to a declining scale of redemption fees. Redemption fees were incurred by some clients when Janmohamed sold a fund before the expiration of the locked-in time period. When these mutual funds were sold, the client paid a fee to the mutual fund company because the funds had been sold before the original expiry date. The amount of the redemption fee varied depending on how early Janmohamed sold the fund. The redemption fees for Janmohamed's clients totaled \$125,402 during the Relevant Period.

Inadequate supervision of Redemption Fees

14. The amount of redemption fees for each client was indicated on the Daily Production Report reviewed by the Respondent. The Respondent did not adequately review or query the amount and frequency of the redemption fees.
15. During the Relevant Period, queries about Janmohamed's trading by the Respondent did not involve a thorough review of the above two issues of concern. The Respondent accepted Janmohamed's response which was that the clients were aware of any fees and assessed that the trades were rational and suitable. The Respondent did not conduct adequate supervisory review to satisfy himself that Janmohamed's trading was within the bounds of good business practice for his clients.

Switch Fees and Redemption Fees indicated on Daily Reports

16. During the Relevant Period, there were a number of days where the switch fees or redemption fees for Janmohamed's clients were several thousands of dollars in a single day alone and should have triggered queries.

Monthly Supervision Issues

17. In monthly reports for 2009, seven months in 2010 and nine months in 2012, Janmohamed's name appears at least once on each of these reports, whether it be for a commission greater than \$1,500 per month issue, other suitability issue or a pro account issue. Despite this flag, in terms of monthly queries, only a few were made during the Relevant Period.

Trading permitted to continue

18. Janmohamed was permitted to continue this trading pattern throughout the Relevant Period without adequate questioning, follow up or any restrictions.

Other

19. The Respondent does not have a prior disciplinary history.
20. The Respondent contacted at least two clients by telephone in April 2012 when there had been a large number of transactions. He indicated that the clients told him that they were aware of DSC fees and that they were happy with their advisor.
21. The Respondent's supervision practice was to make frequent queries of the RRs in his branch (including the RR) by in person conversations and to take notes of those queries. He indicated that his handwritten notes of his in person queries of Janmohamed were not able to be located by his former employer.

PART IV – CONTRAVENTIONS

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

Contravention 1: Between January 2009 and December 2012, the Respondent Alexander George Mitchell failed to adequately supervise the client trading activity of Nadir Janmohamed, contrary to Dealer Member Rule 38.4.

PART V – TERMS OF SETTLEMENT

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

- a) A fine in the amount of \$17,500;
- b) A three month prohibition on re approval in a supervisory capacity;
- c) To re write and pass the Branch Manager's course within six months of any re-registration in a supervisory capacity with IIROC; and,
- d) Costs of \$2,000.

24. 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

25. 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 following paragraph.

26. 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

27. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
28. 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.
29. 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.
30. 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.
31. 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.
32. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.

33. 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.
34. If this Settlement Agreement is accepted, the Respondent agrees that neither he nor anyone on his behalf will make a public statement inconsistent with this Settlement Agreement.
35. 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

36. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.
37. A fax or electronic copy of any signature will be treated as an original signature.

DATED this “11th” day of “September”, 2018.

“John Fabello”
Witness

“Alexander George Mitchell”
Respondent Alexander George Mitchell

“Frank Scali”
Witness

“Kathryn Andrews”
Kathryn Andrews
Senior Enforcement Counsel on behalf of
Enforcement Staff of the Investment
Industry Regulatory Organization of Canada

The Settlement Agreement is hereby accepted this “11th” day of “September”, 2018 by the following Hearing Panel:

Per: “John A. Campion”
Panel Chair

Per: “Elizabeth Tripp”
Panel Member

Per: “Vanessa M. Gardiner”
Panel Member