

# Re Kumar

IN THE MATTER OF:

**The Rules of the Investment Industry Regulatory Organization of Canada (IIROC)**

**and**

**Brian Anish Kumar**

2015 IIROC 33

Investment Industry Regulatory Organization of Canada  
Hearing Panel (Ontario District)

Heard: August 19, 2015

Decision: August 19, 2015

Written Reasons: September 28, 2015

**Hearing Panel:**

Thomas G. Heintzman (Chair), Mary Savona and David Lang

**Appearance:**

Rob Del Frate, Senior Enforcement Counsel for IIROC

Mark Sandler, Counsel for the Respondent

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## REASONS FOR DECISION

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### I. Introduction

¶ 1 These are the Reasons for Decision of the Hearing Panel arising from a Hearing held on August 19, 2015. That hearing was held to consider the Settlement Agreement between the Staff of the Investment Industry Regulatory Organization of Canada (“IIROC”) and the respondent Brian Anish Kumar (“Mr. Kumar” or “the Respondent”). At the hearing, the Hearing Panel accepted the Settlement Agreement and indicated that Reasons for Decision would be issued in due course. These are the Reasons for Decision.

¶ 2 In the Settlement Agreement, IIROC Staff and Mr. Kumar agreed to certain facts and agreed to recommend that the Hearing Panel accept the Settlement Agreement.

¶ 3 In the Settlement Agreement, Mr. Kumar admitted to the contravention of IIROC Dealer Member Rule 29.1 as follows:

- a) Between February 2013 and April 2014, the Respondent made improper use of \$1,450,980 in client funds by transferring these funds from the brokerage accounts of four clients into his own personal brokerage account without the clients’ consent or authorization, contrary to IIROC Dealer Member Rule 29.1.
- b) Between February 2013 and April 2014, the Respondent forged copies of cheques and client signatures to facilitate the unauthorized transfer of client funds into his personal brokerage account, contrary to IIROC Dealer Member Rule 29.1.

¶ 4 In the Settlement Agreement, IIROC Staff and the Respondent agreed to the following penalty: a permanent prohibition and a fine in the amount of \$50,000. The Respondent agreed to pay costs to IIROC in the sum of \$5,000.

¶ 5 The executed Settlement Agreement was marked as Exhibit 1 at the hearing and an unexecuted copy is attached to, and incorporated into, these Reasons.

### **Submissions**

¶ 6 In his oral and written Submissions of Staff, Counsel for IIROC, Mr. DelFrate, submitted that the proposed penalty is appropriate having regard to all the circumstances and ought to be accepted by the Hearing Panel pursuant to IIROC Rule 20.36. Mr. DelFrate referred the Panel to a number of decisions in which the role of the Hearing Panel, in accepting or rejecting a Settlement Agreement reached by IIROC Staff and a respondent, has been discussed.

¶ 7 Mr. DelFrate referred the Hearing Panel to the IIROC Sanction Guidelines as setting forth Sanction Principles and Key Factors which may be referred to by an IIROC Hearing Panel when considering appropriate sanctions.

¶ 8 Mr. DelFrate reviewed the Settlement Agreement in detail. In doing so, Mr. DelFrate made the following submissions:

- a. Many elements of Mr. Kumar's conduct were serious violations of his duties to his clients and employer, and amounted to conscious, repeated, planned and deliberate misconduct. This misconduct was over a period of 14 months and involved at least six clients. Mr. DelFrate submitted that Mr. Kumar held a privileged position in the investment industry. That position required that Mr. Kumar act honestly and in good faith and observe a high ethical standard, and he had abused that privilege.
- b. Some of Mr. Kumar's conduct involved very serious documentary deception including the fictitious copying of cheques, forging of client signatures, providing a false account statement and covering over his misconduct for 14 months.
- c. Mr. DelFrate outlined the mitigating factors relating to Mr. Kumar's conduct. Mr. Kumar had no previous disciplinary record. He returned all the moneys which were taken from his clients, and also paid a return to those clients varying from 2% to 35%. Mr. Kumar had started to return those funds to his clients before his employer was alerted to the problem and before the IIROC investigation was commenced.
- d. From the very beginning of the IIROC investigation, the Respondent admitted responsibility for his misconduct and cooperated with IIROC staff, thereby shortening the time and expense of the investigation.

¶ 9 During his submissions, Mr. DelFrate was asked questions by the panel members about the account that, according to the Settlement Agreement, Mr. Kumar maintained at Interactive Brokers Group ("IB") and into which all the clients' funds made their way together with Mr. Kumar's own funds. Mr. DelFrate acknowledged that IIROC had not conducted a forensic audit of the IB account, but he advised the Panel that IIROC had access to the IB account records and from its investigation, IIROC was satisfied that it had a good understanding of the amount and source of the relevant funds. IIROC was satisfied that Mr. Kumar had fairly calculated the return to the clients of their monies and the proper portion of any profits earned in that account, that accordingly Mr. Kumar had received no part of any benefit or return from those funds, and that the funds returned to the clients had not come from elsewhere "to pay Peter from Paul", as it were. Mr. DelFrate advised that none of Mr. Kumar's clients have complained about the amount of moneys which have been returned to them, which tended to corroborate the fairness and accuracy of Mr. Kumar's repayment to the clients of their funds and the return upon those funds.

¶ 10 Mr. DelFrate submitted that, notwithstanding the mitigating factors present in this case, strong sanctions were required to address the deceptive and deceitful conduct in which Mr. Kumar had engaged. He submitted that a permanent ban (i.e., a permanent prohibition of approval in any capacity under IIROC Rule 20.33(2)(e)) on participating as a registrant in the securities industry was a very serious sanction. In addition to the

permanent prohibition, a fine of \$50,000 and payment of costs would demonstrate to the industry the seriousness with which this conduct was viewed. He pointed to the decision in *Re Cornacchia*<sup>1</sup> as being one in which, in not dis-similar circumstances, a permanent ban on approval of registration in any capacity with IIROC was accepted as an appropriate penalty without a fine or costs being imposed.

¶ 11 Mr. Sandler, counsel for Mr. Kumar, supported the submissions made by Mr. DelFrate. Without excusing the seriousness of Mr. Kumar's deceptive conduct, Mr. Sandler submitted that the appropriateness of the penalty should have regard to the fact that Mr. Kumar has repaid the clients, together with a return on those funds, and started doing so before the IIROC investigation commenced. In his submission, this fact distinguished the present case from many of the other cases cited by IIROC counsel, in which re-payment was made by the employer or the monies were gambled away or lost in some other manner.

## Analysis and Reasons

### 1. The principles to be applied by the Hearing Panel

¶ 12 The proper approach to be taken by the Hearing Panel in this case has been stated by many prior hearing panels. A comprehensive statement of those principles is found in *Re Melville*<sup>2</sup>:

“9 In the recent decision of *Re Faber*, 2014 IIROC 14 (CanLII), the panel commented on the role of a Hearing Panel in considering a Settlement Agreement in the following terms:

9. Under the provisions of IIROC's Rule 20.36, it is open to this Hearing Panel to either accept or reject the Settlement Agreement tendered upon us by the parties. It is not a question of whether the agreed-upon penalties are ones which this Panel would have imposed had the matter come before us for determination at a hearing. It is also not open to us to amend, re-write or alter the terms of the agreement reached between the parties.

10. It is however our fundamental responsibility to be satisfied that the penalties set forth in the agreement are within a reasonable range of appropriateness in the circumstances set forth in the agreed-upon statement of facts.

11. The following excerpts from previously decided cases as recorded in the decision of *Re Ast* (2012 IIROC 38) set forth the parameters of the Hearing Panel's decision making processes when reviewing a Settlement Agreement presented to us by the parties to the dispute:

#### Standard for Reviewing a Settlement Agreement

13 The standard for reviewing a Settlement Agreement was well-stated in a recent Pacific District hearing, *Re Johnson* (2012 IIROC 19), where the panel stated:

'The test applicable to a decision whether to accept or reject a settlement is well-known. Simply put, a panel should accept such an agreement unless it considers the penalty provided for clearly to fall outside a reasonable range of appropriateness.'

14 There are many similar statements. See, for example, *Re Jiwa and Hoffar* (2012 IIROC 9), which adopted an earlier IDA decision, stating:

'It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.' Another recent example is *Re Trapeze Capital* (2012 IIROC 25), where the panel states:

'It is clear from jurisprudence emanating from the courts and from Hearing Panels of IIROC, Investment Dealers Association and the Mutual Fund Dealers Association, that our task is not to decide whether, in this case, we

<sup>1</sup> *Cornacchia (Re)*, 2010 IIROC 9, 2010 LNIROOC 9

<sup>2</sup> *Melville (Re)*, 2014 IIROC 51, 2014 LN IIROC 51 at paras. 9-11

would have arrived at the same decision as that reached by the parties. Rather, our duty is to determine whether the penalty is a reasonable one and that it meets the objectives of the disciplinary process which are to maintain the integrity of the investment industry.'

15 And, finally, see the statement in *Re Rotstein and Zackheim* (2012 IIROC 27):

'Based upon this material it is our responsibility to review the agreement in order to satisfy ourselves that it falls within a reasonable range of appropriateness to the offence and circumstances recorded in the agreement and that there is nothing in the agreement which would be contrary to the public interest or bring the administration of the Rules of IIROC into public disrepute. If we are satisfied that the Settlement Agreement does not offend these principles then it should be accepted.'

10 Similarly, in the case of *Re Portfolio Strategies Securities*, 2012 IIROC 36, the Hearing Panel capsulized the standard of review of a settlement agreement as follows:

9. It is clear from jurisprudence emanating from the courts and from Hearing Panels of IIROC, Investment Dealers Association and the Mutual Fund Dealers Association, that our task is not to decide whether, in this case, we would have arrived at the same decision as that reached by the parties. Rather, our duty is to determine whether the penalty is a reasonable one and that it meets the objectives of the disciplinary process which are to maintain the integrity of the investment industry. We cite from the recent decision of the Hearing Panel in *Re CIBC World Markets Inc.*, [2011] IIROC No. 38:

13 Finally, hearing panels will not lightly interfere with a negotiated settlement. As was said in *Re Milewski*, [1999] IDACD No. 17,

... a District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.

Or, as put by Winkler J. (albeit in another context) in *Gilbert v. CIBC*, [2004] O.J. 4260:

There is a presumption of fairness when a proposed class settlement negotiated at arms length ... is presented to the court for approval. A court will only reject a proposed settlement when it finds that the settlement does not fall within a range of reasonableness.

The test to be applied is whether the settlement is fair and reasonable ... This allows for a range of possible results and there is no perfect settlement. Settlement is a product of compromise, which by definition, necessitates give and take.

## 2. Application of the principles in the present case.

¶ 13 The first element of the penalty referred to in the Settlement Agreement is a permanent prohibition of the Respondent from acting as an IIROC registrant. Both counsel for IIROC Staff and the Respondent submitted to us that this element of the penalty should be accepted by the Hearing Panel.

¶ 14 In our view, a permanent prohibition is appropriate and not outside the bounds of reasonableness. The Respondent engaged in repeated and intentional deceitful conduct. He betrayed the trust that his clients, his employer and the securities industry placed in him. In these circumstances, a permanent ban on registration with

IIROC has been recognized in prior cases as the appropriate penalty.<sup>3</sup>

¶ 15 A permanent prohibition on IIROC registration is also reasonable within the IIROC Sanction Guidelines. Clearly, the repeated and intentional misappropriation of the clients' funds placed this conduct at the high end of the severity of conduct referred to in the Sanction Principles and Key Factors. Item 6 of the Sanction Principles suggests that the Hearing Panel consider a permanent bar when the contraventions involve significant harm to the investing public, the integrity of the market and the securities industry, or the misconduct has an element of criminal or quasi-criminal activity; or there is reason to believe that the Respondent cannot be trusted to act in an honest and fair manner with clients. Each of those elements is applicable in the present case as the Respondent's conduct in repeatedly misappropriating his clients' funds violated the basic principles of trust and confidence underlying the securities industry.

¶ 16 Accordingly, in our view that portion of the proposed penalty involving a permanent prohibition on the Respondent being an IIROC representative should be accepted.

¶ 17 The second and third elements of the penalty proposed in the Settlement Agreement are the payment by the Respondent of a fine in the amount of \$50,000 and costs in the sum of \$5,000.

¶ 18 The panel was concerned that this amount of fine was not sufficient to demonstrate the seriousness of the Respondent's misconduct and might be seen as a "tap on the wrist" rather than a serious monetary penalty. For this reason, the members of the panel had numerous questions for counsel for the parties. Having considered the submissions made by counsel, the prior cases and the facts in this case, the panel is satisfied that it should accept these elements for the Settlement Agreement for the following reasons:

- a. The monetary elements of the penalty should be seen within the context of the whole penalty, including the permanent prohibition. That prohibition is the most extreme interruption of a respondent's registration that can be imposed. Accordingly, a prohibition plus a substantial fine does, in total, amount to a severe penalty.
- b. Moreover, the permanent prohibition provides the protection of the industry and the public against a repetition of the condemned activity by the Respondent, and future conduct of the same nature by others. Accordingly, the permanent prohibition plus the fine provided for in the Settlement Agreement prevents future misconduct by the Respondent and discourages future misconduct by others.
- c. There are several mitigating elements in the Respondent's conduct.
  - i. He has no prior discipline record.
  - ii. He cooperated with IIROC staff throughout the IIROC investigation.
  - iii. He commenced the repayment of the misappropriated funds to the clients before the investigation by IIROC commenced.
  - iv. He has paid back to the clients all the monies that he had taken, together with a return on those monies, and accordingly, did not himself derive any personal return from those monies. In this respect, the present case is quite different from several other prior cases in which the respondent's clients had not been repaid or the respondent's employer had paid back the clients, not the respondent. In those cases, the fine imposed upon the respondent was obviously intended to address the loss suffered by the clients which was not repaid by the respondent, a circumstance not present in this case.<sup>4</sup>

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<sup>3</sup> See for instance: *Ahn (Re)*, 2011 IIROC 31, 2011 LNIIROC 31 at paras 25-27; *Melville (Re)*, 2014 IIROC 51, 2014 LN IIROC 51 at paras. 36-38, 49; *Rao (Re)*, 2011 IIROC 12, 2011 LNIIROC 12 at para. 6; *Cornacchia (Re)*, 2010 IIROC 9, 2010 LNIIROC 9 at paras. 4 and 10.

<sup>4</sup> See for instance: *Ahn (Re)*, 2011 IIROC 31, 2011 LNIIROC 31 at para. 17; *Melville (Re)*, 2014 IIROC 51, 2014 LN IIROC 51 at para. 49; *Rao (Re)*, 2011 IIROC 12, 2011 LNIIROC 12 at para. 7; *Cornacchia (Re)*, 2010 IIROC 9, 2010 LNIIROC 9 at paras. 5(g) and 6.

- d. Many of these facts are Key Factors in Determining Sanctions set forth in the IIROC Sanction Guidelines. In particular, the Respondent's acceptance of responsibility and acknowledgment of misconduct, voluntary acts of compensation and restitution and cooperation with IIROC staff are cited as factors to be considered in mitigation of penalty in those Guidelines. In our view, the particularly noteworthy aspects of the present case are the Respondent's entire repayment of the misappropriated funds together with a return on those funds, and his cooperation with IIROC Staff and acknowledgment of responsibility. Those facts bear heavily on Mr. Kumar's side in accepting the reasonableness of the monetary penalties contained in the Settlement Agreement.

¶ 19 Returning to the principles that should guide the Panel's consideration of the Settlement Agreement, the Panel is of the view that the settlement process should assist in the proper enforcement of IIROC's regulatory regime. As the Sanction Guidelines state, there are two basic elements in that process: the engagement by IIROC Staff and respondents in negotiations knowing that the settlements will be respected if they fall within the bounds of reasonableness; and a full consideration of the acceptability of the settlement agreements by a hearing panel in a fair and efficient manner.

¶ 20 In the present case, the Hearing Panel heard lengthy submissions from counsel for the parties and questioned counsel extensively about the reasonableness of the settlement. That process and the factors set forth in these Reasons lead the Hearing Panel to conclude that the Settlement Agreement between IIROC Staff and the Respondent should be accepted.

¶ 21 Accordingly, the Hearing Panel accepts the Settlement Agreement.

Dated at Toronto this 28<sup>th</sup> day of September, 2015

Thomas G. Heintzman, Chair

Mary Savona

David Lang

## SETTLEMENT AGREEMENT

### I. INTRODUCTION

1. IIROC Enforcement Staff ("Staff") and Brian Anish Kumar (the "Respondent"), consent and agree to the settlement of this matter by way of this agreement (the "Settlement Agreement").
2. The Enforcement Department of IIROC has conducted an investigation ("the Investigation") in the conduct of the Respondent.
3. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C (the "Hearing Panel").

### II. JOINT SETTLEMENT RECOMMENDATION

4. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
5. The Respondent admits to the following contraventions of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:
  - a) Between February 2013 and April 2014, the Respondent made improper use of \$1,450,980 in client funds by transferring these funds from the brokerage accounts of four clients into his own personal brokerage account without the clients' consent or authorization, contrary to IIROC Dealer Member Rule 29.1.
  - b) Between February 2013 and April 2014, the Respondent forged copies of cheques and client

signatures to facilitate the unauthorized transfer of client funds into his personal brokerage account, contrary to IIROC Dealer Member Rule 29.1.

6. Staff and the Respondent agrees to the following terms of settlement:

- a) A permanent prohibition; and
- b) A fine in the amount of \$50,000.

7. The Respondent agrees to pay costs to IIROC in the sum of \$5,000.

### **III. STATEMENT OF FACTS**

#### **(i) Acknowledgment**

8. Staff and the Respondent agree with the facts set out in this Section III and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts.

#### **(ii) Factual Background**

#### **Overview**

- 9. Beginning in February 2013, the Respondent transferred a total of \$1,450,980 from the brokerage accounts of four of his clients without the clients' consent or authorization. He used forged cheques and falsified letters of authorization ("LOAs") to transfer the clients' funds from their brokerage accounts into his personal bank accounts. The amounts transferred from each client represented a significant portion of the amounts held in the clients' accounts.
- 10. He transferred the vast majority of the funds into his personal brokerage account and used the funds to invest in a trading strategy involving the use of options, exchange traded funds and foreign currency contracts. In at least one instance, he created a falsified portfolio statement which he provided to one of his clients.
- 11. The last unauthorized transfer from a client account took place in April 2014. In May 2014, and prior to the commencement of any investigation of his misconduct in September 2014, the Respondent began repaying his clients for the monies taken. By May 2015, the Respondent has repaid a total of \$1,608,902 to the four clients. These repayments represented the full amount of the funds transferred from the client accounts along with returns ranging from 2% to 35%, which the Respondent advises were generated by trading in his personal brokerage account.

#### **Registration and Disciplinary History**

- 12. From November 2011 to September 2014, the Respondent was registered as a Registered Representative with an Oakville, Ontario branch of National Bank Financial Ltd. ("NBF"), an IIROC Dealer Member. All of the misconduct took place while the Respondent was registered with NBF.
- 13. From September 2014 to January 2015, the Respondent was registered as a Registered Representative with an Oakville, Ontario branch of Aligned Capital Partners Inc., an IIROC Dealer Member. He has not been registered in the securities industry since that time.
- 14. The Respondent had previously been registered in the securities industry since 2003.
- 15. The Respondent has no prior disciplinary history.

#### **The Unauthorized Transfer of Client Funds into the Respondent's Personal Account**

##### *February 2013 Unauthorized Transfer*

- 16. OA was a client of the Respondent. On or around February 11, 2013, the Respondent arranged for the withdrawal of \$355,000 from OA's NBF account without OA's knowledge or consent.
- 17. The Respondent submitted a copy of a void cheque for OA's bank account to which the proceeds of the

withdrawal were to be deposited. The Respondent forged a copy of a legitimate void cheque provided by OA by replacing the true account number at the bottom of the cheque with the number for one of his personal bank accounts. As a result, the funds were deposited into the Respondent's personal bank account instead of into OA's bank account. OA did not consent to this withdrawal.

18. The Respondent then transferred a majority of these funds from his personal bank account into his personal brokerage account which he held at Interactive Brokers Group Inc. ("IB"), an IIROC Dealer Member firm.

#### July 2013 Unauthorized Transfers

19. TM and VM were clients of the Respondent. On or around July 2, 2013, the Respondent submitted a LOA purportedly signed by TM and VM for the withdrawal of \$244,000 from TM and VM's NBF account. The Respondent forged TM and VM's signatures on the LOA.
20. Along with the forged LOA, the Respondent submitted a copy of a void cheque for TM and VM's account to which the proceeds of the withdrawal were to be deposited. The Respondent forged a copy of a legitimate void cheque provided by TM and VM by replacing the true account number at the bottom of the cheque with the number for one of his personal bank accounts. As a result, the funds were deposited into the Respondent's personal bank account instead of into TM and VM's bank account. TM and VM did not consent to this withdrawal.
21. The Respondent then transferred a majority of these funds from his personal bank account into his personal brokerage account at IB.
22. CF was a client of the Respondent. On or around July 31, 2013 the Respondent arranged for the withdrawal of \$33,000 from CF's NBF account without CF's knowledge or consent.
23. The Respondent submitted a copy of a void cheque for CF's account to which the proceeds of the withdrawal were to be deposited. The Respondent forged a copy of a legitimate void cheque provided by CF by replacing the true account number at the bottom of the cheque with the number for one of his personal bank accounts. As a result, the funds were deposited into the Respondent's personal bank account instead of into CF's bank account. CF did not consent to this withdrawal.
24. The Respondent then transferred a majority of these funds from his personal bank account into his personal brokerage account at IB.

#### August 2013 Unauthorized Transfers

25. JN and DN were clients of the Respondent. On or around August 2, 2013, the Respondent submitted a LOA purportedly signed by JN and DN for the withdrawal of \$164,980 from JN and DN's NBF account. The Respondent forged JN and DN's signatures on the LOA.
26. Along with the forged LOA, the Respondent submitted a copy of a void cheque for JN and DN's account to which the proceeds of the withdrawal were to be deposited. The Respondent forged a copy of a legitimate void cheque provided by JN and DN by replacing the true account number at the bottom of the cheque with the number for one of his personal bank accounts. As a result, the funds were deposited into the Respondent's personal bank account instead of into JN and DN's bank account. JN and DN did not consent to this withdrawal.
27. The Respondent then transferred a majority of these funds from his personal bank account into his personal brokerage account at IB.
28. On or around August 30, 2013 the Respondent arranged for the withdrawal of \$21,000 from CF's NBF account without CF's knowledge or consent.
29. The Respondent had previously submitted a copy of a void cheque for CF's account to which the proceeds of the withdrawal were to be deposited. The Respondent had forged a copy of a legitimate void



cheque provided by CF by replacing the true account number at the bottom of the cheque with the number for one of his personal bank accounts. As a result, the funds were deposited into the Respondent's personal bank account instead of into CF's bank account. CF did not consent to this withdrawal.

30. The Respondent then transferred a majority of these funds from his personal bank account into his personal brokerage account at IB.

October 2013 Unauthorized Transfers

31. On or around October 15, 2013, the Respondent submitted a LOA purportedly signed by JN and DN for the withdrawal of \$351,000 from JN and DN's NBF account. The Respondent forged JN and DN's signatures on the LOA.
32. The Respondent had previously submitted a copy of a void cheque for JN and DN's account to which the proceeds of the withdrawal were to be deposited. The Respondent had forged a copy of a legitimate void cheque provided by JN and DN by replacing the true account number at the bottom of the cheque with the number for one of his personal bank accounts. As a result, the funds were deposited into the Respondent's personal bank account instead of into JN and DN's bank account. JN and DN did not consent to this withdrawal.
33. The Respondent then transferred a majority of these funds from his personal bank account into his personal brokerage account at IB.
34. On or around October 10, 2013 the Respondent submitted a LOA purportedly signed by CF for the withdrawal of \$35,000 from CF's NBF account. The Respondent forged CF's signature on the LOA.
35. The Respondent had previously submitted a copy of a void cheque for CF's account to which the proceeds of the withdrawal were to be deposited. The Respondent had forged a copy of a legitimate void cheque provided by CF by replacing the true account number at the bottom of the cheque with the number for one of his personal bank accounts. As a result, the funds were deposited into the Respondent's personal bank account instead of into CF's bank account. CF did not consent to this withdrawal.
36. The Respondent then transferred a majority of these funds from his personal bank account into his personal brokerage account at IB.

April 2014 Unauthorized Transfers

37. On or around April 15, 2014, the Respondent arranged for the withdrawal of \$247,000 from TM and VM's NBF account without TM and VM's knowledge or consent.
38. The Respondent had previously submitted a copy of a void cheque for TM and VM's account to which the proceeds of the withdrawal were to be deposited. The Respondent had forged a copy of a legitimate void cheque provided by TM and VM by replacing the true account number at the bottom of the cheque with the number for one of his personal bank accounts. As a result, the funds were deposited into the Respondent's personal bank account instead of into TM and VM's bank account. TM and VM did not consent to this withdrawal.
39. The Respondent then transferred a majority of these funds from his personal bank account into his personal brokerage account at IB.
40. In or around April 2014, the Respondent provided TM and VM with a fictitious account statement on NBF letterhead showing the purchase of approximately \$247,000 in TM and VM's NBF account. The Respondent created this fictitious account statement to mislead TM and VM about the status of their account.
41. In or around September 2014, TM and VM questioned the April 2014 withdrawal and provided a copy

of the fictitious account statement to NBF. NBF subsequently opened an investigation into the Respondent's conduct and identified the additional unauthorized transfers of client funds set out above.

### **Trading in the Respondent's IB account**

42. As noted, a majority of the funds were transferred from the Respondent's bank accounts into his personal brokerage account at IB. The funds were then used to trade a variety of securities, including options, exchange traded funds and foreign exchange contracts. In some cases, these potentially higher risk securities could not be traded in the clients' accounts at NBF.
43. Because these securities were traded outside the clients' accounts at NBF, NBF was unable to supervise the transactions to ensure that they were suitable for the clients.

### **Repayments to the Clients**

44. Between May 2014 and April 2015, the Respondent repaid a total of \$1,608,902 to the four clients. These repayments represented the full amount of the funds transferred without authorization along with returns ranging from 2% to 35% which the Respondent advises were generated by the trading in the Respondent's IB account.

### **Additional Representations of the Respondent**

45. The Respondent makes the following additional representations on which Staff take no position:
  - a) Although it affords the Respondent no defence to the contraventions admitted to herein, the Respondent advised the IIROC investigators that his clients were dissatisfied with the returns generated in their brokerage accounts. He wanted to improve their returns in investments through his personal accounts that he was not professionally qualified to place them in which is why he made the transfers. He always intended to repay them these monies, together with enhanced returns on their monies.
  - b) The Respondent admitted responsibility for his actions at the outset of the investigation, thereby shortening the length of time require by IIROC to complete a full investigation of this matter.

### **Summary**

46. The Respondent transferred a total of \$1,450,980 from the brokerage accounts of four clients into his own personal brokerage account without the clients' consent or authorization. Although he subsequently took steps to repay the clients in full, his conduct was deceitful and deceptive.

## **IV. TERMS OF SETTLEMENT**

47. This settlement is agreed upon in accordance with IIROC Dealer Member Rules 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.
48. The Settlement Agreement is subject to acceptance by the Hearing Panel.
49. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
50. The Settlement Agreement will be presented to the Hearing Panel at a hearing ("the Settlement Hearing") for approval. Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.
51. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her/its right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
52. 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 matters disclosed in the Investigation.

- 53. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
- 54. Staff and the Respondent agree that if the Hearing Panel accepts the Settlement Agreement, they, or anyone on their behalf, will not make any public statements inconsistent with the Settlement Agreement.
- 55. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
- 56. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

**AGREED TO** by the Respondent at the City of Toronto in the Province of Ontario, this 19<sup>th</sup> day of August, 2015.

“Witness”

“Brian Kumar”

\_\_\_\_\_  
**Witness**

\_\_\_\_\_  
**Respondent**

**AGREED TO** by Staff at the City of Toronto in the Province of Ontario, this 19 day of August, 2015.

“Witness”

“Rob DeIFrate”

\_\_\_\_\_  
**Witness**

\_\_\_\_\_  
**Rob DeIFrate**  
 Senior Enforcement Counsel on behalf of Staff of  
 the Investment Industry Regulatory Organization of  
 Canada

**ACCEPTED** at the City of \_\_\_\_\_ n the Province of Ontario , this \_\_\_\_\_ of \_\_\_\_\_, y the following Hearing Panel:

Per: \_\_\_\_\_  
 Panel Chair

Per: \_\_\_\_\_  
 Panel Member

Per: \_\_\_\_\_  
 Panel Member

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