

IN THE MATTER OF:

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

AND

iA PRIVATE WEALTH INC.

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Investment Industry Regulatory Organization of Canada (“IIROC”) will issue a Notice of Application to announce that it will hold a settlement hearing to consider whether, pursuant to Section 8215 of the Consolidated Enforcement, Examination and Approval Rules of IIROC, a hearing panel (“Hearing Panel”) should accept the settlement agreement (“Settlement Agreement”) entered into between the staff of IIROC (“Staff”) and iA Private Wealth Inc. (“IAPW” or “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. iA Private Wealth Inc. (“IAPW” or “Respondent”) failed to properly supervise registered representatives particularized herein, predominantly Donald (Don) McFarlane, a former director of IAPW.
5. The underlying activity included unsuitable investment recommendations to clients, high concentration and trading volumes in small issuers, and the improper use of margin in client accounts.
6. IAPW became aware of these issues following the receipt of multiple client complaints. IAPW immediately self-reported the misconduct to IIROC and undertook an internal investigation. IAPW has since entered into settlement agreements with a number of the complainants, implemented revised policies and procedures and implemented a new compliance structure in an effort to prevent similar misconduct in the future.

Registration History

7. McFarlane Gordon Inc. was founded in 2000. It was a subsidiary of Jovian Capital Corp. (“Jovian”) and was re-branded as MGI Securities (“MGI”) in 2005.
8. IAPW has been a Dealer Member since 2005.
9. In October 2013, Jovian (and therefore MGI) was acquired by Industrial Alliance Insurance and Financial Services Inc. MGI was amalgamated with Industrial Alliance Securities Inc. on April 1, 2014.
10. In 2021, Industrial Alliance Securities Inc. changed its name to IA Private Wealth Inc.

Donald McFarlane

11. McFarlane began his career in the investment management industry as a registered representative at a bank-owned brokerage. In 2000, McFarlane co-founded an independent brokerage—McFarlane Gordon Inc.
12. McFarlane was a Registered Representative and Officer at MGI and was on the Board of MGI for many years. Along with being a Registered Representative, McFarlane was a Director and Vice-Chairman of IAPW from April 1, 2014 to May 2, 2017 and Managing Director, Private Client Group from April 1, 2014 to April 30, 2018.
13. On March 3, 2019, McFarlane passed away.

Supervision of McFarlane

14. At all times, IAPW was responsible for supervising the activities of all its registered representatives, including McFarlane. IAPW failed to meet its supervision obligations of McFarlane in the following areas:

(i) Suitability

15. IAPW did not meet its obligations to conduct adequate supervision of McFarlane with respect to the suitability of the holdings in his client accounts.
16. McFarlane's business generally included the use of margin and investments in higher risk securities. This often included junior gold companies and private corporate debentures.
17. McFarlane's book of business was historically comprised mainly of high net worth and sophisticated clients that had a high risk tolerance. For that reason, McFarlane's

investment strategies typically required that these clients engage in a significant volume of margin trading.

18. On numerous occasions, IAPW supervisors identified instances in which the holdings in a client account were unsuitable for the client based on the Know-Your-Client (“KYC”) information set out in that client’s New Client Account Form (“NCAF”). Instead of reducing the higher risk holdings in the account, McFarlane instead had the client’s NCAF updated to align with the account holdings. These updates were generally approved without any further inquiries, despite no indication of changes to the clients’ personal or financial circumstances.
19. IAPW supervisors routinely monitored McFarlane’s activities and raised concerns, but he consistently assured IAPW by updating client KYCs and advising that he had discussed the strategies with his clients.
20. After McFarlane passed away, IAPW received a number of complaints from his former clients about his trading activity in their accounts (the “Complaints”). IAPW received a total of 30 Complaints, which were from 17 groups of complainants who held accounts at IAPW that were serviced by McFarlane (the “Complainants”). In the Complaints, the Complainants variously alleged that McFarlane:
 - a) undertook investment strategies in their accounts that led to funds being invested in securities that lost significant value over time;
 - b) undertook investment strategies in their accounts that were unsuitable; and
 - c) executed trades in their accounts (sometimes using margin) without their authorization.

21. IAPW treated the Complaints very seriously. IAPW immediately reported the Complaints to IIROC and conducted a broad and thorough investigation into the issues that were raised.
22. Over the course of 2019 to 2021, IAPW entered into settlement agreements with the vast majority of Complainants - 26 out of 30 Complainants, with one Complainant who went to OBSI, leaving only 4 Complaints unresolved.
23. Many of the Complainants were professionals and business people. Most of them were high net worth individuals and were identified on their respective NCAFs as having good or sophisticated investment knowledge. A small number of them had limited investment knowledge and were not high net worth. All of the Complainants had strong personal relationships with McFarlane going back decades that led them to maintain investment accounts serviced by him for many years. Some of the Complainants trusted McFarlane and relied entirely upon his investment recommendations.
24. A small number of the Complainants were less sophisticated. For example, one client ("Client A") opened accounts with MGI and McFarlane in January 2008. At the time, she was 69 years old and retired. Her annual income was listed on her NCAF as \$35,000, her liquid assets as \$300,000 and fixed assets as \$350,000. Her investment objectives and risk tolerance was listed as 50% "Moderate to higher-risk, income-producing securities" and 50% "Moderate-risk, growth-oriented securities" and her investment knowledge was listed as "Limited". The NCAF also noted that McFarlane was a close personal friend of Client A and had known her for over 30 years.
25. In May 2008, Client A's account was amended to add margin to one of her accounts. In addition, her risk tolerance was increased to 100% high risk.

26. In March 2012, Client A's NCAF was updated. At this time, she was 73 years old. Her income level was now listed at \$27,000, her liquid assets at \$1,080,000 (an increase of over \$700,000) and fixed assets of \$760,000.
27. Through March 2012 to March 2017, Client A held some speculative securities, including junior gold stocks. These securities were recommended by McFarlane and Client A never raised an issue with her holdings.
28. In March 2017, Client A's NCAF was again updated. At this time, she was 78 years old. Her income level was still listed at \$27,000, her liquid assets at \$250,000 and her fixed assets at \$1,750,000. Her investment objectives were changed to "Max. Growth/Speculative" and her risk tolerance to "Very High". In addition, a comment on this update indicated "client doesn't require account for income purposes; used for speculation".
29. There is no indication that IAPW questioned the appropriateness of these changes for Client A. Further, despite the inclusion of a note stating that the client did not require the funds for income purposes", Client A stated that her IAPW accounts represented the majority of her investment assets and that she consistently made monthly withdrawals of \$1,500 from the accounts to pay for living expenses.
30. From the initial opening of the accounts, Client A made withdrawals totaling more than her contributions to the account. However, her accounts also experienced significant changes in value, including a drop of over 55% between January and March 2019. In any event, the Respondent entered into a settlement with Client A.

(ii) Trading in Minnova, Avidian, Intercontinental and Corvus

31. Between January 2017 and March 2019, McFarlane and his clients accounted for a significant percentage of trading activity in four issuers: Minnova Corp., Avidian Gold Corp., Intercontinental Gold and Metals Ltd. and Corvus Gold Inc.

Minnova

32. Between January 2017 and March 2019, McFarlane and his clients represented 86.55% of the total buy volume of shares of Minnova, a Canadian Securities Exchange listed security. This represented 95.13% of IAPW's buy volume in Minnova.
33. During that same period, McFarlane and his clients represented 73.91% of the total sell volume in Minnova. This represented 96.69% of IAPW's sell volume in Minnova.
34. Of the total shares traded in Minnova during that period, 72.72% were transactions between IAPW accounts as purchasers and IAPW accounts as sellers.
35. In addition, of the total shares traded in Minnova, 20.93% were trades between IAPW non-client accounts (i.e. Pro Accounts) and IAPW client accounts.
36. IAPW did not properly identify and address the potential harm that McFarlane's trading activity in Minnova shares presented. IAPW also did not properly identify and address the potential harm caused by the significant trading between client and non-client accounts in Minnova.

Avidian

37. In addition, between January 2017 and March 2019, McFarlane and his clients represented 73.30% of the total buy volume in Avidian, a Canadian Securities Exchange listed security. This represented 91.00% of IAPW's buy volume in Avidian.
38. During that same period, McFarlane and his clients represented 52.39% of the total sell volume in Avidian. This represented 90.42% of IAPW's sell volume in Avidian.
39. Of the total shares traded in Avidian during that period, 49.81% were transactions between IAPW accounts as purchasers and IAPW accounts as sellers.
40. In addition, of the total shares traded in Avidian, 18.69% were trades between IAPW non-client accounts (i.e. Pro Accounts) and IAPW client accounts.
41. IAPW did not properly identify and address the potential harm that McFarlane's trading activity in Avidian shares presented. IAPW also did not properly identify and address the potential harm caused by the significant trading between client and non-client accounts in Avidian.

Intercontinental

42. Between January 2018 and March 2019, McFarlane and his clients represented 61.49% of the total buy volume of shares of Intercontinental, a Canadian Securities Exchange listed security. This represented 98.85% of IAPW's buy volume in Intercontinental.
43. During that same period, McFarlane and his clients represented 59.03% of the total sell volume in Intercontinental. This represented 99.74% of IAPW's sell volume in Intercontinental.

44. Of the total shares traded in Intercontinental during that period, 41.74% were transactions between IAPW accounts as purchasers and IAPW accounts as sellers.
45. In addition, of the total shares traded in Intercontinental, 25.31% were trades between IAPW non-client accounts (i.e. Pro Accounts) and IAPW client accounts.
46. IAPW did not properly identify and address the potential harm that McFarlane's trading activity in Intercontinental shares presented. IAPW also did not properly identify and address the potential harm caused by the significant trading between client and non-client accounts in Intercontinental.

Corvus Gold

47. Between January 2017 and March 2019, McFarlane and his clients represented 28.68% of the total buy volume of shares of Corvus, a Canadian Securities Exchange listed security. This represented 87.06% of IAPW's buy volume in Corvus.
48. During that same period, McFarlane and his clients represented 15.84% of the total sell volume in Corvus. This represented 90.27% of IAPW's sell volume in Corvus.
49. Of the total shares traded in Corvus during that period, 12.68% were transactions between IAPW accounts as purchasers and IAPW accounts as sellers.
50. In addition, of the total shares traded in Corvus, 5.53% were trades between IAPW non-client accounts (i.e. Pro Accounts) and IAPW client accounts.
51. IAPW did not properly identify and address the potential harm that McFarlane's trading activity in Corvus shares presented. IAPW also did not properly identify and address the

potential harm caused by the significant trading between client and non-client accounts in Corvus.

52. McFarlane and his clients represented a significant volume of trading in these four securities, both as a percentage of the total market and as a percentage of IAPW's total activity in these securities. This trading may have created an artificial price or a misleading appearance of activity for these securities which IAPW did not properly identify. IAPW did not take appropriate steps to determine whether this activity was appropriate.

(iii) Margin Usage

53. Between 2014 and 2019, a number of McFarlane's client accounts, as well as his personal accounts, employed margin. At times, these accounts became undermargined to a significant extent. IAPW was required to ensure that the margin issues in these accounts were rectified within a reasonable time. While IAPW followed up with McFarlane several times to work on bringing the accounts onside, the accounts ended up falling offside again. IAPW did not properly ensure that McFarlane's accounts remained onside.
54. In September 2014, twenty-three of McFarlane's personal and client accounts were undermargined by over \$1,000,000. This included a margin shortfall of \$269,000 in his personal accounts that had remained outstanding for periods ranging from 1 to 17 days. It also included margin shortfalls in client accounts of up to \$219,000 that had remained outstanding for periods ranging from 3 to 158 days.
55. In May 2015, McFarlane's personal accounts were undermargined by over \$560,000 that had remained outstanding for periods ranging from 7 to 17 days.
56. In May 2016, McFarlane's personal and client accounts were undermargined by over \$1,900,000.

57. In October 2018, McFarlane's personal and client accounts were undermargined by over \$2,000,000. This represented over 36% of IAPW's total outstanding margin at the time.
58. Although the margin issues in his personal and client accounts were ultimately addressed, they were not addressed in a timely manner by IAPW. Further, at times these margin issues were addressed by McFarlane by trading between himself and his clients as outlined above in paragraph 31 to 52.

(iv) Margin on private securities

59. In addition, a number of McFarlane's clients held private corporate debentures. Until February 2019, IAPW permitted these securities to be used as collateral for margin lending purposes. As a result, clients were able to access greater margin than that to which they were entitled. Specifically, 16 of McFarlane's client and personal accounts received excess loan value based on these private corporate debentures totaling approximately \$3,500,000. At the time this margin was provided, IAPW took no steps to limit this excess loan value.
60. As noted above, in 2018, IAPW made significant corporate changes that resulted in an enhanced focus on credit and compliance.
61. In January 2019, IAPW examined McFarlane and McFarlane's clients' private corporate debentures and private promissory notes and determined that they were not eligible to serve as collateral for margin.
62. Following this correction to the margin eligibility of these private corporate debentures, a number of McFarlane's personal and client accounts became undermargined and margin calls were issued.

63. At the end of March 2019, McFarlane's personal and client accounts were undermargined by over \$6,000,000. This included a margin shortfall of over \$778,000 in his personal accounts.

(v) Client Priority

64. Between June 2016 and January 2019, McFarlane entered numerous trades in his personal account prior to trades in client accounts.
65. Although IAPW repeatedly warned McFarlane that this type of conduct was not permitted, he continued to enter trades in advance of clients. At times, he did so on a daily basis, without sufficient steps being taken by IAPW to limit these trades.

(vi) Supervision of other Registered Representatives

66. Between December 2017 and April 2019, four Registered Representatives of IAPW entered into settlement agreements with IIROC in which they admitted to breaching IIROC Rules. The four Registered Representatives were Kevin Price, Colin Baird, Duncan Roy and Sheron Crane. This misconduct included unsuitable investments, unsuitable use of margin by elderly clients, excessive short-term trading and unsupervised client communications. All of the misconduct took place at IAPW, both before and after the amalgamation with MGI.
67. IAPW failed to properly supervise the conduct of these four Registered Representatives. The misconduct led to significant client losses which have been compensated by IAPW. In addition to the disciplinary sanctions imposed by IIROC, IAPW imposed internal disciplinary measures as well.

Remedial Measures

68. In 2018, IAPW made significant corporate changes that resulted in an enhanced focus on credit and compliance. In January 2019, IAPW examined McFarlane and McFarlane's clients' private corporate debentures and private promissory notes and determined that they were not eligible to serve as collateral for margin as it was not consistent with IIROC rules. Accordingly, IAPW informed McFarlane that it would remove the margin from the accounts and issue corresponding margin calls that he and his clients would have to cover at risk of IAPW selling out the securities in the accounts. Over the next several months, as McFarlane worked with his clients to attempt to cover the margin calls, the size of the margin calls grew significantly due to the decline in the value of some securities in which his clients were largely invested.
69. Since 2019, IAPW has spent a significant amount of time, effort and resources to enhance and strengthen its compliance structure. It has implemented significant measures to address the compliance deficiencies that could have contributed to the failure to supervise McFarlane and the other Registered Representatives.
70. To prevent this conduct from occurring in the future, IAPW did the following.

(i) Client Complaints

- As noted above, IAPW received 30 Complaints in relation to McFarlane's conduct.
- IAPW acknowledged all complaints in a timely manner.
- To date, IAPW has settled 26 of the Complaints and paid out \$5,778,763.68 in compensation to the Complainants.

(ii) New Policies and Procedure

- IAPW implemented several new policies and procedures to ensure that McFarlane’s conduct is prevented by any other registered representative in the future.
- Since mid-2019, IAPW has implemented 17 training modules on compliance for all advisors.
- The policies and procedure were implemented in 2019 and continue to be updated and added to as necessary.
- They include (but are not limited to):
 - a. a new margin concentration policy (April 2019);
 - b. new trade review procedures (2019);
 - c. securities concentration policy;
 - d. margin policy (March 2019); and
 - e. pricing and margin eligibility policy (2019).

(iii) Structural Changes to Organization

- As noted above, IAPW has spent a significant amount of time, effort and resources to enhance and strengthen its compliance structure. It has implemented significant measures to address the compliance deficiencies that could have contributed to the failure to supervise McFarlane and the other Registered Representatives. These include, but are not limited to, the following:
 - a. harmonized its compliance systems against the different entities to ensure consistency and best compliance;
 - b. advisors are no longer permitted to be on the IAPW board;
 - c. tier one now reports directly to the CCO in May 2019;
 - d. in October 2018, IAPW appointed a new Ultimate Designated Person;
 - e. in March 2019, IAPW hired a new Chief Compliance Officer;

- f. in November 2018, IAPW hired a new credit manager and Credit began reporting to Operations in February 2019.

Cooperation of IAPW & Early Resolution

71. IAPW demonstrated proactive cooperation and has been forthcoming with IIROC Staff in respect of the issues raised in this settlement agreement. As soon as IAPW received the Complaints, it notified IIROC and conducted a thorough and in-depth investigation of all issues it identified.
72. IAPW provided the investigation report, with supporting documentation, to IIROC in a timely manner which greatly assisted Staff in its investigation.
73. Enforcement Staff have agreed to a 30% reduction of the fine it would otherwise have sought based on the cooperation provided by the Respondent, the remedial measures implemented and the compensation provided to clients to date. These factors led to an early resolution of this matter.

PART IV – CONTRAVENTIONS

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

IA Private Wealth Inc. failed to establish and maintain a system to supervise the activities of its employees reasonably designed to achieve compliance with IIROC requirements, contrary to Dealer Member Rules 38.1.

PART V – TERMS OF SETTLEMENT

75. The Respondent agrees to the following sanctions and costs:
- a) A fine in the amount of \$350,000; and
 - b) Costs in the amount of \$25,000.
76. 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

77. 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.
78. If the Hearing Panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Rule 8200 against the Respondent. These proceedings may be based on, but are not limited to, the facts set out Part III of this Settlement Agreement.

PART VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT

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

80. 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.
81. 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.
82. 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.
83. 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.
84. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
85. 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.
86. 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.

87. 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

88. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.

89. A fax or electronic copy of any signature will be treated as an original signature.

DATED this “9th” day of “July”, 2021.

“Maira Simo”
Name: Maira Simo, SVP & CCO
On behalf of iA Private Wealth Inc.

“Dated this 13th day of July 2021”

Witness

“Rob DelFrate”
Rob DelFrate
Enforcement Counsel on behalf of
Enforcement Staff of the Investment
Industry Regulatory Organization of
Canada

The Settlement Agreement is hereby accepted this "29" day of "July", 2021 by the following Hearing Panel:

Per: "Jean Martel"
Panel Chair

Per: "Danielle Le May"
Panel Member

Per: "Francois Gervais"
Panel Member