

IN THE MATTER OF:

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

AND

BARDYA ZIAIAN

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 Bardya Ziaian (“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. The Respondent was an Approved Person and also the founder, a director, the sole shareholder, supervisor and the Ultimate Designated Person (“UDP”) at BBS Securities Inc. (“BBS”) from its inception in October 2008 until November 2017.
5. Between August 2013 and December 2013 (the “Relevant Period”), the Respondent was responsible for his firm’s syndication activities and proprietary trading.
6. As part of his syndication activities, the Respondent sent expressions of interest to various Dealer Members who were part of underwriting syndicates involved in the distribution of securities (“new issues”). The Respondent’s practice in sending initial expressions of interest to the underwriters/underwriting syndicates was to express interest without having confirmed *bona fide* interest from clients and where there was not interest from clients at the level at which he expressed interest to the underwriters.
7. Although clients always received the securities that they requested during the relevant time period, most of the new issue securities were placed by the Respondent into his firm’s inventory accounts or accounts held in the Respondent’s name or over which the Respondent exercised control. As such, the Respondent’s activities resulted in there being no *bona fide* offering of those securities to public investors.
8. After receiving confirmation of the allocation that the Respondent’s firm would receive, the Respondent would frequently sell the shares short and cover when the new issue closed and the securities were received. On other occasions, the Respondent would sell the shares as soon as they were received upon closing of the deal.
9. The Respondent’s firm received the new issue allocations at the “drawdown price,” which is the price set by the syndicate manager for intra-syndicate transfers or to the selling group. The “selling concession” is the difference between the public offering price and

the drawdown price. The selling concession represents the commission earned by the broker for distributing the new issue to clients.

10. The vast majority of the new issues were allocated by the Respondent to his firm's inventory accounts or non-arm's length client accounts over which the Respondent had control, at the public offering price. A small number of new issues were allocated to retail clients as requested.
11. The purpose of the selling group is to assist in distributing the new issue to the public. Some of the new issues for which the Respondent received allocations contained a specific disclosure from the syndicate members that the securities were "not pro-eligible" or alternatively were "available for retail" at the time of original dissemination.

The Respondent

12. The Respondent was an Approved Person with BBS, a Dealer Member, during the Relevant Period. He founded BBS, which offered primarily order-execution services. Specifically, the Respondent was a director, shareholder, supervisor and the UDP at BBS from its inception in October 2008 until November 2017.
13. The Respondent is not currently an Approved Person.
14. During the Relevant Period, the Respondent had multiple functional responsibilities at BBS including the conveying of expressions of interest to underwriting syndicates for new issue deals as well as proprietary trading.

New Issue Financing

15. When an issuer seeks to raise capital in the public markets, it will generally engage the services of one or more firms to act as underwriters of the financing. These firms are commonly referred to collectively as the “Syndicate” or, individually, as a “Syndicate Member.”
16. Syndicate Members will enter into a contractual underwriting agreement with the issuer, pursuant to which the Syndicate Members purchase the new issue securities from the issuer at an agreed price, less a commission. The Syndicate Members then offer these securities to their clients at the public offering price agreed to, and receive the securities at a “drawdown price.” The “selling concession” is the difference between the public offering price and the drawdown price. The syndicate also receives underwriting fees.
17. Syndicate Members may also elect to sell underwritten securities to firms which are outside the syndicate (the “Selling Group” or “Selling Group Members”). These sales are made at the drawdown price. The Selling Group offers the new issues to its clients at the public offering price.
18. There is no contractual relationship between the Syndicate Members and the Selling Group Members. The Syndicate sends an e-mail to potential members of a Selling Group advising that a particular new issue has become available.
19. If a member of the Selling Group has demand from its clients, that demand is communicated to the Syndicate Members by way of an expression of interest. The Selling Group Member may then be allocated some new issue securities by the Syndicate, at the Syndicate Member’s discretion.

Staff's Review

20. During the Relevant Period, the Respondent's firm was a member of the Selling Group for a number of new issues. Although as an order execution only firm the Respondent's firm would not typically have access to new issues, the Respondent's firm subscribed for and made new issues available to its clients.
21. Staff reviewed numerous deals during the Relevant Period. Rather than requesting new issues based on client interest, the Respondent requested allocations of new issues that were greater than any interest expressed by BBS's clients.
22. Although BBS provided notice to clients on its website of available new issues, the expressions of interest from clients in response to such notices did not correspond to the level of interest conveyed by the Respondent to the various underwriting syndicates. Through the notices posted to BBS's website, BBS clients were given the opportunity to participate in the new issues that were made available to BBS.
23. The vast majority of securities received by BBS from the Syndicate Members were taken into a BBS inventory account or non-arm's length client accounts over which the Respondent exercised control. Other retail clients, who received notice of and the first opportunity to take all of the new issue allocation that they wanted, received all of the securities that they requested, but the total that went to client accounts represented a small percentage of the new issue securities allocated by the Syndicate Members. The Respondent received new issues into accounts held in his name or over which he exercised control at the public offering price.
24. On numerous occasions, after the Respondent received confirmation of an allocation for a new issue, the Respondent sold short a corresponding number of securities in the

marketplace. The Respondent covered his short position using the securities received from the underwriting syndicate when the distribution closed.

25. On other occasions, shares were disposed of immediately upon receipt through either the BBS inventory account or accounts controlled by the Respondent and were not allocated to retail clients.
26. Some of the communications from syndicate members regarding the new issues in which the Respondent expressed interest and received allocations contained an explicit disclosure that the securities were “not pro-eligible” or alternatively were “available for retail.” Even in these instances, the Respondent allocated new issues to BBS’s inventory accounts or accounts in his name or over which he exercised control. The Respondent did not always have a written acknowledgment from the syndicate that the transaction had become pro eligible.
27. The Respondent’s overall trading in new issues, including those positions held for many days, was profitable.
28. The Respondent’s firm also received significant benefit in the form of drawdown prices or selling concessions for the new issues, and as the sole shareholder, the Respondent benefitted indirectly from the selling concessions received by his firm.
29. The monetary sanctions agreed to below reflect a portion of the financial benefits received by the Respondent in addition to a monetary fine.

Respondent's Position

30. The Respondent asserts that for any new issue that he believed to be oversubscribed, any allocation to BBS, as a member of the selling group, would likely be a small percentage of what was requested.
31. The Respondent asserts that for any transaction that became a "hung deal," the syndicate would want BBS to take as many shares as it could. The Respondent further asserts that he made additional expressions of interest after new issues became "hung deals" and these additional expressions of interest were not based on client interest, as the Respondent believed them to then be pro-eligible.

Conclusion

32. The purpose of the selling group is to distribute new issues to the public. The Respondent obtained new issues and, while failing to make *bona fide* offerings of the new issues to public investors, obtained the financial benefits described above.

PART IV – CONTRAVENTIONS

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

Between August 2013 and December 2013, the Respondent failed to make *bona fide* offerings of new issues to public investors in circumstances where he ought to have known that the expressions of interest were not *bona fide*, contrary to Dealer Member Rule 29.3.

PART V – TERMS OF SETTLEMENT

34. The Respondent agrees to the following sanctions and costs:
- a) payment of a fine of \$150,000, inclusive of disgorgement;
 - b) prohibition of approval for the following supervisory positions for 18 months commencing on the date of acceptance of this Settlement Agreement: Ultimate Designated Person, Chief Compliance Officer, and Supervisor, as defined in IIROC Rules; and
 - c) costs of \$35,000.
35. 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

36. 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.
37. 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

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

39. 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.
40. 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.
41. 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.
42. 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.
43. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
44. 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.

45. If this Settlement Agreement is accepted, the Respondent agrees that neither he nor anyone on his behalf, will make a public statement inconsistent with this Settlement Agreement.
46. 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

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

DATED this "9th" day of May, 2022

"David Sutton"
Witness

"Bardya Ziaian"
Respondent

"Ricki Ann Newmarch"
Witness

"Sylvia Samuel"
Sylvia Samuel
Enforcement Counsel on behalf of
Enforcement Staff of the Investment
Industry Regulatory Organization of
Canada

The Settlement Agreement is hereby accepted this "20" day of May, 2022 by the following Hearing Panel:

Per: "Donna Campbell"
Panel Chair

Per: "Debbie Archer"
Panel Member

Per: "Mary Savona"
Panel Member