

IN THE MATTER OF:

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

AND

R. J. O'BRIEN & ASSOCIATES CANADA INC.

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Investment Industry Regulatory Organization of Canada (“IIROC”) will issue a Notice of Motion to announce that it will hold a settlement hearing to consider whether, pursuant to section 8215 of the IIROC Rules, a hearing panel (“Hearing Panel”) should accept the settlement agreement (“Settlement Agreement”) entered into between the staff of IIROC (“Staff”) and R. J. O’Brien & Associates Canada Inc. (“R.J. O’Brien” or “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.

Overview

4. R.J. O'Brien is a futures, options, and commodities brokerage firm that provides access to what it describes as the "highly sophisticated derivatives market."
5. Between February 2016 and February 2018 (the "Relevant Period"), R.J. O'Brien did not adequately supervise Yonathan Chanock Shields ("Shields") to ensure his activities complied with know your client ("KYC") and suitability requirements by, particularly, failing to maintain adequate records of its supervisory activities in relation to nine specific clients' accounts, namely, VP, ED, SS, JM, SF and RF, MW, BT and AM (the "Clients").
6. The obligation of a Dealer Member to maintain adequate records of supervisory activities is an important aspect of the Member's supervisory activities which permits the regulator to verify supervision activities and fulfill its regulatory oversight obligations.

Background

7. R.J. O'Brien has been a Dealer Member since 2010.
8. Shields was a Registered Representative ("RR") with R.J. O'Brien at its Toronto premises from October 2014 until October 2019 and had been an Approved Person since 1995. Shields is no longer an Approved Person.
9. During the Relevant Period, both Tier 1 and Tier 2 supervision was conducted by R.J. O'Brien Compliance Staff at its office in Winnipeg, Manitoba. Informal supervision of Shields was also conducted by R.J. O'Brien's Ultimate Designated Person ("UDP"), in Toronto, where he had an office in physical proximity to Shields' office.
10. In 2018, Shields' Clients filed complaints with IIROC alleging improper handling of their accounts. In a decision dated July 20, 2021, an IIROC hearing panel found that Shields contravened Dealer Member Rules 1300.1(a) and 1300.1(q).

11. Pursuant to Dealer Member Rules 38 and 2500, R.J. O'Brien is required to establish and maintain a system to supervise the activities of each of its RRs, which system is required to, among other things, maintain adequate records of supervisory activity.
12. Following the account opening for the Clients, R.J. O'Brien maintained some records of its supervision of Shields' suitability obligations that included certain email correspondence and recordings of phone calls between Compliance Staff and Shields.
13. However, R.J. O'Brien failed to maintain adequate records of certain other telephone and in-person conversations and meetings between and among its UDP, Chief Compliance Officer ("CCO"), Compliance Officer, and Shields, during which conversations and meetings Shields represented that he was complying with IROC Rules and R.J. O'Brien's policies and procedures in relation to KYC and suitability obligations.

The Policies and Procedures Manual

14. The R.J. O'Brien Policies and Procedures Manual ("P&P") included numerous requirements regarding account opening, KYC, and suitability obligations and the supervision of those obligations. These requirements focused on the explanation to clients of the level of risk associated with futures trading, the possibility of losses exceeding the amount of funds invested, and that particular attention should be paid to potential clients with no previous investment history.
15. The P&P provided that in order to expedite the account opening process, it was suggested that an advisor walk the client through the account opening documentation and review those areas to be completed by the client.
16. The P&P further required that supervisors monitor advisors' activities to ensure compliance with the policies and procedures set out therein and to determine that adequate risk disclosure had been provided to all prospective clients. In accordance with regulatory requirements, RJO provided each Client with the current risk disclosure

statement and obtained the Client's acknowledgement of its receipt before the Client's initial trade in futures contracts or futures contract options.

17. Shields represented and certified, in writing, that he complied and was complying with all of the requirements contained within and mandated by the P&P.

Notices, Bulletins, Circulars and Emails

18. Over the course of the Relevant Period, R.J. O'Brien distributed numerous Bulletins, Circulars, Articles, emails and other documentation to Shields advising and reminding him of his obligations and the requirements regarding account opening, KYC, and suitability obligations.

Failure to Supervise

(i) Know-Your-Client

19. The Clients were referred to Shields by Shane Dubin ("Dubin") an RR at another Dealer Member as detailed below. Prior to Shields and R.J. O'Brien onboarding the Clients, the CCO and UDP had conversations with Shields in which Shields represented that he would speak with every client referred by Dubin and satisfy the requirements that he understood he needed to address before proceeding to open an account. Shields also agreed and acknowledged that he personally needed to know the client and ensure that the account was suitable for the prospective client.
20. R.J. O'Brien's CCO, UDP and Shields also discussed the policies and protocols set out in the firm's P&P and Shields confirmed that he would follow those steps when opening the accounts for the Clients referred by Dubin and executing transactions.
21. R.J. O'Brien did not maintain adequate records of the steps it took to ensure Shields met his KYC obligations and to ensure that his activities complied with the P&P, including that:

- (a) Shields ensured the Clients fully understood the risks inherent in trading futures and options on futures;
- (b) Shields had reviewed the new client application form (“NCAF”) with the Clients;
- (c) Shields had asked whether the Clients fully understood the use of leverage in the futures/options markets; and
- (d) Shields understood and assessed whether the product was suitable (both KYC and KYP) for each individual client prior to recommending it to a Client and subsequently trading on their behalf.

(ii) Opening of the Client Accounts

- 22. R.J. O’Brien opened accounts for the Clients during 2016 and 2017.
- 23. Dubin was Shields’ former colleague at Scotia Capital Inc. The referrals were made in order for the Clients to engage in Dubin’s option writing strategy that involved selling uncovered puts and calls on futures markets, predominantly focused on S&P 500 E-mini contracts (the “Strategy”).
- 24. R.J. O’Brien considered the Strategy highly speculative.
- 25. Dubin entered into a settlement agreement with IIROC in 2019 in respect of his conduct in making the referrals to Shields.
- 26. Shields never met or spoke with three of the Clients. In the case of four other Clients, he spoke to them for a matter of minutes and did not discuss any substantive issues in relation to KYC requirements or the operation of their accounts.
- 27. However, in response to verbal queries by R.J. O’Brien’s UDP and CCO, Shields represented that he had met with the Clients before their account opening documents were sent to them, that he had discussed the Strategy with the Clients, and that he

discussed his recommended trades with the Clients prior to entry to ensure that they were appropriate for the Clients.

28. Shields did not discuss or review the content of the NCAFs with any of the Clients but represented in conversations with Compliance Staff that he had done so. Other than Shields and his assistants RM and AK, no representative of R.J. O'Brien met or spoke with any of the Clients prior to the events of February 5, 2018 described below.
29. The NCAFs reflected that most of the Clients did not have any futures or options on futures trading experience.
30. In the case of the remaining Clients, although their NCAFs reflected such experience, Shields was aware that this was not accurate and that the experience instead reflected that of their respective spouses, each of whom had trading authority over those Client's Accounts.
31. R.J. O'Brien questioned Shields as to the information on the Clients' NCAFs in order to determine that the accounts should be opened and relied on his assurances that the accounts were suitable for the Clients. R.J. O'Brien did not maintain adequate records of the questions asked of Shields, replies received, actions taken, and other related information.

(iii) Account Approval Process

32. As part of the approval process, R.J. O'Brien reviewed a dollar figure on the NCAF identified as "Approximate Risk Capital Available for Futures Trading (Risk Capital refers to the amount you are willing to risk trading.)"
33. The risk capital amount was meant to function as a threshold such that once a client sustained losses in the amount identified, R.J. O'Brien would assess the client's account for any further trading.

34. In the case of many of the Clients, R.J. O'Brien reduced their risk capital amounts as part of the approval process, thereby enhancing the threshold for supervision purposes. The reductions of these amounts were not verbally communicated to these Clients, however the revisions were included in the Client's account opening package that they received upon account approval. Ultimately, however, the reduction in risk capital amount did not trigger a suitability review during the Relevant Period and the Accounts were liquidated in February 2018, as detailed below.
35. In addition, many of the Clients were required to sign an Additional Risk Disclosure Form (the "ARDF") as they did not meet R.J. O'Brien's guidelines to open a futures/futures option account because they had no futures or options on futures trading experience.
36. In the ARDF, R.J. O'Brien advised the Clients to reconsider the investment as the trading was high risk and stated that "[y]ou should therefore carefully consider whether such trading is suitable for you in light of your circumstances and financial resources."
37. R.J. O'Brien's supervisors during the Relevant Period considered the ARDF as a cautionary measure to ensure the Clients understood the risks of the investment and required the Clients to sign as part of the form an acknowledgement that stated: "I understand that I do not meet the minimum guidelines to open an account set forth by [R.J. O'Brien]."
38. R.J. O'Brien did not retain adequate records demonstrating that it had questioned Shields as to whether the ARDF, which effectively asked the Clients to accept that the suitability obligation was being shifted to them by the firm, had been discussed with them before they signed it, and did not take its own independent steps to discuss the risks with each Client.
39. R.J. O'Brien approved and opened the accounts for these Clients when the Risk Disclosure statement was acknowledged, executed and obtained from the Client along with the executed ARDF in circumstances where such was required.

(iv) Suitability

40. The P&P included numerous requirements regarding suitability obligations and the supervision of those obligations. The requirements reiterated the high-risk nature of trading in futures and the potential for significant losses as well as the need to keep KYC information up to date. The P&P specifically provided that orders may not be received by electronic communications including email.
41. The P&P provided that supervisors were required to monitor all accounts for, among other things, unsuitable trading and inappropriate trading strategies, and that such supervision was to be documented in writing.
42. Trading in the Accounts was based on Shields' recommendations sent via email, which he generated after discussions with, or instructions from, Dubin. Contrary to the P&P, Shields' only form of communicating recommendations to the Clients during the Relevant Period was via email.
43. Shields sent recommendation emails to the Clients that were generally identical, with adjustments for position size or quantity, but there was no discussion or analysis in the recommendation emails as to why the trades were suitable for the Clients.
44. The Clients were advised by Shields or Dubin to approve the recommendations by responding via email.
45. Throughout the Relevant Period, the Clients followed Shields' recommendations and provided instructions to Shields via email to execute the transactions and Shields executed the recommended transactions.

Reviews and Supervision of the Transactions

46. R.J. O'Brien's Compliance Officer regularly reviewed daily and monthly reports of the Accounts and of the trading activity in the Accounts to ensure that each trade was within the requested account objectives and executed at a different time, which was a proxy for

ensuring that Shields was separately communicating with each Client before acting on his or her instructions. No trades in the Accounts were executed within the same minute or minutes.

47. None of the activity that took place in any of the accounts was inconsistent with the Clients' account documentation, nor were the positions in the accounts, or the accounts as a whole, inconsistent with the Clients' account documentation.
48. Notwithstanding the requirements of the P&P and the reviews by the Compliance Officer, R.J. O'Brien failed to maintain adequate records of its supervision of Shields with respect to suitability, including evidence of inquiries made, replies received, actions taken, and other related information adequate to reflect that all necessary supervisory steps had been taken.

Client Losses

49. On February 5, 2018, the S&P Index experienced a significant spike in volatility and a corresponding drop in value. Shields sent a series of recommendation emails to the Clients during the day, all in the same format as prior recommendation emails.
50. Over the course of the day, R.J. O'Brien had discussions with Shields to ensure that he was communicating with the Clients and Shields represented that he was communicating with the Clients and that the Clients were liquidating their accounts.
51. Later that evening, Shields sent an email entitled "Trade Liquidation" to the Clients in the same format as all of his prior recommendation emails, noting only that "due to market conditions" he recommended that the Clients liquidate all of their positions that night.
52. Consistent with all of Shields' prior recommendation emails, there was no discussion or analysis in the emails as to why the recommendations were suitable, nor were any options other than liquidation offered or discussed.

53. All of the Clients approved Shields' recommendations and instructed Shields to execute the transactions which Shields carried out, liquidating all of the positions in the Clients' Accounts which resulted in realized losses to some of the Clients. Civil proceedings were commenced by some of the Clients against the Respondent and by the Respondent against some of the Clients. The civil proceedings were resolved to the satisfaction of the parties, with Mutual Full and Final Releases being provided and the dismissal of all civil proceedings.
54. R.J. O'Brien failed to maintain adequate records of its supervision of Shields with respect to the events of that day, including evidence of conversations it had with Shields, his representations and assurances that he was speaking with the Clients, and other related information adequate to reflect that all necessary supervisory steps had been taken.
55. Shields resigned from the firm in October 2019.

Additional Factors

56. Neither the Respondent nor any of its current or former compliance staff has any disciplinary history with IIROC.

PART IV – CONTRAVENTIONS

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

Between February 2016 and February 2018, R.J. O'Brien failed to adequately supervise the activities of one of its Registered Representatives in relation to nine specific Client accounts by failing to maintain adequate records of its supervisory activities in relation to those accounts, contrary to Dealer Member Rules 38.1 and 2500.

PART V – TERMS OF SETTLEMENT

58. The Respondent agrees to the following sanctions and costs:
- (a) Payment of a fine of \$90,000; and
 - (b) Costs in the amount of \$10,000.
59. 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

60. If the Hearing Panel accepts this Settlement Agreement, Staff will not initiate any further action against the Respondent in relation to the facts set out in Part III and the contraventions in Part IV of this Settlement Agreement, subject to the provisions of the paragraph below.
61. 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 IIROC 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

62. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
63. 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.

64. 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.
65. 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.
66. 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.
67. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
68. 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.
69. 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.
70. 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

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

DATED this “1” day of “Nov”, 2022.

“Robert O’Connell, CFO”
Witness

“Keith Riddoch, CEO”
R.J. O’Brien & Associates
Canada Inc./per

DATED this “2nd” day of “November”, 2022.

“Paddy Patel”
Witness

“Andrew P. Werbowski”
Andrew P. Werbowski
Director, Enforcement Litigation on
behalf of Enforcement Staff of the
Investment Industry Regulatory
Organization of Canada

The Settlement Agreement is hereby accepted this “30” day of “November”, 2022 by the following Hearing Panel:

Per: “Paul Moore”
Mr. Paul Moore, Panel Chair

Per: “Edward Jackson”
Panel Member

Per: “Sarah Shody”
Panel Member