

# INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

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

AND

**THE BY-LAWS OF THE  
INVESTMENT DEALERS ASSOCIATION OF CANADA (IDA)**

AND

*DANIEL EDWARD SMITH*

## SETTLEMENT AGREEMENT

### I. INTRODUCTION

1. IIROC Enforcement Staff and Daniel Edward Smith (the Respondent), consent and agree to the settlement of this matter by way of this settlement agreement (the Settlement Agreement).
2. The Enforcement Department of IIROC has conducted an investigation (the Investigation) into the conduct of Daniel Edward Smith.
3. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada and Market Regulation Services Inc. Pursuant to the Administrative and Regulatory Services Agreement between IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions.
4. The Respondent consents to be subject to the jurisdiction of IIROC.
5. 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

6. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.

7. The Respondent admits to the following contraventions of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:
  - a) From July 2003 to October 2009 inclusive, the Respondent engaged in personal financial dealings with his client(s) without his firm's knowledge, contrary to Dealer Member Rule 29.1 (IDA By-law 29.1, prior to June 1, 2008).
8. Staff and the Respondent agree to the following terms of settlement:
  - a) The Respondent shall not be permitted to re-apply for registration in any capacity for four (4) years.
  - b) The Respondent shall pay a \$50,000 fine.
9. The Respondent agrees to pay costs to IIROC in the sum of \$5,000.

### **III. STATEMENT OF FACTS**

#### **(i) Acknowledgment**

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

#### **(ii) Factual Background**

#### ***OVERVIEW***

11. At all material times, Smith was employed as an RR with BMO Nesbitt Burns Inc. (Nesbitt). Mr. and Mrs. S (the Ss or Client) were Smith's elderly clients. Smith and his family developed a close friendship with the Ss.
12. At a time when Mr. S was ill, the Ss' agreed to sell their property to Smith and his wife. After Mr. S's death, Mrs. S gave each of Smith's two children a monetary gift to assist with their university education. Mrs. S also executed a new will in which Smith and his family were named as a 75% beneficiary of her estate.
13. Smith failed to disclose these transactions to Nesbitt, despite several opportunities to do so. This failure to disclose prevented Nesbitt from conducting any oversight into any actual or perceived conflicts of interest that these personal financial dealings may have created.

#### ***THE RESPONDENT***

14. Smith commenced his employment in the securities industry in 1993 with Midland Walwyn Capital Inc. In 1995 he transferred to Nesbitt where he remained employed

until Nesbitt terminated him for cause on February 1, 2010 as a result of the matters described herein. He has not been employed in a registered capacity in the securities industry since.

15. Smith does not have a disciplinary history.
16. Smith's wife, (CS), was employed by Nesbitt as an unregistered office assistant.

***NESBITT POLICIES***

17. At all material times, Nesbitt had policies in place that required all conflicts and perceived conflicts of interest to be disclosed to Nesbitt management. According to its policies, these conflicts of interest with prospective or actual clients could result from a direct or indirect personal interest in a transaction or the acceptance of gifts or benefits of more than a nominal value.
18. Smith annually completed an acknowledgement that he had read, understood and complied with Nesbitt's Code of Business Conduct and Ethics. He did not note any exceptions in his forms for the years 2003 – 2009 inclusive.

***MR. AND MRS. S***

19. Smith met Mr. and Mrs. S in late 1993 or early 1994 when they became his clients during his employment at Midland Walwyn. When Smith transferred to Nesbitt, the Ss also moved their accounts to Nesbitt. After becoming clients, Smith and his family developed a close personal relationship with the Ss, who did not have children.
20. Mr. S was born in 1920 and Mrs. S was born in 1918. They owned and lived together on a 1.5 lot waterfront property in Nanoose Bay, BC (Property).

***2000***

21. On or about August 22, 2000, Mrs. S appointed CS to be Power of Attorney over her affairs. Smith did not disclose this fact to Nesbitt.

***2003***

22. In early 2003, Mr. S was diagnosed with cancer. The Ss had a difficult time and Mr. S was very sick. CS helped the Ss by taking them to medical appointments and other errands. She treated the Ss like her own grandparents.
23. On or about July 11, 2003, the Ss signed a contract of purchase and sale to sell the Property to Smith and CS for \$304,500, which was the 2003 taxed assessed value of the Property. Smith assumed that the purchase price was fair market value. He did not have the Property independently appraised nor did he advise the Ss to have an

independent appraisal done. The 2004 taxed assessed value of the Property was \$360,100.

24. Smith did not advise Nesbitt that he had entered into this contract with the Ss.

25. Mr. S passed away on December 15, 2003, at age 83.

**2004**

26. Mrs. S was very upset by her husband's death and she relied more on CS. CS checked in on Mrs. S daily and took her on errands, appointments and outings.

27. On January 15, 2004, the conveyance of the Property from the Ss to Smith and CS took place. Smith did not advise Nesbitt of this fact.

28. In early 2004, Mrs. S gifted each of Smith's two children \$30,000 to assist them with their university education. The children were attending university away from home at the time.

29. Smith was aware of these gifts but did not advise Nesbitt of same. The gifts were deposited into the Smith's children's Nesbitt accounts and used over time to supplement their university expenses.

30. Mrs. S wanted to make a new will. In her previous 1999 will, she left her entire estate to Mr. S and if he predeceased her, she left 100% of her personal effects and estate to charity.

31. At Mrs. S's request, on January 30, 2004, Smith contacted a lawyer to make an appointment for Mrs. S to change her will. Smith believed and was concerned that Mrs. S intended to include him and his family as beneficiaries of her estate and he so advised the lawyer.

32. On February 4, 2004, Smith drove Mrs. S to her appointment with the lawyer and on February 23, 2004 Mrs. S executed her new will in which Smith and his family were named 75% beneficiaries of her estate. She appointed BMO Trust Company to be executor of her estate (BMO Trust). BMO Trust is a separate legal entity from Nesbitt, each having its own compliance department. Smith had no involvement in the execution of Mrs. S's will.

33. At no point did Smith disclose to Nesbitt the Client's intention to name him and his family as beneficiaries.

**2006**

34. In or about June and July 2006, during a routine estate review, BMO Trust contacted Smith about Mrs. S's will. Smith advised BMO Trust that Mrs. S had updated her

will and that BMO Trust was still appointed Executor. BMO Trust did not have a copy of the updated will. Smith advised that CS had access to the will (as she was Power of Attorney) and that they would provide BMO Trust with a copy. The will was not provided so BMO Trust subsequently agreed to “memo-ing the file” on the status of Mrs. S’s will.

**2007**

35. In or about January 2007, Smith approached Nesbitt Compliance when the power of attorney that CS had over Mrs. S’s affairs was going to be invoked due to Mrs. S’s deteriorating mental health.
36. In late January 2007, Nesbitt Compliance granted approval for CS to act as power of attorney for Mrs. S. At this time, management of Mrs. S’s accounts at Nesbitt was transferred to Smith’s partner, although they remained under a joint sales code and Smith continued to earn commissions from these accounts. At all times, the Ss’ accounts were appropriately invested and they were never actively traded.

**2008/2009**

37. Mrs. S passed away on October 9, 2008 at age 90.
38. Upon obtaining a copy of the updated will, BMO Trust staff advised Smith that he was a beneficiary of Mrs. S’s estate. At that time, BMO Trust staff reminded Smith that accepting gifts from clients was against policy and advised that they would refer the matter to their compliance department. BMO Trust staff met with Smith and CS on October 16, 2008 at which time CS provided the original will. Smith did not advise Nesbitt Compliance after it was confirmed that Smith and his family had been named beneficiaries of Mrs. S’s estate.
39. In late 2008, Nesbitt Compliance was notified by BMO Trust that Smith and CS had been named the primary beneficiaries of Mrs. S’s estate.
40. During late 2008 and early 2009, Nesbitt Compliance questioned Smith about Mrs. S’s estate and the circumstances under which he and his wife were named beneficiaries under her will. At no time during this period did Smith disclose the Property transfer or the monetary gifts to his children.
41. On or about September 16 or 17, 2009, in response to a request from Nesbitt, Smith prepared an outline of his relationship with the Ss. In that outline, Smith made no mention of the Property transfer or the monetary gift from Mrs. S to his children.
42. In October 2009, Nesbitt’s Managing Director of Retail Compliance met with Smith and CS and asked them about the Property transfer and how they came to be named as beneficiaries under Mrs. S’s will, and whether there were any other personal

dealings with Mrs. S. In response, Smith disclosed the monetary gift Mrs. S had given to his children and the details about the Property transfer.

**2010**

43. On February 1, 2010, Nesbitt terminated Smith's employment for cause.
44. The gross value of Mrs. S's estate for probate purposes was \$1,223,086.06. Distributions to Smith and CS were made in accordance with her will, which was 75% of her estate (approximately \$917,000). An interim distribution was made to beneficiaries in September 2010 and the final distribution was made on August 5, 2011.

**2011**

45. Smith was interviewed by Staff in March 2011. During his interview, Smith denied having any discussions with Mrs. S about the prospect of her leaving her estate or a portion of her estate to Smith and his family.

**IV. TERMS OF SETTLEMENT**

46. This settlement is agreed upon in accordance with IROC Dealer Member Rules 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.
47. The Settlement Agreement is subject to acceptance by the Hearing Panel.
48. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
49. 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.
50. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her/it's right under IROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
51. 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.
52. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.

53. 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.
54. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
55. 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 Vancouver in the Province of British Columbia, this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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**WITNESS**

“Daniel Smith”  
**RESPONDENT**

**AGREED TO** by Staff at the City of Vancouver in the Province of British Columbia, this 28th day of March, 2013.

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**WITNESS**

“Wietzke Gerber”  
**WIETZKE GERBER**  
Enforcement Counsel on behalf of  
Staff of the Investment Industry  
Regulatory Organization of Canada

**ACCEPTED** at the City of Vancouver in the Province of British Columbia,  
this 3rd day of April, 2013, by the following Hearing Panel:

Per: \_\_\_\_\_  
Panel Chair

Per: \_\_\_\_\_  
Panel Member

Per: \_\_\_\_\_  
Panel Member