

**Unofficial English Translation**

**IN THE MATTER OF:**

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

**AND**

**PEAK SECURITIES INC.**

**SETTLEMENT AGREEMENT**

**PART I - INTRODUCTION**

1. The Investment Industry Regulatory Organization of Canada (IIROC) will issue a Notice of Application to announce that a settlement hearing will be held before a Hearing Panel (the Hearing Panel) to consider whether, pursuant to Rule 8215 of IIROC's Enforcement, Examination and Approval Rules, it should accept a settlement agreement (the Settlement Agreement) between IIROC Staff (Staff) and PEAK Securities Inc. (the 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.

#### **REGISTRATION HISTORY**

4. PEAK Securities Inc. has been a duly registered Dealer Member of IIROC since September 29, 2000.

#### **I. COUNT 1 – SUPERVISION**

##### **Overview**

5. In September 2017, following an integrated examination that included, notably, the examination conducted by its Business Conduct Compliance Department ("BCC"), IIROC Staff informed the Respondent of several major deficiencies concerning its internal controls at the time;
6. It was noted, on this occasion, that the Respondent had failed to correct deficiencies noted during a previous examination by BCC, even though it had committed to doing so.

##### **Examination reports dated December 23, 2015 and September 22, 2017**

7. On December 23, 2015, after an examination conducted by BCC staff, IIROC sent the Respondent a report detailing a number of deficiencies, among them eight (8) findings that were considered significant.
8. On February 5, 2016, the Respondent responded in writing to this report, stating to IIROC Staff, among others, that corrective measures had been implemented or were about to be;

9. On September 22, 2017, after an integrated examination conducted by IIROC Staff, a report was sent to the Respondent, once again detailing numerous compliance related deficiencies;
10. More specifically, as regards the BCC, the report noted eight (8) findings that were considered significant and repetitive, in the following areas:
  - A. Level II supervision;
  - B. Supervision of employees' outside accounts;
  - C. Referral arrangements;
  - D. Internal inspections of business locations and follow-up of problems;
  - E. Supervision of fee-based accounts;
  - F. Monthly supervision of non-trading activities;
  - G. Supervision of social media; and
  - H. Internal control – continuing education.
11. The report also highlighted eleven (11) other findings considered significant by IIROC Staff, including:
  - I. Maintenance of the policies and procedures manual;
  - J. Pre-trade disclosure of charges; and
  - K. Remote supervision – Level I supervision.

**Principal findings – September 22, 2017 report**

12. The eleven (11) findings enumerated above, including the examination report of September 22, 2017, resulted from the following elements among others:

#### **A. Level II supervision**

13. It appears that from May to October 2016, this supervision was inadequate or not performed in a timely fashion;
14. These findings notably concerned the review of the daily commission reports, daily margin call reports and accounts with a debit balance, as well as the monthly reports on margin account concentrations.

#### **B. Supervision of employees' outside accounts**

15. For many employees of the Respondent, this supervision was inadequate or non-existent;
16. Moreover, for two of its employees, the Respondent failed to submit the necessary correspondence to the firms concerned.

#### **C. Referral arrangements**

17. Deficiencies were observed concerning the Respondent's analysis of conflicts of interest;
18. In some cases, the client disclosure or referral arrangement contained no description of the services offered by each of the parties concerned.

#### **D. Internal inspections of business locations and follow-up of problems**

19. For the majority of the Respondent's business locations concerned, the established schedule of inspections of these locations was not followed;
20. There was no follow-up by the Respondent, once the inspection reports regarding the business locations concerned were issued.

#### **E. Supervision of fee-based accounts**

21. Deficiencies and delays were noted with respect to the monthly supervision of feebased accounts.

#### **F. Monthly supervision of non-trading activities**

22. Deficiencies were identified by IIROC Staff in this regard, specifically between May and October 2016.

#### **G. Supervision of social media**

23. IIROC Staff were unable to track down proof of supervision performed by the Respondent, at this level;
24. Furthermore, some employees of the Respondent had a LinkedIn account without prior approval.

#### **H. Internal control – continuing education**

25. Deficiencies were noted with respect to the content of a course offered internally by the Respondent, as well as its tracking of the continuing education taken by its Registered Representatives.

#### **I. Maintenance of the policies and procedures manual**

26. IIROC Staff found that the Respondent's policies and procedures manual was incomplete and obsolete.

#### **J. Pre-trade disclosure of charges**

27. For most of the trades examined by IIROC Staff, there was no evidence of pre-trade disclosure of charges to the Respondent's clients.

#### **K. Remote supervision – Level I supervision**

28. The Respondent was unable to demonstrate that timely periodic visits were made to four (4) of its business locations.

#### **Conditions imposed on the Respondent's membership**

29. On or around March 23, 2018, given all of its findings, among other things, IIROC Staff recommended the imposition of terms and conditions on the Respondent's membership, in accordance with Rule 9208 of the Consolidated Enforcement, Examination and Approval Rules of IIROC;
30. On or around April 6, 2018, the Respondent accepted the imposition of these terms and conditions, as recommended;
31. On or around May 3, 2018, a decision was rendered by IIROC confirming the imposition of these terms and conditions;
32. Among the terms and conditions thus imposed, the Respondent was required, notably, to retain the services of a compliance consultant and implement corrective measures for each of the deficiencies highlighted in the BCC examination report of September 22, 2017.

#### **Monitoring of the terms and conditions imposed on the Respondent's membership**

33. In accordance with the terms and conditions imposed on it, the Respondent retained the services of such a consultant and submitted a remedial action plan, which IIROC approved in July 2018;
34. In April 2020, the Respondent and the consultant submitted an attestation of implementation of the recommendations contained in the remedial action plan, in accordance with the terms and conditions that had been imposed on the Respondent;

35. IIROC Staff took note of the tests conducted by the consultant, relative to the deficiencies that had led to the imposition of terms and conditions on the Respondent;
36. In consideration of the foregoing, notably, the terms and conditions that had been imposed on the Respondent on May 3, 2018 were lifted on June 26, 2020.

## **II. COUNT 2 – ERRONEOUS CHARGING OF FEES IN CERTAIN FEE-BASED ACCOUNTS (OVERCHARGING)**

### **Overview**

37. In May 2018, the Respondent met with IIROC Staff to declare that, between 2012 and 2018, it had erroneously charged annual fees to certain clients who held fee-based accounts (the fee-based accounts);
38. In all, the Respondent erroneously collected excessive fees (overcharging) on the fee-based accounts of nearly 500 clients, for a total of approximately \$191,500;
39. The Respondent reported the overcharging problem to IIROC voluntarily and has since made diligent efforts to return this money to its current and former clients (overcharged clients).

### **Control and Supervision Failures**

#### **(i) The Fee-Based Accounts**

40. The Respondent would offer fee-based accounts to its clients. The clients who held this type of product paid no fees on individual trades effected in their account and, instead, paid a fixed charge based on a percentage of the value of the securities in the account. The Respondent's fee-based accounts were supposed to be free of products for which a trailing commission is normally charged;

41. Thus, because of the controls in place, which proved inadequate in spotting securities that paid trailing commissions, securities containing embedded compensation were not excluded from the annual fee calculation and some clients therefore overpaid;
42. In all, from January 2012 to May 2018, the Respondent erroneously collected approximately \$191,500 in fee overpayments from fee-based accounts.

**(ii) Self-Reporting**

43. In 2017, IIROC sent its Dealer Members a request for information to ensure that dealers were adequately managing potential conflicts in connection with fee-based accounts and managed accounts. In so doing, IIROC was asking its Dealer Members to examine their internal policies and procedures respecting the prevention and analysis of compensation-related conflicts and to report the existence of any problems;
44. In the course of its analysis, the Respondent examined every security that was held in a fee-based account since January 2012;
45. In May 2018, after completing its analysis, the Respondent met with IIROC Staff to communicate the existence of the overcharging problem in fee-based accounts, as well as its extent. Following this meeting, the Respondent undertook to reimburse the clients whose fee-based accounts had been erroneously charged since 2012.

**(iii) Measures taken by the Respondent to reimburse clients**

46. Since June 2018, the Respondent has made diligent efforts to repay the amount of \$191,500 to its overcharged clients;
47. The Respondent has reimbursed overcharged clients who erroneously paid a total of \$25 or more per account between January 2012 and May 2018;
48. Furthermore, the Respondent also paid the overcharged clients nearly \$24,000 in interest, as compensation, in addition to the reimbursed fees of \$25 or more;



49. In the end, an amount a little over \$2,500 could not be repaid to the overcharged clients. This amount represents clients who erroneously paid less than \$25 in total fees per account, or former clients who were untraceable;
50. The Respondent therefore paid this amount to a non-profit organization that aids women victims of violence, without requesting a receipt for charity donations in return. The Respondent therefore did not benefit financially from the erroneously charged fees.

#### **PART IV – CONTRAVENTIONS**

51. By engaging in the conduct described above, the Respondent contravened Rule 38.1 and Rule 2500 of the IIROC Dealer Member Rules.

##### Count 1

Between February 2016 and May 2018, the Respondent failed to establish and maintain a system that allowed adequate supervision of the activities of its personnel, contrary to IIROC Dealer Member Rule 38.1.

##### Count 2

Between January 2012 and May 2018, the Respondent failed to establish and maintain a system of internal controls and monitoring that was reasonably designed to ensure compliance with IIROC's regulatory requirements, thus failing to fulfill its supervisory responsibilities with respect to the fees invoiced in certain accounts, contrary to IIROC Dealer Member Rule 38.1 and Rule 2500.

#### **PART V - TERMS OF SETTLEMENT**

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

- a) A fine in the amount of \$80,000 for count 1;
  - b) A fine in the amount of \$50,000 for count 2;
  - c) Costs to IIROC in the amount of \$5,000.
53. 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**

54. If the Hearing Panel accepts the 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;
55. 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 in Part III of this Settlement Agreement.

#### **PART VII – SETTLEMENT ACCEPTANCE PROCEDURE**

56. The Settlement Agreement is subject to acceptance by the Hearing Panel;
57. The Settlement Agreement shall be presented to a Hearing Panel at a settlement hearing held 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.

58. 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.
59. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives its right, under IIROC rules and any applicable legislation, to a disciplinary hearing, review or appeal.
60. 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 in relation to the same allegations or to related allegations.
61. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
62. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IIROC will post a full 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.
63. If this Settlement Agreement is accepted, the Respondent agrees that neither it, nor anyone on its behalf, will make a public statement inconsistent with this Settlement Agreement.
64. 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 – SIGNATURE OF THE SETTLEMENT AGREEMENT**

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

**SIGNED** this July 21, 2020

(S) Jean Carrier

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Name: Jean Carrier  
Title: President  
PEAK Securities Inc.  
Respondent

**SIGNED** this July 21, 2020

(S) Fanie Dubuc

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Fanie Dubuc  
Senior Enforcement Counsel,  
On behalf of IIROC Enforcement Staff

**SIGNED** this July 21, 2020

(S) Francis Larin

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Francis Larin  
Senior Enforcement Counsel,  
On behalf of IIROC Enforcement Staff