

Re Sabet

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Naghmeh Sabet

2021 IIROC 03

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

Heard: January 19, 2021 in Montreal, Quebec (by videoconference)

Decision: January 19, 2021

Reasons for Decision: February 17, 2021

Hearing Panel:

Guy Lemoine, Chair, John Ballard and Jean W. Jeannot

Appearance:

Me Francis Larin, Senior Enforcement Counsel

Me Julie-Martine Loranger, for Naghmeh Sabet

Naghmeh Sabet (present)

DECISION ON ACCEPTANCE OF SETTLEMENT

INTRODUCTION

¶ 1 This settlement hearing was convened in accordance with the procedures described in Sections 8215 and 8428 of IIROC's Consolidated Enforcement, Examination and Approval Rules ("Rules") to consider whether the Hearing Panel should accept a Settlement Agreement entered into between IIROC Enforcement staff and the Respondent, Naghmeh Sabet ("Settlement Agreement"). A copy of the Settlement Agreement is attached.

¶ 2 Having considered the material filed, the submissions of counsel and after reviewing the Settlement Agreement, the Panel advised counsel at the hearing that the Settlement Agreement was accepted and that written Reasons for Decision would be provided.

¶ 3 The Settlement Agreement describes the contraventions as follows:

- a) **Count 1:** In March and April 2016, the Respondent recommended the purchase and holding of securities that were unsuitable for a client, pursuant to this client's investment objectives, thus contravening IIROC Dealer Member Rule 1300.1(q);
- b) **Count 2:** In December 2015, the Respondent engaged in personal financial dealings with a client by accepting the offer of a short-term loan proposed by the client for an imminent real estate transaction, thus contravening IIROC Dealer Member Rule 43.

¶ 4 The Respondent accepts the following penalties and costs:

- a) An aggregate fine in the amount of \$25,000, as follows:
 - a \$10,000 fine for Count 1;
 - a \$15,000 fine for Count 2.
- b) The obligation to pass the Conduct and Practices Handbook Course exam, within sixty (60) days following acceptance of this Settlement Agreement by the Hearing Panel.
- c) Costs in the amount of \$2,000 payable to IIROC.

BACKGROUND AGREED FACTS

¶ 5 The agreed upon facts are set out in detail in the attached Settlement Agreement. They are summarized below with much of the following taken directly from this document:

- a) The Respondent has been a Registered Representative with IIROC, as well as its predecessor, the Investment Dealers Association of Canada (IDA), since 1998;
- b) The Respondent has been registered and employed with Scotia Capital Inc. (Scotia) since January 2009;
- c) The Respondent has no disciplinary history with IIROC;

Particulars

The client FS

- d) On or around March 1st, 2016, the client FS opened an account with the Respondent;
- e) The Respondent knew client FS very well, through family and social relations;
- f) The account was an “in trust” account, for and in the name of FS’ minor daughter;
- g) FS’ profile, her investment objectives and risk tolerance may be summarized as follows:

Type	Cash
Birth year	1984
Civil status	Married
Dependent(s)	1
Occupation	Homemaker
Investment experience	Generally fair
Assets and margin	Fair
Mutual funds, fixed income, options, short selling	Poor/none
Investment Objectives	100% long-term capital gains
Risk tolerance	100% moderate
Annual income	\$0
Liquid assets	\$10,000
Fixed assets	\$0

- h) During the months of March and April 2016, the Respondent executed only the following trades in the client's account:

Date	Securities	Buy Quantity	Sell Quantity	Price in CAD	Subtotal in CAD	Commissions in CAD	Total in CAD
17-Mar-16	Valeant Pharma	200		39.38	(7,876)	(150)	(8,026)
07-Apr-16	Valeant Pharma		200	48.00	9,600	(155)	9,445
08-Apr-16	Valeant Pharma	200		44.30	(8,860)	(155)	(9,015)

Subtotal in CAD (460)

Date	Securities	Buy Quantity	Sell Quantity	Price in USD	Subtotal in USD	Commissions in USD	Total in USD
08-Apr-16	SunEdison Inc.	2,000		0.3739	(748)	(155)	(903)
14-Apr-16	SunEdison Inc.		1,000	0.7000	700	(155)	545
15-Apr-16	SunEdison Inc.	1,000		0.4374	(437)	(150)	(587)

Subtotal in USD (460)

Subtotal in CAD (594)

Total commissions (1,054)

- i) These trades were not suitable for FS taking into account, in particular, the risk tolerance factors and investment objectives set out by FS when she initially signed the account opening form;
- j) On June 28, 2016, FS opened an account with the iTRADE discount brokerage division of Scotia;
- k) On or around June 30, 2017, following a complaint filed by FS, Scotia indicated that these two securities did not meet the client's profile according to her record;
- l) On March 29, 2019, Scotia sent a letter to the Respondent regarding the above-mentioned conduct;
- m) The Respondent subsequently compensated FS for an amount of \$3,825, in accordance with the offer made by Scotia and accepted by FS;

The client GB

- n) GB became a client of the Respondent in 2005 and, over the years, developed ties of friendship with the Respondent and her family;
- o) In December 2015, the Respondent accepted a short-term bridge loan offered by GB for

- the amount of \$200,000, in order to proceed with an imminent real estate transaction;
- p) The Respondent reimbursed GB in full on February 9, 2016, prior to the real estate transaction to be completed before notary on February 19, 2016;
 - q) The Respondent admitted having accepted to receive a short-term loan from GB without her employer's knowledge and agreed to pay an internal penalty of \$5,000, imposed by Scotia.

ANALYSIS

The contraventions

¶ 6 The parties to the Settlement Agreement submit that the Respondent has contravened IIROC Dealer Member Rules 1300.1(q) and 43.

¶ 7 The relevant provisions are as follows:

Rule 1300.1(q)

(q) Each Dealer Member, when recommending to a client the purchase, sale, exchange or holding of any security, shall use due diligence to ensure that the recommendation is suitable for such client based on factors including the client's current financial situation, investment knowledge, investment objectives and time horizon, risk tolerance and the account or accounts' current investment portfolio composition and risk level.

Rule 43

43.1 An employee or Approved Person of a Dealer Member must not, directly or indirectly, engage in any personal financial dealings with clients.

43.2 Personal financial dealings include, but are not limited to, the following types of dealings:

(1) Accepting any consideration

(i) ...accepting any consideration, including remuneration, gratuity or benefit, from any person other than the Dealer Member for any activities conducted on behalf of a client.

...

(3) Borrowing from clients

(i) Borrowing money or receiving a guarantee in relation to borrowing money, securities or any other assets from a client, ...

Criteria for accepting or rejecting a joint settlement agreement

¶ 8 The Hearing Panel is called upon to accept or reject the Settlement Agreement.

¶ 9 Section 8215 of IIROC's Rules provides:

8215. Settlements and settlement hearings

(1) Enforcement Staff may agree in a settlement agreement to settle a proceeding or proposed proceeding against a Regulated Person at any time prior to the conclusion of a disciplinary hearing.

(2) A settlement agreement must contain:

...

(vi) a provision that the settlement agreement is conditional on acceptance by a hearing

panel,

...

(5) After a settlement hearing, a hearing panel may accept or reject a settlement agreement.

¶ 10 What is the test to be applied to determine if a settlement agreement should be accepted or rejected?

¶ 11 According to various precedents that were submitted to us the Hearing Panel should accept the Settlement Agreement as long as the proposed penalties fall within a reasonable range of appropriateness.

¶ 12 The leading decision in this matter was delivered in *Re Milewski* [1999] I.D.A.C.D. No. 17. The hearing panel of the forerunner of IIROC then determined at pages 9-10 that:

Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. 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. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.

This understanding is reflected in paragraph 20.26 of the By-laws which authorizes the District Council to "accept", rather than approve, a settlement agreement. In each case a District Council must determine appropriateness, but the standards applicable to its doing so on a settlement hearing differ from those in a contested hearing. Thus, the penalties imposed under settlement agreements, while relevant to a District Council exercising its discretion to penalize, provide only limited assistance in a hearing like this one.

¶ 13 This "reasonable range of appropriateness" principle enunciated in *Re Milewski* has been repeatedly applied and approved in many cases since including:

- *Re Maurice* 2019 IIROC 20
- *Re M Partners and Isenberg* 2018 IIROC 25
- *Re Jacob* 2017 IIROC 17.

IIROC Sanction Guidelines

¶ 14 The Hearing Panel must now determine if, given the circumstances of the case before us, the penalties agreed upon in the Settlement Agreement fall within a reasonable range of appropriateness. For this purpose, the Panel has examined IIROC's Sanction Guidelines which are "... *intended to promote consistency, fairness and transparency by providing a framework to guide the exercise of discretion in determining sanctions which meet the general sanctioning objectives*" and penalties imposed in the past for similar contraventions.

¶ 15 The Guidelines are divided into two parts. Part I provides a framework that should be considered in connection with the imposition of sanctions in all cases. Part II lists factors commonly taken into consideration when making a determination as to an appropriate sanction.

¶ 16 The Panel has mainly considered that given the preventative nature of disciplinary sanctions, the sanctions are imposed to protect the investing public, strengthen market integrity, and improve overall business standards and practices. As stated in the guidelines:

The purpose of sanctions in a regulatory proceeding is to protect the public interest by

restraining future conduct that may harm the capital markets. In order to achieve this, sanctions should be significant enough to prevent and discourage future misconduct by the respondent (specific deterrence), and to deter others from engaging in similar misconduct (general deterrence).

¶ 17 The Respondent has been a Registered Representative for over 20 years and has no prior disciplinary record. She has already compensated client FS for an amount of \$3,825 and has agreed to pay an internal penalty of \$5 000 in respect of her personal financial dealings with client GB. She will not have benefited financially from her misconducts.

Precedents

Count 1

¶ 18 The Panel has considered the following precedents submitted by IIROC's Counsel on penalties imposed for contraventions to IIROC Dealer Member Rule 1300.1(q) (suitability):

- *Re Martel* 2020 IIROC 30
- *Re Maurice* 2019 IIROC 20
- *Re Sawisky* 2017 IIROC 28
- *Re Dahl* 2017 IIROC 07
- *Re Marricco* 2017 IIROC 01
- *Re Husebye* 2016 IIROC 21.

Count 2

¶ 19 The Panel has also considered the following precedents submitted by IIROC's Counsel on penalties imposed for contraventions to IIROC Dealer Member Rule 43 (personal financial dealings with clients):

- *Re Coccimiglio* 2019 IIROC 27
- *Re Barkwell* 2018 IIROC 49
- *Re Rudensky* 2018 IIROC 38
- *Re Rudensky* 2018 IIROC 28
- *Re Bridgman* 2018 IIROC 14
- *Re Prusky* 2017 IIROC 43
- *Re Darrigo* 2015 IIROC 03
- *Re Darrigo* 2014 IIROC 48
- *Re Dirani* 2014 IIROC 09
- *Re Toh* 2011 IIROC 51.

¶ 20 Of course, no case is identical but penalties for similar offences usually provide for a fine and additional measures such as the obligation to pass the Conduct and Practices Handbook Course exam and payment of costs incurred by or on behalf of IIROC in connection with the hearing and any investigation related to the hearing. In more serious contraventions, restrictions to membership or suspension have been imposed.

¶ 21 The Panel has found that the nature and the extent of the penalties agreed upon by the parties in the Settlement Agreement fall within the scope of penalties imposed for similar contraventions.

CONCLUSION

¶ 22 Considering

- the agreed facts in the Settlement Agreement,
- the need
 - to protect the investing public, strengthen market integrity, and improve overall business standards and practices and
 - to prevent and discourage future misconduct by the Respondent (specific deterrence), and
 - to deter others from engaging in similar misconduct (general deterrence) and
- the precedents examined,

the Hearing Panel has unanimously concluded that the recommended penalties fall within the reasonable range of appropriateness.

¶ 23 The Panel therefore accepted the proposed Settlement Agreement.

Dated at Montreal, Quebec, this 17 day of February 2021.

Guy Lemoine

John Ballard

Jean W. Jeannot

Appendix

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 Staff of IIROC (Staff) and Nahgmeh Sabet (the Respondent).

PART II - JOINT SETTLEMENT RECOMMENDATION

2. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement in accordance with the terms set forth below.

PART III – AGREED FACTS

3. For purposes of the Settlement Agreement, the Respondent agrees with the facts set out in Part III of this Settlement Agreement.

Registration History

4. The Respondent has been a registered representative with IIROC, as well as its predecessor, the Investment Dealers Association of Canada (IDA), since 1998;
5. The Respondent has been registered and employed with Scotia Capital Inc. (Scotia) since January 2009;
6. The Respondent has no disciplinary history with IIROC.

Particulars

The client FS

7. On or around March 1st, 2016, the client FS opened an account with the Respondent;
8. The Respondent knew client FS very well, through family and social relations;
9. The account was an “in trust” account, for and in the name of FS’ minor daughter;
10. FS’ profile, her investment objectives and risk tolerance may be summarized as follows:

Type	Cash
Birth year	1984
Civil status	Married
Dependent(s)	1
Occupation	Homemaker
Investment experience	Generally fair
Assets and margin	Fair
Mutual funds, fixed income, options, short selling	Poor/none
Investment Objectives	100% long-term capital gains
Risk tolerance	100% moderate
Annual income	\$0
Liquid assets	\$10,000
Fixed assets	\$0

11. During the months of March and April 2016, the Respondent executed only the following trades in the client’s account:

Date	Securities	Buy Quantity	Sell Quantity	Price in CAD	Subtotal in CAD	Commissions in CAD	Total in CAD
17-Mar-16	Valeant Pharma	200		39.38	(7,876)	(150)	(8,026)
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Subtotal in CAD (460)

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15-Apr-16	SunEdison Inc.	1,000		0.4374	(437)	(150)	(587)

Subtotal in USD (460)

Subtotal in CAD (594)

Total commissions (1,054)

12. These trades were not suitable for FS taking into account, in particular, the risk tolerance factors and investment objectives set out by FS when she initially signed the account opening form;
13. On June 28, 2016, FS opened an account with the iTRADE discount brokerage division of Scotia;
14. On or around June 30, 2017, following a complaint filed by FS, Scotia indicated that these two securities did not meet the client's profile according to her record;
15. On March 29, 2019, Scotia sent a letter to the Respondent regarding the above-mentioned conduct;
16. The Respondent subsequently compensated FS for an amount of \$3,825, in accordance with the offer made by Scotia and accepted by FS.

The client GB

17. GB became a client of the Respondent in 2005 and, over the years, developed ties of friendship with the Respondent and her family;
18. In December 2015, the Respondent accepted a short-term bridge loan offered by GB for the amount of \$200,000, in order to proceed with an imminent real estate transaction;
19. The Respondent reimbursed GB in full on February 9, 2016, prior to the real estate transaction to be completed before notary on February 19, 2016;
20. The Respondent admitted having accepted to receive a short-term loan from GB without her employer's knowledge and agreed to pay an internal penalty of \$5,000, imposed by Scotia.

PART IV – CONTRAVENTIONS

21. By reason of the conduct described above, the Respondent contravened IIROC Dealer Member Rules 1300 and 43:

Count 1: In March and April 2016, the Respondent recommended the purchase and holding of securities that were unsuitable for a client, pursuant to this client's investment objectives, thus contravening IIROC Dealer Member Rule 1300.1(q);

Count 2: In December 2015, the Respondent engaged in personal financial dealings with a client by accepting the offer of a short-term loan proposed by the client for an imminent real estate transaction, thus contravening IIROC Dealer Member Rule 43.

PART V - TERMS OF SETTLEMENT

22. The Respondent accepts the following penalties and costs:
- a) An aggregate fine in the amount of \$25,000, as follows:
 - o a \$10,000 fine for Count 1; o a \$15,000 fine for Count 2.
 - b) The obligation to pass the Conduct and Practices Handbook Course exam, within sixty (60) days following acceptance of this Settlement Agreement by the Hearing Panel.
 - c) Costs in the amount of \$2,000 payable to IIROC.
23. If the Hearing Panel accepts this Settlement Agreement, 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

24. 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.
25. If the Hearing Panel accepts the Settlement Agreement and the Respondent does not abide by the terms thereof, Staff of IIROC may initiate proceedings against the Respondent pursuant to Rule 8200. 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

26. The Settlement Agreement is subject to acceptance by the Hearing Panel.
27. 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.
28. 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.
29. If the Hearing Panel accepts the Settlement Agreement, the Respondent agrees to waive all rights, under IIROC rules and any applicable legislation, to a disciplinary hearing, review or appeal.
30. 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.
31. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
32. 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.
33. If this Settlement Agreement is accepted, the Respondent agrees that neither she nor anyone on her behalf will make a public statement inconsistent with this Settlement Agreement.

34. The Settlement Agreement shall become effective and binding upon the Respondent and Staff from the date of its acceptance by the Hearing Panel.

PART VIII – SIGNATURE OF THE SETTLEMENT AGREEMENT

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

DATED this 16 november 2020.

(S) Nahgmeh Sabet

Nahgmeh Sabet

Respondent

DATED this 16 november 2020.

(S) Francis Larin

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

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