

IN THE MATTER OF:

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

AND

GRAEME ROBERT KIRKLAND

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 Consolidated Enforcement, Examination and Approval Rules of IIROC, a hearing panel (“Hearing Panel”) should accept the settlement agreement (“Settlement Agreement”) entered into between the staff of IIROC (“Staff”) and Graeme Robert Kirkland (“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.

A. Overview

4. The Respondent made numerous recommendations to several of his clients to purchase new issues and/or initial public offerings of securities (collectively “New Issues”).

5. When the Respondent purchased New Issues for his clients he earned a percentage of commissions paid to BMO Nesbitt Burns Inc. (“BMO” or the “Dealer Member”) by the issuers of the securities that roughly doubled his earnings and thereby resulted in a significant additional financial benefit to him.
6. The commissions paid to him by BMO influenced his decision, at least in part, to recommend New Issues to his clients. He was also influenced by his own research. The New Issues were brought to the Respondent’s attention via “New Issue Updates” email alerts sent to him by BMO’s Syndication Department.
7. In a number of cases, the New Issues did not perform well over a short time frame and the Respondent recommended that these clients subsequently sell the New Issues and there was in some cases no profit or gain for his clients.
8. The Respondent did not take reasonable steps to identify, address, and avoid the potential material conflict of interest that resulted from his recommendations and purchases of New Issues.
9. In 2015 the Respondent failed to escalate a client’s written complaint to his Dealer Member.

B. Registration History

10. From 2001 to 2002 the Respondent was a registrant with Investors Group and then was not registered in the securities industry from 2002 until 2007. According to the Respondent, he was working as a marketing contractor for RBC Dominion Securities advisors during this time. He was registered with Scotia Capital Inc. from 2007 to 2008 and worked for three months at RBC Dominion Securities Inc. from late 2008 to February 2009.
11. He was a Registered Representative with BMO from March 2009 to June 2016. As of February 2017, the Respondent has been registered with another IIROC Dealer Member, working under close supervision as a term of his registration due to this proceeding.

C. New Issues Commissions and Short Term Investing

12. The Respondent’s earnings were based, in part, on the use of a fee based structure for most client accounts (“Fee Based Accounts”).

13. In addition the Respondent recommended and purchased numerous New Issues in several clients' accounts and thereby received an additional financial benefit in the form of commissions on these purchases.
14. BMO was part of the syndicate for all of the New Issues purchased by the Respondent and shared in the financial benefit in the form of fees and commissions received from the issuers.
15. The Respondent admits that the additional commissions influenced his decision, at least in part, to recommend New Issues to his clients. He was also influenced by his own research.
16. However, in a number of cases the Respondent recommended that his clients sell the New Issues on a short term basis, and used the proceeds to purchase additional securities, including New Issues. The Respondent recommended short term trading in non-New Issue securities as well.
17. In 2014 New Issues accounted for approximately half of the purchases across his book of business. In some cases, there was ultimately a limited or no gain for his clients from this trading.
18. The Respondent also acknowledges to Staff that a result of his active investment strategy it meant that he routinely traded much more than average resulting in a high turnover in his clients' accounts.

D. Clients SA & PM

19. Among the clients for whom the Respondent purchased New Issues were SA and PM, a married couple.
20. The Respondent opened a total of six Fee Based Accounts for SA and PM in March and April 2014. SA and PM each opened an RRSP account and transferred approximately \$100,000.00 and \$85,000.00 into each respectively; a spousal RRSP account and a TFSA account.
21. Prior to opening these accounts with the Respondent, these clients had only invested in Guaranteed Investment Certificates and in mutual funds. SA and PM's new client application forms indicated that their investment time horizon was long term, in excess of 10 years.

22. SA and PM made no withdrawals from or additional contributions to any of their six accounts during the 11 month period from March 2014 to February 2015 that they were the Respondent's clients.

TFSA Accounts Were Profitable

23. SA and PM indicated to the Respondent that they wanted a "proactive" account management approach in the TFSA Accounts.
24. No New Issues were purchased in the TFSA accounts or in SA's spousal RRSP account.
25. In February 2015 SA and PM made a complaint to BMO and subsequently moved their accounts, in kind, out of BMO. At the time the accounts were moved out, the TFSA accounts and SA's spousal RRSP account had increased, on paper, in value by approximately \$3,800 or 6%, over the 11 month period.

RRSP Accounts-Purchases of New Issues

26. The Respondent did recommend purchases of several New Issues in the RRSP accounts and PM's spousal RRSP account (the "RRSP Accounts").
27. Over the 11 month period the longest period of time that a New Issue was held in the RRSP Accounts was for approximately five months.
28. The Respondent did not inform SA and PM that he would be receiving additional commissions on purchases of New Issues. BMO's policy was that disclosure of commissions on New Issues was not required. SA and PM received copies of a prospectus for all New Issue purchases. The Prospectuses disclosed commissions paid to his Dealer Member. The Respondent disclosed the commissions on New Issues to clients who asked. SA and PM did not ask.
29. During the 11 month period, New Issues represented approximately half of the Respondent's recommended purchases, and approximately three quarters of the dollar value of all purchases, in the RRSP Accounts.

30. A summary of the trading activity in the RRSP Accounts is as follows:

Account	Opening Balance	Closing Balance	No. of All Purchases	No. of Purchases of New Issues	Gross Commissions Applied to the Respondent's Grid for New Issues
1	\$85,300	\$79,600	18	12	\$3,700
2	\$100,300	\$84,400	20	10	\$3,500
3	\$31,700	\$20,400	8	2	\$705
Total	\$217,400	\$184,500	46	24	\$7905 [approximated total net commissions of \$3180 paid by BMO to the Respondent]

31. By the end of February 2015 the RRSP Accounts had sustained a loss in value of approximately \$32,900, or 15%, of which approximately \$23,000 were realized losses in New Issues. Approximately \$15,000.00 of this \$23,000.00 loss resulted from losses from the Energy Leaders Plus Income Fund, a New Issue, which suffered a significant decline due to the drastic decreases in oil prices in late 2014.
32. Over the same time period BMO earned approximately \$15,810 in total fees and commissions from these New Issue purchases of which \$3180 was net commissions paid to the Respondent.
33. By the end of the 11 month period the value of purchases made by the Respondent was approximately \$430,000 or roughly twice the overall value of the opening balance of the RRSP Accounts. Of these purchases, approximately \$302,900 worth were purchases of New Issues.

34. BMO investigated the complaint made by SA and PM but did not resolve it. SA and PM made a complaint to the Ombudsman and BMO ultimately settled this complaint with SA and PM.
35. The Respondent contributed approximately \$26,400 to compensate these clients as a result of the settlement of the Ombudsman complaint. The Respondent acknowledges that but for this payment the monetary penalty herein would have been higher.

E. Respondent's New Issues Purchases 2013 to 2014

36. In addition to SA and PM, from January 2013 to December 2014, the Respondent made several purchases of New Issues for at least 125, or roughly 70%, of his other clients' accounts.

Commissions Earned from New Issues Purchases

37. The Respondent earned a total of approximately \$477,000 in net commissions in 2013 and 2014 as a result of New Issues purchases alone. BMO earned fees and commissions on these same purchases of approximately \$1,908,900.00.

Increase in New Issues Purchases in 2014

38. Although his AUM remained virtually the same as in 2013, in 2014 the Respondent more than doubled the dollar value of New Issues purchases, as well as the percentage of New Issues purchases, relative to his AUM.
39. The Respondent roughly tripled his net commissions from New Issues purchases in 2014 compared with 2013.
40. For example, in the case of five specific New Issues purchased between March and December 2014, the Respondent had earned net commissions of over \$200,000; over \$90,000 of which was earned on one day in March 2014 when two New Issues settled on the same day.
41. Further, the Respondent had sold at least half and in some cases as much as 98% of these New Issues by the end of 2014. For four of the five New Issues at least 45%, and in the case of one of the New Issues 100% of the clients sold below the purchase price.

42. In January 2015, the firm's compliance staff raised an internal inquiry as to why the Respondent's "...commissions [were] double what they should be." The inquiry was responded to by another compliance staff member, who confirmed that it was as a result of New Issues commissions. This inquiry was not made directly to the Respondent.

F. Conflicts of Interest

43. The Respondent admits he placed himself in a potential material conflict of interest when he engaged in numerous purchases of New Issues influenced, at least in part, by the fact that he received a percentage of the commissions paid to BMO by the issuer on such purchases.
44. As a result, while the trading in New Issues for PM and SA, and other clients, was generally unprofitable for them, there was a substantial financial benefit to the Respondent.
45. The Respondent however, failed to identify, address, and avoid the potential material conflict of interest throughout the relevant time. Though BMO raised concerns about the Respondent's turn (revenue on assets) and use of New Issues, there is no evidence that the conflict of interest was ever identified by BMO or brought to the Respondent's attention.
46. In late 2015 the Respondent decided to substantially reduce his New Issues usage and reduce the amount of turn in his book of business.

G. Failure to Escalate Client LG's Written Complaint

47. The Respondent opened several accounts for his client LG in 2012 when LG was approximately 67 years of age and retired.
48. In 2015 the Respondent's client LG stated at that time that he was concerned about losses in his account. In April 2015 LG sent a written complaint in an email to the Respondent entitled "Request for an urgent review of my account".
49. In his complaint LG expressed concerns including about the "dismal performance" of his accounts resulting in a decrease in their value, which was causing him "considerable alarm".

50. LG concluded the email with a request to meet with the Respondent and inquired about “I am wondering about setting a new direction and getting a second opinion of the suitability of [his] holdings by the investment supervisor” at the firm; and “I now want your side of the story and I want to make a plan to both stop the slide and to get out of this mess.”
51. The Respondent did not escalate the written complaint to his supervisor or anyone else at BMO.
52. Instead the Respondent called LG and discussed the quality of the holdings in his accounts and advised LG that he should not focus on the account value alone. LG did not contact anyone else at BMO at the time.
53. According to the Respondent, he felt that he had addressed the client’s concerns. By not escalating LG’s written complaint of April 2015 to BMO compliance, no one else at BMO addressed the concerns at that time.
54. This issue came to Staff’s attention in June 2017 when LG wrote a second complaint addressed directly to BMO compliance staff, in which he enclosed his April 2015 complaint.
55. The Respondent acknowledges that but for certain financial circumstances, evidence of which has been provided to Staff, the fine agreed to by Staff would have been higher.
56. The Respondent further acknowledges that but for the fact that he has been under close supervision for over seven months at his current Dealer Member, a period of close supervision would have been included as a further sanction.

PART IV – CONTRAVENTIONS

57. By engaging in the conduct described above, the Respondent committed the following contraventions of IIROC’s Rules:
 - a) From January 2013 to February 2015 the Respondent failed to consider and to address a potential material conflict of interest between himself and his clients that resulted from his recommendations and purchases of securities in new issues that were offered for sale by his Dealer Member contrary to Dealer Member Rule 42.1 and 42.2.
 - b) In April 2015 the Respondent failed to escalate a client’s written complaint to his

Dealer Member, contrary to Dealer Member Rule 3100.

PART V – TERMS OF SETTLEMENT

58. The Respondent agrees to the following sanctions and costs:
 - a) A global fine of \$90,000 inclusive of disgorgement.
59. The Respondent agrees to pay costs to IIROC in the sum of \$10,000.
60. 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

61. 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.
62. 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 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

63. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
64. 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.
65. 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.

66. 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.
67. 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.
68. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
69. 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.
70. 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.
71. 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

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

DATED this “18th” day of “October”, 2017.

“Witness”
Witness

“Graeme Robert Kirkland”
Graeme Robert Kirkland

“Eric Mucchi”
Witness

“Natalija Popovic”
Natalija Popovic / Kathryn Andrews
Enforcement Counsel on behalf of
Enforcement Staff of the Investment
Industry Regulatory Organization of
Canada

The Settlement Agreement is hereby accepted this “4th” day of “January”, 2018 by the following
Hearing Panel:

Per: “Edward McDermott”
Panel Chair

Per: “Debbie Archer”
Panel Member

Per: “Ron Smith”
Panel Member