

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

**THE RULES OF THE INVESTMENT INDUSTRY REGULATORY
ORGANIZATION OF CANADA (IIROC)**

AND

ASSANTE CAPITAL MANAGEMENT LTD.

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff (“Staff”) and the Respondent, Assante Capital Management Ltd. (the “Respondent”), consent and agree to the settlement of this matter by way of this agreement (the “Settlement Agreement”).
2. The Enforcement Department of IIROC has conducted an investigation (“the Investigation”) into the conduct of Assante Capital Management Ltd.
3. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C (the “Hearing Panel”).

II. JOINT SETTLEMENT RECOMMENDATION

4. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
5. The Respondent admits to the following contraventions of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:

Between January 2007 and May 2012, the Respondent failed to adequately fulfill its obligations to conduct Tier 2 supervision of a sub-branch, contrary to IIROC Dealer Member Rule 2500.

6. Staff and the Respondent agree to the following terms of settlement:

a) A global fine of \$400,000.

7. The Respondent agrees to pay costs to IIROC in the sum of \$30,000.

III. STATEMENT OF FACTS

(i) Acknowledgment

8. Staff and the Respondent agree with the facts set out in this Section III and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts.

(ii) Factual Background

A. Overview

9. From 2007 to 2012 (“the Material Time”), the Respondent failed to adequately fulfill its obligations to conduct Tier 2 supervision of its branch located in Red Deer, Alberta (“the Red Deer Branch”).

10. Throughout the Material Time, there were three employees in the Red Deer Branch. They were Christine Malley who was a non-producing Branch Manager, her husband Brian Malley who was a Registered Representative (“RR”) (together “the Malleys”), and one unregistered assistant. The Malleys were sanctioned by IIROC in June 2014.

11. The Respondent failed in its Tier 2 supervision of the Red Deer Branch in that it did not make supervisory inquiries in circumstances where inquiries were required. In some cases where inquiries were made, it received inadequate or questionable responses but accepted the responses as satisfactory.

12. In addition, the Respondent was aware throughout the Material Time that the Malleys were spouses; however the Respondent failed to adequately supervise the Red Deer Branch to mitigate for the potential conflict of interest on the part of Christine Malley.

B. Registration History

13. The Respondent is a Dealer Member of IIROC with branches located across Canada. Its head office is located in Toronto, Ontario.

14. The Respondent became a Dealer Member of the Investment Dealers Association in 1997 and became a Dealer Member of IIROC on June 1, 2008.

15. The Respondent was at the Material Time in a principal-agent relationship with the Malleys but remained responsible for the supervision of the Malleys' conduct to ensure compliance with IIROC requirements.

C. Background---The 2014 IIROC Decision in Re Malley

16. The conduct of Christine Malley and Brian Malley between 2005 and 2012 was the subject of an IIROC discipline proceeding resulting in a decision dated June 25, 2014 ("the Malley Decision"). The Malleys did not admit or contest the allegations and did not attend the hearing.
17. In the Malley Decision, the IIROC Hearing Panel ("the Panel") found that Brian Malley failed to ensure that his recommendations were suitable for ten clients when he recommended that they hold highly concentrated positions in speculative securities such as junior issuers and commodity based leveraged exchange traded funds ("LETFs").
18. In addition, the Panel found that he had engaged in discretionary trading in the accounts of seven of the ten clients.
19. The Panel concluded that most of the clients suffered substantial losses in their accounts with decreases in value ranging from approximately 23%-54%.
20. The Panel imposed a permanent registration ban upon Brian Malley together with a fine of \$300,000.
21. The Panel found that Christine Malley as her husband's supervisor approved client accounts with inappropriate investment and risk parameters; failed to take the necessary actions to prevent him from engaging in highly aggressive trading strategies; and failed to undertake any meaningful supervision with respect to the activities in his clients' accounts.
22. The Panel imposed a permanent registration ban upon Christine Malley together with a fine of \$250,000.

D. Structure of Tier 2 Supervision

I. Red Deer Branch Audits

23. The Respondent's internal policies and procedures manual (the "PPM") required periodic branch audits to be conducted, with more frequent reviews and follow up visits for "high risk" branches. Depending upon the Respondent's assessment of the level of risk, audits were then conducted on one, two, or three year cycles.

24. Several aspects of the Red Deer Branch were known or ought to have been known to the Respondent and ought to have attracted greater supervisory scrutiny with more frequent visits or audits of the branch. For example during the Material Time:
- Christine Malley was a non-producing Branch Manager, her husband Brian Malley was the only RR in the branch.
 - Approximately 89% of the revenues from all of the Respondent's RRs were derived from the purchase and sale of mutual funds. In contrast, a significant portion of Brian Malley's revenue derived from trades in securities other than mutual funds. His revenue from non-mutual funds securities was the highest of any RR at the firm in all but one year and ranged from 52% to 77 % of his revenues.
 - Between approximately August 2007 and February 2008, the Respondent restricted four of Brian Malley's clients' accounts because it had not received responses from Christine Malley to its supervisory inquiries about the accounts.
 - Between September and December 2008 there was a series of margin calls in several of Brian Malley's client accounts. In one instance as many as 39 client accounts were subject to margin calls on a single day.
25. During the Material Time the Respondent only conducted audits of the Red Deer Branch on the longest audit cycle of three years, specifically in June 2007 and then not again until November 2010.

II. Tier 2 Review

26. As set out in the PPM, in the course of performing Tier 2 supervision, members of the compliance department were required to review certain trading activities for each branch office, including reviewing the trade blotter, and were required to contact advisors via email when trades triggered inquiries or required further information.
27. The PPM required that satisfactory resolution of a Tier 2 query include one of the following:
- a) Submission of an approved new account application form ("NAAF") with updated "know your client" ("KYC") information to Head Office which reflected the new portfolio holdings;
 - b) A change in account holdings so that the portfolio was rendered suitable given the current KYC information; or
 - c) A reasonable explanation where neither a) nor b) would provide a satisfactory resolution.

E. Supervisory Failures

28. During the Material Time the Respondent failed to adequately discharge its obligations to conduct Tier 2 supervision at the Red Deer Branch, as described below, in that:
- a) Tier 2 Inquiries were not made in circumstances where they ought to have been made; and
 - b) Some Tier 2 Inquiries which were made received inadequate or questionable responses that were accepted as satisfactory.

a) Failure to Make Tier 2 Inquiries

(i) Use of Leverage in Client Accounts at Red Deer Branch.

29. The Respondent failed to adequately supervise the use of leverage at the Red Deer Branch in client margin accounts and through the use of an external lender.
30. The Respondent relied entirely upon Christine Malley as the Branch Manager to assess the reasonableness and suitability of the use of leverage by Brian Malley's clients.
31. The Respondent performed no ongoing assessment at the Tier 2 level for the use of leverage by these clients at the Red Deer Branch.
32. Further, there is no evidence that the Respondent made any inquiries in respect of margin calls on clients of the Red Deer Branch in 2008.

(ii) Trades in LETFs and Junior Securities

33. From 2009 onward, the Respondent failed to make adequate inquiries when trades in LETFs and/or junior resource securities were executed which were clearly outside of the clients' risk tolerances as recorded on their NAAFs. In some cases these trades represented a downgrade in the quality of securities held, and a corresponding increase in relative risk, from prior securities held in the clients' accounts.

(iii) High Number of Trades on Certain Days

34. On twelve days in 2010 and 2011, Brian Malley entered a high number of trades, including in LETFs, in various client accounts. The number of trades entered each day ought to have prompted the Respondent to query whether Brian Malley had contacted each client prior to entering the trades. However, the Respondent made no such inquiries.

(iv) High Monthly Commissions

35. In performing monthly Tier 2 supervision the Respondent was required to review accounts in which \$3000 or more of commission was charged in the month. However, in

the case of several clients, the Respondent ought to have but either did not detect or did not question instances when the monthly commissions over \$3000 represented a significant amount relative to the net asset value of the client's account.

(v) Trades and Account Value Exceeding Recorded Net Worth

36. In performing daily and monthly supervision reviews of the account of one of Brian Malley's clients, the Respondent failed to make inquiries in the following circumstances that ought to have triggered queries at the Tier 2 level:
- Eight individual LETF trades were processed in January and February 2010 in amounts of between \$60,000 and \$94,700, each of which exceeded the client's net worth which was reflected as \$50,000 on the supervisory report.
 - In January and February 2010 the client's account value was \$220,000 and \$233,500 respectively, at a time when the client's net worth was shown as \$50,000 on the supervision report.
 - In January 2010 a single deposit to the account of \$38,000 was almost twice the client's income of \$20,000, as reflected on the supervision report.

b) Inadequate Responses to Inquiries Accepted as Satisfactory

37. At certain times in 2010, the Respondent accepted unsatisfactory or inadequate responses to its inquiries, without further questioning.
38. For example, on January 4, 2010 Brian Malley conducted 69 trades in various client accounts above the Tier 2 threshold in the same LETF, resulting in 12 inquiries in respect of 12 individual clients. All 12 inquiries were sent to Christine Malley on the same day.
39. Christine Malley responded to all 12 of these inquiries in the same way. She advised the Tier 2 reviewer that the affected NAAFs would be updated.
40. On January 5 and 6, 2010, Brian Malley conducted further trades in LETFs and in one junior resource security that resulted in four more Tier 2 inquiries. Christine Malley responded to all four inquiries in the same way. She advised that the affected NAAFs would be updated.
41. There is no evidence that Christine Malley advised that any of these trades were being cancelled because they were inconsistent with the account objectives.
42. Over the next several weeks the Respondent received and accepted updated NAAFs for at least 16 of the accounts in question. The updates reflected significantly higher risk

tolerances for these clients that may not have been in keeping with some clients' circumstances, such as age, income, net worth or investment knowledge.

43. The Respondent failed to query the legitimacy of the NAAF updates to determine whether they truly reflected the clients' change in circumstances, or were simply updates made in order to match the NAAF to holdings already in the account.
44. Following receipt of the updates, the Respondent then failed to question subsequent trades of LETFs and junior resource security in these accounts when it had opportunities to do so.
45. Despite Christine Malley's uniform response that the clients' NAAFs would be updated, the Respondent did not follow up to question the adequacy of these responses in the circumstances. For example, the Respondent failed in its supervisory obligations in that it did not:
 - Question why 12 individual clients would be placing similar LETF orders that were outside of their investment objectives and risk factors on the same day.
 - Question why the risk tolerance of multiple clients would simultaneously have changed as significantly as indicated by the updated NAAFs, including a joint account for clients KC & JC updated within three months of opening.
 - Question the reasonableness or suitability of the above changes to client risk tolerances at the Tier 2 level.
 - Question why the updated risk tolerances were not in keeping with some clients' circumstances, such as age, income, net worth or investment knowledge.
 - Question Christine Malley whether any of the clients ought to have rebalanced their holdings rather than update the NAAFs.
 - Contact Brian Malley directly to make inquiries about the changes.
 - Contact the client directly to verify the trades and/or the updates to their NAAFs.
46. Further, in the case of 10 client accounts where supervision inquiries were still open and updates to NAAFs had not yet been received, the Respondent allowed subsequent and similar transactions to occur without further query.

F. Failure to Supervise for Potential Conflict of Interest

47. There was a clear potential for conflict of interest on the part of Christine Malley. Specifically, there was a conflict between Christine Malley and Brian Malley based upon their personal relationship as spouses that could have had an impact on her ability to objectively supervise him.
48. The Respondent was aware throughout the Material Time that the Malleys were spouses and that they resided at the same home address. A heightened level of supervision was therefore required to mitigate the potential for conflict of interest.
49. However, the Respondent failed to take steps to mitigate against the potential for conflict of interest and conduct adequate supervision to ensure that Christine Malley was conducting adequate Tier 1 supervision of her husband's trading activity.

IV. TERMS OF SETTLEMENT

50. 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.
51. The Settlement Agreement is subject to acceptance by the Hearing Panel.
52. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
53. 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.
54. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her/its right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
55. 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 matters disclosed in the Investigation.
56. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
57. 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.
58. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.

59. 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 at the City of "Toronto" in the Province of

"Ontario", this 20th day of August , 2015.

"Witness"
Witness

"Steven J. Donald"
Assante Capital Management Ltd.
Per:

AGREED TO by Staff at the City of "Toronto" in the Province of

"Ontario" ,

this 21st day of August , 2015.

"Witness"
Witness

"Natalija Popovic"
Natalija Popovic
Enforcement Counsel on behalf of
Staff of the Investment Industry
Regulatory Organization of Canada

ACCEPTED at the City of "Toronto" in the Province of

"Ontario" ,

this 13th day of October , 2015, by the following Hearing
Panel:

Per: "Robert Armstrong"

Panel Chair

Per: "Nick Savona"
Panel Member

Per: “Colleen Wright”
Panel Member