

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

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

AND

HENRY SOJKA

NOTICE OF HEARING

TAKE NOTICE that pursuant to Part 10 of Dealer Member Rule 20 of the Investment Industry Regulatory Organization of Canada (IIROC), a hearing will be held before a hearing panel of IIROC (Hearing Panel) on a date to be fixed by the Hearing Panel on April 27, 2016 at Charest Reporting, 16th Floor - 885 West Georgia Street, Vancouver, British Columbia at 10:00 a.m., or as soon thereafter as the hearing can be heard.

TAKE FURTHER NOTICE that pursuant to Rule 6.2 of IIROC's Dealer Member Rules of Practice and Procedure (*Rules of Practice and Procedure*), that the hearing shall be designated on the:

The Standard Track

The Complex Track

THE PURPOSE OF THE HEARING is to determine whether the Respondent, Henry Sojka (Sojka) who at all material times was a Registered Representative, committed the following contraventions that are alleged by the Staff of IIROC (IIROC Staff):

Count 1

Between March 2009 and May 2011, Sojka failed to use due diligence to ensure that the orders that he placed for the account of his client SF were suitable for her, contrary to IIROC Dealer Member Rule 1300.1(p) and/or 1300.1(q).

Count 2

Between March 2009 and May 2011, Sojka engaged in discretionary trading for the account of his client SF without the account having been approved and accepted as a discretionary account, contrary to IIROC Dealer Member Rule 1300.4.

Count 3

On January 6, 2016, Sojka failed to attend and give information in respect of an IIROC investigation into his conduct, contrary to IIROC Dealer Member Rule 19.5 and/or Rule 29.1.

PARTICULARS

TAKE FURTHER NOTICE that the following is a summary of the facts alleged and to be relied upon by IIROC Staff at the hearing:

Overview

1. Sojka was the Registered Representative who was responsible for the account of his niece SF.
2. On behalf of SF's account, between March 2009 and May 2011 Sojka bought and then sold within a relatively short period of time, shares of primarily high risk resource companies. These trades were uneconomic because in almost every instance they generated significantly more in commission revenue than profit. They were also unsuitable for SF because of her investment objectives and risk tolerance level.
3. Further, Sojka used his discretion to place buy and sell orders even though the account had not been designated as discretionary.
4. A complaint was submitted on behalf of SF regarding Sojka's handling of her account. As a result, IIROC Staff opened an investigation into Sojka's conduct. In furtherance of the investigation, IIROC Staff scheduled an interview which Sojka failed to attend.

Sojka's Work History

5. Sojka first began working in the securities industry in 1987.
6. Between 2005 and October 2012, he worked as a Registered Representative at the Vancouver head office of Union Securities Inc. (Union Securities).
7. He has not been an IIROC Approved Person since October 2012.

Opening of SF Account

8. AB was Sojka's sister. She died in 2005. AB was the mother of SF and CD.

9. On or about July 12, 2006, SF opened an investment account at Union (the SF Account). At the time the account was opened SF was 19 years of age.
10. The Client Account Form for the SF Account indicated that SF was a full time student and that her:
 - annual income was zero;
 - net liquid assets were \$200,000;
 - net fixed assets were \$200,000;
 - investment objectives were 70% income; 20% long term growth; 5% medium risk; and 5% venture/speculative; and
 - risk tolerance level was 70% low; 25% medium; and 5% high.
11. At all material times, Sojka was the Registered Representative who was responsible for the SF Account.

Deposits into the SF Account

12. In total, approximately \$574,314 from AB's estate was deposited into the SF Account as follows:
 - \$94,314 was deposited in July 2006;
 - \$110,000 was deposited in July 2008; and
 - \$370,000 was deposited in May 2009.
13. Virtually all of the funds which were deposited into the SF account came from AB's estate.
14. SF wanted to use the funds that she received from AB's estate to, among other things, pay for her education, purchase a home, and to assist her brother CD.

Initial Activity in the SF Account

15. For the first few years that the SF Account was open for the most part it held low and medium risk securities.
16. On March 1, 2009 the Client Account Form for the SF Account was updated. As a result, among other things, SF's:
 - investment objectives were changed to 100% venture speculative; and
 - risk tolerance level was changed to 100% high risk.
17. SF did not wish to change the account objectives and risk tolerance levels for the SF Account. It was common for SF to sign blank forms that Sojka provided to her.

Uneconomic Short Term Trading

18. Approximately 42 times between March 2009 and May 2011, Sojka bought and then sold within a relatively short period of time shares of resource companies (the Impugned Transactions). Many of these companies were high risk.
19. The Impugned Transactions were uneconomic because in almost every instance they generated significantly more in commission revenue than profit. As a result of the Impugned Transactions the SF Account incurred a loss of approximately \$6,984 on the value of the shares and approximately \$34,554 in commission charges. Therefore, due to the Impugned Transactions the SF Account incurred a total loss of approximately \$41,538.
20. The Impugned Transactions were not suitable for SF given, among other things, her financial situation, investment knowledge, investment objectives, and/or risk tolerance.

Discretionary Trading

21. Between March 2009 and May 2011, Sojka bought and/or sold shares of approximately 94 different companies. As a result of these orders, the SF Account incurred approximately \$142,911 in commission charges.
22. Sojka used his discretion with respect to the type of security, quantity, price, or timing of these orders.
23. At no point did Sojka obtain SF's written authorization for discretionary trading, and the SF Account was never designated and approved as discretionary by Union Securities.

Failure to Cooperate

24. By way of a February 25, 2014 letter that was delivered to Sojka's home by registered mail, IIROC Staff informed him that it had opened an investigation into his conduct while he was employed by Union Securities (the Investigation).
25. On June 23, 2014, IIROC Staff left a telephone message for Sojka at his home asking him to contact IIROC Staff. Sojka did not return the telephone call.
26. On August 8, 2014, IIROC Staff left a voice mail message for Sojka at his home informing him that his investigatory interview had been scheduled for September 10, 2014 and asking him to contact IIROC Staff. Sojka did not respond to the August 8, 2014 voice mail message.
27. By way of an August 8, 2014 letter which was delivered to Sojka's home on August 11, 2014, IIROC Staff informed Sojka that his investigatory interview had been scheduled for September 10, 2014.

28. IIROC Staff also attempted to personally serve Sojka with the August 8, 2014 letter and to send it to him by email.
29. Sojka failed to attend his September 10, 2014 investigatory interview.
30. On December 4, 2015, Sojka was personally served at his residence with a letter dated December 4, 2015 which, among other things, stated:

Pursuant to Investment Industry Regulatory Organization of Canada (IIROC) Dealer Member Rule 19.5, you are required to attend an interview on **January 6, 2016 at 10:00 a.m. at the IIROC offices at Suite 2800 – 1055 West Georgia Street, Vancouver, BC** in order to answer questions regarding the IIROC investigation into your conduct.

... We have unilaterally set the date and time of this interview and we are compelling your attendance because you have not responded to our numerous attempts to contact you since June 2014. These attempts are summarized in our September 11, 2014 letter to you, a copy of which is attached.

... Should you fail to attend the interview on January 6th or you do not contact me before that day to reschedule the interview, IIROC will initiate disciplinary proceedings against you for failure to cooperate with IIROC's investigation.

31. Sojka did not respond to the December 4, 2015 letter and he failed to attend his January 6, 2016 investigatory interview.
32. Sojka's failure to attend his interview and to provide information has prevented IIROC Staff from completing the Investigation.

GENERAL PROCEDURAL MATTERS

TAKE FURTHER NOTICE that the hearing and related proceedings shall be subject to the *Rules of Practice and Procedure*.

TAKE FURTHER NOTICE that pursuant to Rule 13.1 of the *Rules of Practice and Procedure*, Sojka is entitled to attend and be heard, be represented by counsel or an agent, call, examine and cross-examine witnesses, and make submissions to the Hearing Panel at the hearing.

RESPONSE TO NOTICE OF HEARING

TAKE FURTHER NOTICE that Sojka must serve upon IIROC Staff a Response to the Notice of Hearing in accordance with Rule 7 of the *Rules of Practice and Procedure* within twenty (20) days (for a Standard Track disciplinary proceeding) or within thirty (30) days (for a Complex Track disciplinary proceeding) from the effective date of service of the Notice of Hearing.

FAILURE TO RESPOND OR ATTEND HEARING

TAKE FURTHER NOTICE that if Sojka fails to serve a Response or attend the hearing, the Hearing Panel may, pursuant to Rules 7.2 and 13.5 of the *Rules of Practice and Procedure*:

- (a) proceed with the hearing as set out in the Notice of Hearing, without further notice to Sojka;
- (b) accept as proven the facts and contraventions alleged by IIROC Staff in the Notice of Hearing; and
- (c) order penalties and costs against Sojka pursuant to Dealer Member Rules 20.33 and 20.49.

PENALTIES & COSTS

TAKE FURTHER NOTICE that if the Hearing Panel concludes that Sojka did commit any or all of the contraventions alleged by IIROC Staff in the Notice of Hearing, the Hearing Panel may, pursuant to Dealer Member Rules 20.33 impose any one or more of the following penalties:

- (a) a reprimand;
- (b) a fine not exceeding the greater of:
 - (i) \$1,000,000 per contravention; and
 - (ii) an amount equal to three times the profit made or loss avoided by such Approved Person by reason of the contravention.
- (c) suspension of approval for any period of time and upon any conditions or terms;
- (d) terms and conditions of continued approval;
- (e) prohibition of approval in any capacity for any period of time;
- (f) termination of the rights and privileges of approval;
- (g) revocation of approval;
- (h) a permanent bar from approval with the IIROC; or
- (i) any other fit remedy or penalty.

TAKE FURTHER NOTICE that if the Hearing Panel concludes Sojka did commit any or all of the contraventions alleged by IIROC Staff in the Notice of Hearing, the Hearing Panel may pursuant to Dealer Member Rule 20.49 assess and order any investigation and prosecution costs determined to be appropriate and reasonable in the circumstances.

DATED at Vancouver, this 3rd day of March, 2016.

“Warren Funt”

Warren Funt

Vice-President, Western Canada

Investment Industry Regulatory Organization of Canada

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