

IN THE MATTER OF:

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

AND

NEIL DiCOSTANZO

NOTICE OF HEARING

An initial appearance (“Initial Appearance”) will be held before a hearing panel (“Hearing Panel”) of the Investment Industry Regulatory Organization of Canada (“IIROC”) pursuant to Sections 8203 and 8205 of the Consolidated Enforcement, Examination and Approval Rules of IIROC in this matter. The purpose of the Initial Appearance is to schedule a hearing (“Hearing”).

The Initial Appearance will be held on: February 5, 2021 at 10:00 a.m.

The Initial Appearance will be held at: Toronto (electronically).

The Respondent must serve a Response (“Response”) to this Notice of Hearing and the Statement of Allegations dated December 11, 2020 (“Statement of Allegations”) in accordance with Section 8415 within 30 days from the effective date of service of this Notice of Hearing.

If the Respondent does not file a Response in accordance with Section 8415(1), the Initial Appearance may be immediately converted to a Hearing.

If the Respondent files a Response in accordance with Section 8415(1), the Initial Appearance will be immediately followed by an initial prehearing conference. In preparation for the prehearing conference, the Respondent must serve and file a prehearing conference form in accordance with Section 8416(5).

The purpose of the Hearing will be to determine whether the Respondent has committed the contraventions that are alleged by the staff of IIROC (“Staff”). The alleged contraventions are contained in the Statement of Allegations.

Pursuant to Section 8409, the Hearing will be conducted as a[n]:

- ☐ Oral Hearing
- ☒ Electronic Hearing
- ☐ Written Hearing

The Respondent may object to the format of the Hearing. The objection must be made in accordance with Section 8409.

The Initial Appearance, the Hearing and all related proceedings will be subject to the Rules of Practice and Procedure as set out in Section 8400.

Pursuant to the Rules of Practice and Procedure, the Respondent is entitled to attend the Hearing and to be heard, to be represented by counsel or by an agent, to call, examine and cross-examine witnesses, and to make submissions to the Hearing Panel at the Hearing.

If the Respondent fails to serve a Response at the Hearing the Hearing Panel may, pursuant to Section 8415(4):

- (a) proceed with the hearing as set out in this Notice of Hearing, without further notice to the Respondent;
- (b) accept as proven the facts and contraventions set out by Staff in the Statement of Allegations; and
- (c) order sanctions and costs against the Respondent pursuant to Section 8210.

If the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by Staff in the Statement of Allegations, the Hearing Panel may, pursuant to Section 8210, impose any one or more of the following sanctions:

- (a) a reprimand;
- (b) disgorgement of any amount obtained, including any loss avoided, directly or indirectly, as a result of the contravention;
- (c) a fine not exceeding the greater of:
 - (i) \$5,000,000 per contravention; and
 - (ii) an amount equal to three times the profit made or loss avoided by the person, directly or indirectly, as a result of the contravention.

- (d) suspension of the person's approval or any right or privilege associated with such approval, including access to a Marketplace, for any period of time and on any terms and conditions;
- (e) imposition of any terms or conditions on the person's continued approval or continued access to a Marketplace;
- (f) prohibition of approval in any capacity, for any period of time, including access to a Marketplace;
- (g) revocation of approval;
- (h) a permanent bar to approval in any capacity or to access to a Marketplace;
- (i) permanent bar to employment in any capacity by a Regulated Person, and
- (j) any sanction determined to be appropriate under the circumstances.

If the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by the Staff in the Statement of Allegations, the Hearing Panel may assess and order any investigation and prosecution costs determined to be appropriate and reasonable in the circumstances pursuant to Section 8214.

DATED this 11th day of December, 2020.

"National Hearing Coordinator"

NATIONAL HEARING COORDINATOR
Investment Industry Regulatory Organization of Canada
Suite 2000, 121 King Street West
Toronto, Ontario, M5H 3T9

IN THE MATTER OF:

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

AND

NEIL DiCOSTANZO

STATEMENT OF ALLEGATIONS

Further to a Notice of Hearing dated December 11, 2020, Enforcement Staff make the following allegations:

PART I – REQUIREMENTS CONTRAVENED

Between December 2016 and March 2018, Neil DiCostanzo (the “Respondent”) engaged in outside business activity without the approval of his Dealer Member by arranging investments in two companies for various clients off the books and records of his Dealer Member, contrary to Dealer Member Rule 18.14.

PART II – RELEVANT FACTS AND CONCLUSIONS

Overview

1. Between December 2016 and March 2018, the Respondent engaged in outside business activities aimed at facilitating investments in two companies off the books and records of his firm, Foster & Associates Financial Services Inc. (referred to throughout as “Fosters” or the “Dealer Member”). These activities included making client referrals, facilitating subscription agreements and issuance of subscription certificates, and general promotion and solicitation to prospective clients, including clients of the Respondent and Fosters

(collectively, the “Business”). In addition, the Respondent, either directly or through his spouse, received commissions for at least three client referrals, one of which occurred after his employment with the Dealer Member was terminated.

2. In March of 2018, Fosters discovered that the Respondent had been engaging in the Business without the firm’s knowledge or approval. In particular, an investigation into the matter, including a review of the Respondent’s emails over the relevant period, revealed that the Respondent had facilitated investments for numerous clients, some of whom were clients of the Respondent at Fosters.
3. As a result, Fosters terminated the Respondent’s employment with the firm.
4. The Respondent was aware, or ought to have been aware, that his Dealer Member’s policies, as well as IIROC requirements, required disclosure and written approval before he could engage in outside business activities so as to facilitate, among other things, the identification of any potential conflicts of interest and to allow for appropriate supervision by his firm. The Respondent nonetheless failed to do so in relation to the Business.

Background

5. Between October 2014 and March 2018, the Respondent was a Registered Representative with Fosters. As stated, he was terminated in March 2018 for cause due to his participation in the Business.
6. The Respondent entered the securities industry in 1995 and worked at various other firms prior to his tenure with Fosters.
7. The Respondent is no longer a Registered Representative with IIROC.

Company 1

8. Between December 2016 and March 2018, the Respondent facilitated investments in Company 1, a company which operates encrypted cloud software (“Company 1”), without Foster’s knowledge or approval. Fosters had brokered a previous private placement for Company 1 in September of 2015 but was not engaged to broker any subsequent

offerings for the company. Two of the Respondent's clients had invested in the 2015 private placement and Company 1 continued to have an account with Fosters as at 2018, but the Respondent was not the advisor on that account.

9. Over this period of time, the Respondent was in regular contact with various representatives of Company 1 including its President & CEO and his executive assistant as evidenced by numerous email communications:
 - a. Company 1 regularly provided the Respondent with marketing material, which the Respondent then shared with potential investors to promote the company and solicit investment.
 - b. The Respondent organized and attended numerous information meetings with prospective investors, both on his own and with representatives of Company 1, to share information about the company and to solicit investment.
 - c. The Respondent shared financial projections about the company with prospective investors and gathered and shared more information on Company 1 in response to investors' inquiries.
10. The Respondent sent emails of this nature to over 100 prospective investors, approximately one-third of whom were clients at Fosters. In one such email dated February 28, 2017, the Respondent described Company 1 as a software company he was "...helping with a .81 [cents per share] financing..." By his own description, the Respondent was holding himself out as helping to secure financing/raise capital for Company 1.
11. The Respondent's emails relating to Company 1 over this period also reflect that he was facilitating the completion of Subscription Agreements and Subscriber Certificates for investors that he had recruited, and coordinating the logistics of payment by investors for Company 1's shares.
12. In aggregate, over \$2 million worth of Company 1's shares were purchased with the Respondent's involvement, and some investors purchased shares on multiple occasions.

13. In addition, at least some investors referred by the Respondent used cash to purchase Company 1 shares. An email from the CEO's executive assistant to the Respondent dated December 6, 2016 with the subject line "Cash given" indicates that two investors paid for shares with cash. A further email between the Respondent and the executive assistant dated May 29, 2017 discloses the name of a third investor who used cash to purchase \$40,000 worth of shares in Company 1.
14. On November 23, 2017, an email money transfer in the amount of \$5,000 was sent to the Respondent with the description "...Company 1 referral fee."
15. Additional emails reference payment by Company 1 to the Respondent, but the specific amounts and forms of compensation to the Respondent are known only to the Respondent. For example, in an email from the executive assistant to the Respondent dated December 21, 2017, she asked:

"Nello [referring to the Respondent], what is the total \$ amount you are bringing in tomorrow? This way I can prepare your "fee" cheque ahead of time so that [the CEO] doesn't have to be bothered with it. Thanks."
16. Despite the numerous emails regarding Company 1 that the Respondent sent and received on his Fosters email account, there is indication that the Respondent made efforts to keep his communications regarding Company 1 concealed from his Dealer Member. In an email between the executive assistant and the Respondent dated September 28, 2017, in which the Respondent was inquiring about an email he had been expecting, the executive assistant advised the Respondent: "It might have gone to your sympatico [i.e., personal email] address because you said you wanted to keep Company 1 emails separate from Foster."
17. Communications between the Respondent and Company 1 continued even after he was terminated by the Dealer Member in March 2018.

Company 2

18. Communications between the Respondent and various other parties demonstrate that he

also facilitated investments in a second company, a cannabis producer that was not among Fosters' offerings ("Company 2"). Company 2 was an offering of an Exempt Market Dealer (the "EMD").

19. The Respondent's participation in the Business as it relates to Company 2 included, among other activity, facilitating investments in Company 2 by two corporate clients, Corporate Account 1 and Corporate Account 2, as further described below.
20. In February 2018, Corporate Account 1 made an investment in Company 2 in the amount of \$250,000 as evidenced by a Know Your Client & New Client Application Form signed and dated February 20, 2018 and a related Subscription Agreement and Subscriber Certificate. The Respondent, either directly or through his spouse, N.F. (the "Respondent's Spouse"), received a commission of \$12,500 for facilitating this investment, which represented a referral fee of 5%. The referral fee was paid pursuant to a referral agreement between the EMD and the Respondent's Spouse dated February 16, 2018 (the "Referral Agreement"). The Referral Agreement was subsequently amended to provide for a referral fee/commission of 6% instead of 5%.
21. In June 2018, after his termination by Fosters, the Respondent facilitated a further investment in Company 2 by Corporate Account 2 in the amount of \$420,000. This investment is evidenced by a Know Your Client & New Client Application Form dated May 31, 2018 and a related Subscription Agreement and Subscriber Certificate. The Respondent, either directly or through his spouse, received a commission of \$25,200, for facilitating this investment pursuant to the Referral Agreement.
22. Despite the Referral Agreement being between the EMD and the Respondent's Spouse, surrounding email communications reveal that it was the Respondent himself who facilitated all aspects of the referrals of Corporate Account 1 and Corporate Account 2, including the flow of invoices for any associated referral fees. For example, in an email from the Respondent to the CEO of the EMD dated February 26, 2018, with the subject line "Invoice For Referral Form," the Respondent attached an invoice dated February 25, 2018 from the Respondent's Spouse to the EMD which read:

"Hi [name of CEO], here is the invoice for the referral for February 25, 2018 for
[name of Company 2]
Referral Fee: \$12,500
Total Invoice: \$12,500
Thank you,
[N.F.]"

23. The beneficial owner of both Corporate Account 1 and Corporate Account 2 was an individual, B.R., who also made other investments with the Respondent, namely investments in Company 1.

The Annual Staff Questionnaire

24. In January 2017, the Respondent completed, signed and returned to the Dealer Member an Annual Staff Questionnaire circulated to all staff pursuant to IIROC requirements (the "Questionnaire"). The instructions in the Questionnaire specifically required staff to disclose all "accounts outside Fosters" and all "outside business" even if previously disclosed to the Dealer Member.
25. The Respondent provided "no" answers to the following question in the Questionnaire:
- "Outside Business or Volunteer Activities
Are you involved in any business or employment other than your position with Fosters or are you in an officer or director (or equivalent) position with any volunteer organization?"
26. In answering "no" to this question, the Respondent specifically failed to disclose the Business in his responses to the Questionnaire.
27. In addition, under the heading labeled "General Policies Applicable to all Registered Staff," the Questionnaire included the following statements:

"Non-Brokered Private Placements (NBPP)

Any NBPP for which you or Fosters will receive any remuneration must be approved according to the firm's procedures.

Procedures Manual

I confirm that I have access on my computer to the most recent Fosters Policy and

Procedures Manual (dated June 2015). Additionally, I have reviewed and am familiar with those sections of the manual that apply to my job/duties at Fosters.”

28. The Fosters Policy and Procedures Manual referred to in the Questionnaire required, among other things, that “[a]ny Fosters staff who have an “OBA” need to advise the CCO [Chief Compliance Officer] or the UDP [Ultimate Designated Person]...” of Fosters.
29. In signing and submitting the Questionnaire to Fosters, the Respondent certified that the information he provided was accurate and complete and undertook to promptly advise Fosters of any changes.
30. Despite this certification, the Respondent engaged in the Business without informing or seeking the approval of the Dealer Member contrary to both his firm’s Policy and Procedures Manual, as well as IIROC requirements.

DATED at Toronto, Ontario this 11th day of December, 2020.