

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

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

AND

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

AND

MARK STEVEN ROTSTEIN AND JESSICA ELISABETH ZACKHEIM

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Enforcement staff of the Investment Industry Regulatory Organization of Canada (“IIROC”) and the Respondents, Mark Steven Rotstein (“Rotstein”) and Jessica Elisabeth Zackheim (“Zackheim”) (together, the “Respondents”), 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 the Respondents’ conduct.
3. The Investigation discloses matters for which the Respondents 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. IIROC staff (“Staff”) and the Respondents jointly recommend that the Hearing Panel accept this Settlement Agreement.
5. The Respondents admit to the following contraventions of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:

For more than a decade until March 2011, the Respondents signed client names on client account and investment related documents and passed those signatures off as the clients' own, contrary to IDA By-law 29.1 and IIROC Dealer Member Rule 29.1.

6. Staff and the Respondents agree to the following terms of settlement:
 - (a) Rotstein is prohibited from registration with IIROC for a period of twelve months to be served in two intervals of six consecutive months without interruption, which intervals shall be completed by no later than October 15, 2014;
 - (b) Rotstein shall pay IIROC a fine in the amount of \$250,000;
 - (c) Zackheim is prohibited from registration with IIROC for a period of twelve months to be served in two intervals of six consecutive months without interruption, which intervals shall be completed by no later than October 15, 2014;
 - (d) Zackheim shall pay IIROC a fine in the amount of \$50,000; and
 - (e) Rotstein's and Zackheim's registration terms and conditions imposed pursuant to the Ontario District Council Registration Subcommittee Decision dated July 21, 2011, modified as necessary and set out in the attached Appendix (the "Terms and Conditions") shall remain in place until April 30, 2015.
7. The Respondents agree to pay IIROC the sum of \$10,000 to reflect the costs that Staff incurred in connection with this matter.

III. STATEMENT OF FACTS

(i) Acknowledgment

8. Staff and the Respondents 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

Overview

9. Rotstein and Zackheim engaged in a practice for over a decade of signing client names and passing those signatures off as the clients' own on account and investment related documents. Rotstein and Zackheim relied on their signatures of clients' names in dozens, and potentially hundreds, of instances.

10. Rotstein or Zackheim, with Rotstein's knowledge and authorization, signed clients' names on account and investment documents, including for example fee schedules, risk disclosure and acknowledgement forms, account agreements, US tax certifications, transfer authorizations, trading authorizations and private placement subscription forms. Without genuine client signatures, there is no confirmation that those clients obtained the disclosure to which they were entitled or provided the certifications and instructions set out in the documents. Rotstein and Zackheim acknowledge that the absence of such confirmation created risks for clients, for the dealer and for themselves.
11. Rotstein and Zackheim acknowledge that, by repeatedly signing clients' names and passing those signatures off as the clients' own, they failed to observe high standards of ethics and conduct in their business and engaged in business conduct that is unbecoming to registrants and highly detrimental to the public interest.
12. Rotstein's and Zackheim's misconduct was significant. They created risks for the clients whose names they signed, for their dealer and for themselves. In acknowledgement of the severity of the misconduct, the parties have agreed that the Respondents will each be suspended for a year. In light of all of the circumstances particular to this case, including the totality of sanctions imposed, those suspensions will each be applied in two separate intervals so that Rotstein and Zackheim will be able to maintain their operations in a way that is not detrimental to their clients' interests.

The Respondents

13. Rotstein was registered as a Registered Representative, Options at RBC Dominion Securities Inc. ("RBC DS") from February 10, 1997, until April 5, 2011, when his employment at RBC DS was terminated for cause in connection with his signing client names on account and investment documents.
14. Zackheim worked at RBC DS from April 27, 1998, until April 5, 2011, when her employment was terminated for cause in connection with her signing client names on account and investment documents. Zackheim worked as Rotstein's associate from May 2000, and was registered as an Investment Representative from January 2001, until her employment was terminated.
15. Rotstein and Zackheim applied for re-registration with Scotia Capital Inc. ("Scotia"). The IIROC Ontario District Council Registration Subcommittee approved their re-registration, subject to the Terms and Conditions, in a Decision dated July 21, 2011. Rotstein and Zackheim have been registered at Scotia since that date.
16. Rotstein and Zackheim together operate under the name "Rotstein Wealth Management" and provided generally conservative investment advice to individuals, families and small

corporations. By the spring of 2011, Rotstein's and Zackheim's business consisted of more than 2,000 client accounts with assets valued at approximately \$500 million.

Respondents' Practice of Signing Client Names

17. From at least as early as 2000, Rotstein and Zackheim signed client names on account and investment related documents and passed those signatures off as the clients' own. When Zackheim signed client names, she did so either on the instruction of Rotstein or to Rotstein's knowledge. Rotstein and Zackheim generally signed client names only for clients who had a close and longstanding relationship with Rotstein.
18. On some or all occasions when Rotstein and Zackheim signed client names, they consulted original client signatures on previously signed documents for the purpose of assisting to replicate those signatures.
19. Some examples of documents on which Rotstein or Zackheim, with Rotstein's knowledge and authorization, signed client names include the following:
 - (a) Disclosure of Equity Interests and Consent Form dated June 21, 2000, for client BP;
 - (b) Equity Creditline Agreement dated November 12, 2002, for clients AK and DZ;
 - (c) Trading Authorization dated January 30, 2004, appointing agent with authority to deal with RBC DS in respect of the account for client BP;
 - (d) Declaration of Trust for a Minor dated December 6, 2004, for client RS;
 - (e) Canada-United States Income Tax Treaty Statement dated December 6, 2004, for client RS;
 - (f) Transfer Authorization for Registered Investments dated June 21, 2005, for client AC;
 - (g) Client Account Agreement for Registered Retirement Savings Plan, Account Application and Fee Schedule, all dated May 26, 2006, for client BF;
 - (h) Client Account Agreement for Registered Retirement Savings Plan, Account Application and Fee Schedule, all dated May 26, 2006, for client SF;
 - (i) Subscription form for Sprott Hedge Fund L.P. II dated October 31, 2007, and February 18, 2008, for client JT;
 - (j) Application for Margin Trading dated October 10, 2008, for client PE;
 - (k) Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding ("US IRS Form W8-BEN") for client JR-T dated August 10, 2009;

- (l) Beneficiary Designation Form for Multiple Beneficiary Designation dated November 18, 2010, for client MTF;
 - (m) Accredited Investor Form dated November 23, 2010, for client GS;
 - (n) US IRS Form W8-BEN dated January 10, 2011, for client P-WH Ltd.;
 - (o) Investment Fund and Equity Private Placement Application and Certification Form for \$25,000 investment in Venator Income Fund dated February 9, 2011, for client NK;
 - (p) Risk Acknowledgement and Release for Exempt Market Securities for investment in Venator Income Fund dated February 9, 2011, for client NK;
 - (q) Investment Fund and Equity Private Placement Application and Certification Form for \$200,000 investment in Arrow Head Partners and Risk Acknowledgement and Release for Exempt Market Securities, both dated March 9, 2011, for client MTF;
 - (r) Risk acknowledgement form for investment in Chrysalis Capital VIII Corporation, dated March 22, 2011, for client DM; and
 - (s) Risk acknowledgement form for investment in Chrysalis Capital VIII Corporation, dated March 22, 2011, for client SB.
20. The full number and nature of documents on which Rotstein and Zackheim signed client names, and passed off those signatures as the clients' own, is not known but there is evidence that there may have been hundreds of documents.
21. In addition to signing client names, Rotstein and Zackheim from time to time signed documents as witness to client signatures when they had not in fact witnessed those clients signing the documents.

Client Authorization

22. Rotstein and Zackheim signed client names for the convenience of those clients, to avoid the clients having to take the time to personally attend to the paperwork in respect of their accounts. Rotstein and Zackheim did not sign clients' names for the purpose of personal gain or for dishonest or fraudulent purposes. There is no evidence that any of Rotstein's or Zackheim's clients suffered any financial harm as a result of their conduct.
23. Rotstein and Zackheim believe that their clients authorized them to sign their names, and pass those signatures off as the clients' own, in each instance that they did so. At least 15 of Rotstein and Zackheim's clients have provided written statements to Staff in the course of this proceeding confirming that they verbally authorized Rotstein and Zackheim to sign their names and more than 40 clients overall have provided written

statements to Staff supportive of Rotstein and Zackheim generally, their work and their client service.

Economic Impact on Rotstein and Zackheim

24. Not all of Rotstein's and Zackheim's clients decided to transfer to Scotia with them. Rotstein and Zackheim have lost approximately 30% of the value of their client assets on their transfer to Scotia.

Rotstein and Zackheim Cooperated

25. Rotstein and Zackheim both understand the risks created by their misconduct, regret that conduct and regret any harm caused to their clients as a result.
26. When first approached by RBC DS regarding the issue of signing client names, Rotstein and Zackheim were both forthright, admitting the conduct and complying with RBC DS's investigation.
27. When they approached Scotia, Rotstein and Zackheim were again forthright about their conduct. Rotstein and Zackheim contacted their clients to tell them about the issues that had arisen. Rotstein and Zackheim complied with the Terms and Conditions and worked with Scotia to ensure an orderly transfer of the assets of those clients who wanted to remain with Rotstein and Zackheim.
28. Rotstein and Zackheim cooperated with IIROC's Registration Department in respect of their application for re-registration, including proposing terms and conditions to address IIROC's concerns.
29. Rotstein and Zackheim cooperated with Staff through the course of the Investigation, including by attending at IIROC's offices to meet with Staff, where they admitted their wrongdoing and were forthright in providing information about the relevant facts and circumstances.
30. Rotstein and Zackheim have also cooperated with Staff through the course of this proceeding.
31. Neither Rotstein nor Zackheim have any prior record of regulatory discipline.

IV. TERMS OF SETTLEMENT

32. 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.
33. The Settlement Agreement is subject to acceptance by the Hearing Panel.

34. The Settlement Agreement shall become effective and binding upon the Respondents and Staff as of the date of its acceptance by the Hearing Panel.
35. 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.
36. If the Hearing Panel accepts the Settlement Agreement, the Respondents waive their rights under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
37. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondents may enter into another settlement agreement, or Staff may proceed to an expedited or disciplinary hearing in relation to the matters disclosed in the Investigation.
38. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
39. Staff and the Respondents 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.
40. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondents are payable immediately upon the effective date of the Settlement Agreement.
41. 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 Mark Steven Rotstein at the City of Toronto, in the Province of Ontario, this 17th day of April, 2012.

"Gord Love"

"Mark Rotstein"

Witness

Mark Steven Rotstein

AGREED TO by the Respondent Jessica Elisabeth Zackheim at the City of Toronto, in the Province of Ontario, this 17th day of April, 2012.

“Gord Love”

“Jessica Zackheim”

Witness

Jessica Elisabeth Zackheim

AGREED TO by Staff at the City of Toronto, in the Province of Ontario this 17th day of April, 2012.

“Sharon Lloyd-Gyurkovics”

“Susan Kushneryk”

Witness

Susan Kushneryk
Senior 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 18th day of April, 2012, by the following Hearing Panel:

“Edward McDermott”

Mr. Edward McDermott

“Peter Gribbin”

Mr. Peter Gribbin

“Terry Bourne”

Mr. Terry Bourne

APPENDIX
to the Settlement Agreement between IIROC Enforcement staff,
Mark Steven Rotstein and Jessica Elisabeth Zackheim

Terms and Conditions on Registration and Approval

IIROC's registration and approval of Mark Steven Rotstein and Jessica Elisabeth Zackheim is subject to the following terms and conditions:

- (i) Rotstein and Zackheim are subject to close supervision, with reports to be filed on a monthly basis with IIROC Registration;
- (ii) Rotstein and Zackheim must work in a business location at which a qualified Supervisor is present;
- (iii) Scotia must send the approved letter [explaining that Rotstein and Zackheim signed client names and passed off those signatures as the clients' own], reviewed by the Registration Subcommittee of the Ontario District Council, to all Scotia clients serviced by Rotstein and Zackheim (including new clients as they retain Scotia on an ongoing basis during the currency of the terms and conditions on registration and approval);
- (iv) All documents requiring signature by clients of Rotstein and Zackheim must be witnessed by a third party other than Rotstein or Zackheim;
- (v) All documents executed by clients in the branch must be witnessed by the Branch Manager or his or her delegate; and
- (vi) All documents sent out to clients for remote signature must be sent out by the Branch Manager and all such documents executed by clients and witnessed must be returned to the Branch Manager for verification of the client signature against Scotia records.