

**INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA**

**IN THE MATTER OF:**

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

**AND**

**THE BY-LAWS OF THE  
INVESTMENT DEALERS ASSOCIATION OF CANADA**

**AND**

**WELLINGTON WEST CAPITAL INC. AND LESLEY WALTERS-SAGHER**

**SETTLEMENT AGREEMENT**

**INTRODUCTION**

1. Enforcement staff of the Investment Industry Regulatory Organization of Canada (“IIROC”) and the Respondents, Wellington West Capital Inc. (“WW”) and Lesley Walters-Sagher (“LWS”) consent and agree to the settlement of this matter by way of this agreement (the “Settlement Agreement”).
2. IIROC's Enforcement Department has conducted an investigation (the “Investigation”) into WW's and LWS's conduct.
3. The Investigation discloses matters for which WW and LWS may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C (the “Hearing Panel”).

**JOINT SETTLEMENT RECOMMENDATION**

4. IIROC staff (“Staff”), WW and LWS jointly recommend that the Hearing Panel accept this Settlement Agreement.
5. WW and LWS admit to the following contraventions of IIROC Dealer Member Rules, Guidelines, Regulations or Policies for the period from January to June, 2009 (the “Relevant Period”):

- (a) each did not use due diligence to learn and remain informed of the essential facts relative to the orders for certain leveraged exchange traded funds accepted during the Relevant Period, contrary to Dealer Member Rule 1300.1(a); and
  - (b) they did not adequately supervise WW registered representatives when they recommended certain leveraged exchange traded funds to their clients during the Relevant Period, contrary to Dealer Member Rule 2500.
6. Staff and WW agree to the following terms of settlement:
- (a) WW shall pay to IROC a fine in the amount of \$175,000;
  - (b) LWS shall pay to IROC a fine in the amount of \$15,000; and
  - (c) WW shall pay IROC the sum of \$10,000 to reflect the costs that Staff incurred in connection with this matter.

## **STATEMENT OF FACTS**

### **Acknowledgement**

7. Staff, WW and LWS agree with the facts set out in this Settlement Agreement and acknowledge that the terms of the settlement contained in this Settlement Agreement are based on those specific facts.

### **WW**

8. WW was admitted to membership with the Investment Dealers Association of Canada (“IDA”) in October 2006 and became an IROC registrant on June 1, 2008. In or about July 2011, well after the Relevant Period, WW was acquired by National Bank Financial Ltd. (“NBF”), another IROC Dealer Member.

### **LWS**

9. LWS has been a registrant of the IDA since 1995 and became an IROC registrant on June 1, 2008. LWS was registered as a compliance manager and branch manager at WW from 2003 to 2011, when WW was acquired by NBF. LWS is now an IROC registrant with NBF.
10. LWS was asked by WW to act as interim branch manager for WW’s Thunder Bay branch from 2008 to 2011 while she was a compliance department employee of WW based out of WW’s Winnipeg offices.

### **LETfs Made Available and Client Orders Accepted**

11. Prior to the Relevant Period, and as early as 2006, publicly-traded leveraged exchange traded funds became available to WW’s registered representatives for recommendation to

clients and WW began accepting client orders for leveraged exchange traded funds around the same time. In 2008, WW allowed an issuer of leveraged exchange traded funds to present to its registered representatives on a national sales call.

12. During the Relevant Period, Terry Dyck, while an investment advisor at WW, was able to purchase and sell certain leveraged exchange traded funds for his clients. The products at issue in this matter are the certain leveraged exchange traded funds that were purchased and sold by Terry Dyck for his clients during the Relevant Period that were available at the time and were recommended by WW's registered representatives (the "LETFS").
13. During the Relevant Period, a number of Mr. Dyck's client accounts held the LETFS and, by the end of 2009, the LETFS were held by approximately 145 of his clients. Mr. Dyck's clients suffered losses in connection with such investments in 2009, notwithstanding the gains made on LETFS by certain of those clients in 2008.

### **LETFS are Complex High Risk Products**

14. WW accepted orders from clients for the LETFS, including "Bull" and "Bear" LETFS. The "Bull" LETFS are designed to achieve a multiple of the daily performance of an index (*i.e.*, to rise or fall in value in the same direction as the index), whereas the "Bear" LETFS are designed to achieve an inverse multiple of the daily performance of an index (*i.e.*, to rise or fall in value in the opposite direction from the index).
15. The LETFS are described in their prospectuses as "highly speculative" and as "involving a high degree of risk". The LETFS include the following characteristics, among others, as described in their prospectuses:
  - (a) the securities underlying the funds include equity and/or fixed income securities, currencies, commodities and/or financial instruments including derivatives, such as options, swap agreements and futures and forward contracts;
  - (b) their use of leverage could magnify market movements and provide greater investment exposure than in an unleveraged investment; and
  - (c) they are designed to provide daily investment results and are rebalanced daily, which could magnify gains or losses.
16. The prospectuses for the LETFS identify a number of inherent risks, including: active investor risk; leverage risk; volatility risk; derivatives trading risk; restrictive effect of speculative position limits; commodity risk; aggressive investment technique risk; correlation and inverse correlation risk; counterparty risk; and risks associated with the underlying securities.
17. In June 2009, IIROC issued a Guidance Notice (the "Guidance Notice") to Dealer Members indicating that leveraged and inverse ETFs that are reset daily typically are unsuitable for retail investors who plan to hold them for longer than one trading session, particularly in volatile markets.

### **WW Failed to Use Due Diligence to Learn Essential Facts of LETFs**

18. WW failed to use adequate due diligence to learn and remain informed of essential facts about the LETFs.
19. It is immediately apparent on the face of the prospectuses that the LETFs are high risk. To have failed to identify the LETFs as high risk products, WW failed to use adequate due diligence to learn and remain informed of essential facts about the LETFs. As such, WW was not in a position to verify the suitability of the LETFs.

### **WW Failed to Adequately Supervise**

20. The LETFs were recommended for investment to WW clients. Without understanding the essential facts relative to the LETFs before accepting the client orders, WW could not accurately assess the nature and level of risk attendant in the LETFs. As such, WW was not able to meet its obligation to supervise the suitability of the recommendations to invest in the LETFs.

### **LWS Failed to Use Due Diligence to Learn Essential Facts of LETFs**

21. LWS was branch manager for WW's Thunder Bay branch over the period when Mr. Dyck recommended the LETFs for investment to approximately 145 clients. At least one other registered representative at the Thunder Bay branch also recommended LETFs to clients.
22. Although LWS was aware of Mr. Dyck's extensive recommendation of the LETFs, she did not take any independent steps – such as reviewing the prospectuses or otherwise – to understand the LETFs. Instead, she relied on Mr. Dyck's assessment of the product as the responsible investment advisor and WW's identification of the LETFs as a medium risk security.
23. Had LWS reviewed the LETF prospectuses, it would have been clearly apparent to someone of her diligence and experience that they are a high risk product that would have to be supervised as such.

### **LWS Failed to Adequately Supervise**

24. As branch manager, LWS was responsible for assessing compliance with regulatory requirements, including conducting daily trading reviews for, among other things, the suitability of recommended securities for clients.
25. While LWS generally executed her obligations as branch manager with diligence, she failed to meet those obligations in respect of the LETFs. Without understanding the essential facts relative to the LETFs, LWS could not accurately assess the nature and level of risk attendant in the LETFs and thus could not meet her obligation to supervise the suitability of the recommendations regarding the LETFs. As such, LWS failed to adequately supervise Mr. Dyck.

## **Mitigating Factors**

26. After IIROC issued the Guidance Notice, Wellington West circulated the notice to its registered representatives.
27. By 2010, WW took additional steps to ensure that it sufficiently understood the structure and features of more complex and/or non-transparent investment products that its registered representatives would recommend to clients, including leveraged exchange traded funds.
28. WW and LWS have cooperated with IIROC Staff throughout the course of the Investigation.

## **TERMS OF SETTLEMENT**

29. 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.
30. The Settlement Agreement is subject to acceptance by the Hearing Panel.
31. The Settlement Agreement shall become effective and binding upon the Respondent and IIROC Staff as of the date of its acceptance by the Hearing Panel.
32. 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.
33. The Respondent hereby waives its rights under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal in the event that the Hearing Panel accepts the Settlement Agreement.
34. If the Hearing Panel rejects the Settlement Agreement, IIROC 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.
35. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
36. IIROC 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.
37. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.

38. 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 Wellington West Capital Inc. at the City of Montréal in the Province of Québec, this 25<sup>th</sup> day of October, 2012.

*“Sabrina Tremblay”*

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Witness

*“François Lavallée”*

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**Wellington West Capital Inc.**  
**Per: François Lavallée**

**AGREED TO** by the Respondent Lesley Walters-Sagher at the City of Winnipeg in the Province of Manitoba, this 30<sup>th</sup> day of October, 2012.

*“Jim Lawson”*

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Witness

*“Lesley Walters-Sagher”*

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**Lesley Walters-Sagher**

**AGREED TO** by Staff at the City of Winnipeg in the Province of Manitoba, this 1<sup>st</sup> day of November, 2012.

*“Gil Gauthier”*

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Witness

*“Susan Kushneryk for”*

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**Natalija Popovic and Susan Kushneryk**  
Enforcement Counsel on behalf of Staff of  
the Investment Industry Regulatory  
Organization of Canada

**ACCEPTED** at the City of Winnipeg in the Province of Manitoba, this 1st day of November, 2012, by the following Hearing Panel:

Per: *“Thomas Kormylo”*  
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Mr. Thomas Kormylo  
Panel Chair

Per: *“Bernie Plett”*  
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Mr. Bernie Plett  
Panel Member

Per: *“Bruce Henderson”*  
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Mr. Bruce Henderson  
Panel Member