

IN THE MATTER OF:

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

AND

NANCY FAIRCLOUGH (WOODS)

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 IIROC Rules, a hearing panel (“Hearing Panel”) should accept the settlement agreement (“Settlement Agreement”) entered into between the staff of IIROC (“Staff”) and Nancy Fairclough (the “Respondent” or “Fairclough”).

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. This settlement concerns Fairclough acting as a Power of Attorney (“POA”) for an elderly client and accepting a \$50,000 monetary gift from the client to act as the client’s estate executor. Fairclough did not advise her Dealer Member about the arrangement and transferred her client to another adviser at RBC DS. Fairclough has since returned the \$50,000 to the client’s estate and ceased acting as executor.

Background

5. Fairclough is a Registered Representative (“RR”) at a branch of RBC Dominion Securities Inc. (“RBC DS”) where she has worked since 2006.
6. The Respondent was registered on IIROC’s National Registration Database (“NRD”) as Nancy Woods from 1994 to December 2021. In December 2021, the Respondent changed her name on NRD from Nancy Woods to Nancy Fairclough.

Fairclough Appointed as Executor and POA for Client

7. Fairclough was the RR for an elderly client (“MB”) who had retired and moved to Italy. MB had no children or other immediate family and had a close personal friendship with Fairclough of over thirty years.
8. In 2013, Fairclough became aware that she was appointed as executor for MB’s estate in her will and appointed as MB’s POA.
9. In 2017, Fairclough advised her Branch Manager (“BM”) at RBC DS about her appointment as executor but did not advise about the POA. The BM advised Fairclough that the executor appointment was contrary to RBC DS policy and IIROC Rules. The BM advised

that Fairclough was expected to tell MB to try to appoint someone else as executor, but if that did not happen that Fairclough needed to take appropriate steps to resign.

10. Fairclough remained appointed as executor for MB's estate and did not update RBC DS.

Fairclough Received \$50,000 from Client

11. In January 2019, Fairclough received and deposited a personal cheque from MB in the amount of \$50,000. The funds were intended in part as a gift from MB to acknowledge Fairclough's assistance and friendship, and in part to compensate Fairclough for the work she would be undertaking as executor for MB's estate.
12. Fairclough did not advise RBC DS at the time that she had received and deposited the \$50,000 cheque from MB.

Fairclough Acted as POA for Client

13. Also in January 2019, Fairclough received a letter of direction from MB asking that she hold aside approximately \$50,000 for future use to cover expenses relating to MB's Italian estate. Further to this letter, Fairclough acted as MB's POA to have a \$50,000 bank draft issued from MB's CIBC banking account and delivered the funds to MB's lawyer. At MB's request, Fairclough also acted as POA on four other occasions by signing documentation at CIBC to transfer MB's funds at CIBC to MB's bank account in Italy. By acting as POA, Fairclough was attempting to assist her close personal friend who was living abroad.
14. Fairclough did not disclose to RBC DS at the time that she had been acting as MB's POA.

Fairclough Transferred Client's Account to Another RR at RBC DS

15. In March 2019, Fairclough transferred MB's account to another RR at RBC DS. Fairclough worked with the new RR to have the POA added to the account which named Fairclough as attorney for MB. As POA, Fairclough was able to make investment decisions for MB's account.
16. Fairclough did not update Branch Management about the reason for transferring of the account or the addition of the POA to the account.

Fairclough Acted as Executor for Client

17. In July 2020, MB passed away. Fairclough began acting as executor by collecting the \$50,000 deposited with MB's lawyer on behalf of MB's estate per the letter of direction set out in paragraph 13 above.
18. Fairclough did not advise RBC DS that she was acting as executor for MB's estate at the time.

Fairclough Ceased Acting as Executor and Repaid \$50,000 to Client's Estate

19. During the course of IIROC's investigation, Fairclough ceased acting as executor and repaid the \$50,000 monetary gift to MB's estate. As a result, Fairclough did not ultimately benefit from the contraventions.

Fairclough Subject to Internal Disciplinary Action at RBC DS

20. RBC DS became aware of the facts above when certain beneficiaries of MB's estate filed a complaint and IIROC launched an investigation.

21. Fairclough was subject to internal disciplinary action by RBC DS twice for the facts listed above:
- a) For the first Contravention as set out in paragraph 27(a) below, Fairclough was required in June 2021 to:
 - i. pay a fine of \$12,500, which was donated to charity;
 - ii. re-write and pass the examination based on the Conduct and Practices Handbook; and
 - iii. review and acknowledge her understanding of the Standards of Conduct chapter and the RBC Code of Conduct.

 - b) For the second Contravention as set out in paragraph 27(b) below, Fairclough was required in January 2022 to:
 - i. Pay a fine of \$7,500 which was donated to charity.

Additional Factors and Early Resolution Offer

22. Fairclough has admitted the conduct described above reducing the length of time required to investigate this matter and agreed to resolve this matter in a timely manner. Fairclough accepted Enforcement Staff's Early Resolution Offer which granted a 30% reduction on the fine Enforcement Staff otherwise would have sought.
23. Fairclough had a close personal friendship of over 30 years with MB. According to Fairclough, her actions as POA were intended to assist MB with her banking needs and to prepare for her passing given that MB lived abroad and had no immediate family members who could assist.
24. Fairclough has paid a total of \$20,000 in internal disciplinary fines at RBC DS. Fairclough has successfully re-written and passed the Conduct and Practices Handbook.

25. Fairclough has repaid the \$50,000 monetary gift to MB's estate referred to in paragraph 11.
26. Fairclough does not have any disciplinary history with IIROC.

PART IV – CONTRAVENTIONS

27. By engaging in the conduct described above, the Respondent committed the following contraventions of IIROC's Rules:
 - a) Between January 2019 and July 2020, the Respondent acted as a Power of Attorney for a client contrary to Dealer Member Rule 43.2(5)(i); and
 - b) In January 2019, the Respondent accepted a \$50,000 monetary gift from a client contrary to Dealer Member Rule 43.2(1).

PART V – TERMS OF SETTLEMENT

28. The Respondent agrees to the following sanctions and costs:
 - a) A fine of \$17,500
 - b) Costs of \$5,000
29. 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

30. 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.

31. 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

32. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
33. 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.
34. 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.
35. 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.
36. 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.

37. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
38. 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.
39. 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.
40. 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

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

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

DATED this 16 day of June, 2022.

“Witness”
Witness

“Nancy Fairclough”
Nancy Fairclough (Woods)

“Ricki Ann Newmarch”
Witness

“April Engelberg”
April Engelberg
Enforcement Counsel on behalf of
Enforcement Staff of the Investment
Industry Regulatory Organization of
Canada

The Settlement Agreement is hereby accepted this "18" day of "July", 2022 by the following Hearing Panel:

Per: "Philip Anisman"
Panel Chair

Per: "Mary Savona"
Panel Member

Per: "Vanessa Gardiner"
Panel Member