



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue Queen Ouest
Toronto ON M5H 3S8

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**IN THE MATTER OF
QUESTRADE WEALTH MANAGEMENT INC.**

**ORAL REASONS FOR APPROVAL OF A SETTLEMENT
(Subsection 127(1) and Section 127.1 of the *Securities Act*, RSO 1990, c S.5)**

Hearing: November 27, 2018

Decision: November 27, 2018

Panel: Robert P. Hutchison
Deborah Leckman
Lawrence P. Haber
Commissioner and Chair of the Panel
Commissioner
Commissioner

Appearances: Jamie Gibson
Raphael T. Eghan
Jennifer Teskey
For Staff of the Commission
For Questrade Wealth Management
Inc.

ORAL REASONS FOR APPROVAL OF A SETTLEMENT

The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on reasons delivered orally in the hearing, and as edited and approved by the Panel, to provide a public record.

- [1] I would like to start by thanking the parties and their counsel for their cooperation in bringing this matter to hopefully a beneficial and efficient end, and we appreciate their efforts in that regard.

I. BACKGROUND

A. Questrade, PIQ and One Capital

- [2] Just to summarize the background, from our perspective, as has been outlined by Mr. Gibson, Questrade is an Ontario corporation that is registered with the Commission as an Investment Fund Manager, an Exempt Market Dealer and a Portfolio Manager.
- [3] In July 2017, at the time of the conduct at issue with respect to the Settlement Agreement, Questrade had the two primary lines of business that were described. It acted as a Portfolio Manager of its online investment service, Portfolio IQ (**PIQ**), and also managed eight exchange traded mutual funds, the ETFs that were referred to (the **Questrade ETFs**).
- [4] The conduct at issue in this settlement proceeding relates solely to Questrade's activities and obligations as a Portfolio Manager of the PIQ portfolios. As a Portfolio Manager, Questrade has and had a discretionary authority over trading in the PIQ portfolios.
- [5] Questrade also engaged a Nevada company, One Capital Management LLC (**One Capital**), to provide sub-advisor services for the PIQ portfolios. One Capital is also registered with the Commission as a Portfolio Manager.
- [6] Notwithstanding One Capital's role as a sub-advisor for the PIQ portfolios, Questrade has and had ultimate responsibility for identifying and responding to conflicts of interest and determining whether trades are suitable with respect to the PIQ portfolios.

B. The Transaction and July Trade

- [7] I will briefly describe the transaction. In November 2016, Questrade began negotiating a transaction (the **Transaction**) that would involve selling Questrade ETFs to another Ontario investment fund manager, WisdomTree Asset Management Canada, Inc. (**WisdomTree**). WisdomTree managed its own collection of exchange traded mutual funds (the **WisdomTree ETFs**).
- [8] During negotiations, WisdomTree advised that it wanted Questrade to purchase WisdomTree ETFs for the PIQ portfolios before WisdomTree would agree to finalize the Transaction.

- [9] Questrade and WisdomTree agreed that WisdomTree would meet with Questrade's sub-advisor, One Capital, to discuss purchasing WisdomTree ETFs. In mid-July 2017, One Capital advised Questrade that One Capital intended to recommend significant investments in WisdomTree ETFs. At this time, Questrade did not obtain any analysis from One Capital demonstrating why the recommended WisdomTree ETFs were suitable for PIQ clients.
- [10] Ultimately, on July 27, 2017, One Capital sent instructions to Questrade to purchase WisdomTree's ETFs for the PIQ portfolios. In response to the instruction from One Capital, Questrade arranged phone calls with One Capital to get more information about the proposed trade. One Capital provided oral assurances on those phone calls, but no documentation.
- [11] The following day, on July 28, Questrade purchased approximately \$15 million in fixed income WisdomTree ETFs for the PIQ portfolios (which has been referred to as the **July Trade** in the materials). This involved replacing iShares fixed income ETFs, which represented 23% of the PIQ portfolios, with WisdomTree ETFs.
- [12] At the time, WisdomTree's fixed income ETFs had been launched only one month earlier and the management expense ratios for the new WisdomTree ETFs were higher and the spreads were wider than those of the iShares ETFs.
- [13] In deciding to execute the July Trade, Questrade's ordinary compliance process was not followed. Questrade obtained no written analysis from its sub-advisor, One Capital, that demonstrated why the trade was suitable for PIQ clients.
- [14] It was not until August 22, 2017, nearly one month after the July Trade, that Questrade completed a review of the July Trade and concluded that the July Trade was in the best interests of its PIQ clients.

II. CONDUCT CONTRARY TO THE PUBLIC INTEREST

- [15] Questrade has admitted that it acted contrary to the public interest by failing to take appropriate steps to determine whether a conflict of interest existed before investing client money.
- [16] In doing so, Questrade failed to meet the high standards of conduct expected of a registrant when identifying and responding to conflicts of interest, which potentially put PIQ clients at risk that the July Trade was not in their best interests.
- [17] It is essential to investor protection and market integrity that registered portfolio managers diligently identify and respond to conflicts of interest pursuant to their obligations under section 13.4 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. Portfolio managers must have in place proper procedures to anticipate and respond in advance to conflicts of interest that may arise. They must take reasonable steps to identify and respond to a conflict of interest before investing client money so as to ensure that they are acting in the best interest of their clients. Portfolio managers who are not able to demonstrate that they took appropriate steps to identify and respond to conflicts of interest will face regulatory consequences.

III. THE TERMS OF THE SETTLEMENT AGREEMENT

- [18] The parties have come to a settlement agreement, which I gather has been executed, and the terms of the Settlement Agreement between Questrade and Staff include that an order be issued by the Commission requiring that:
- a. Questrade be reprimanded;
 - b. Questrade pay \$100,000 in costs to the Commission; and
 - c. an undertaking by Questrade to make a voluntary payment of \$2.9 million to the Commission.
- [19] The Panel has been advised that the costs and the first instalment of the voluntary payment have been received by the Commission.

IV. ANALYSIS

- [20] The role of the Panel in considering a settlement agreement is to determine whether the sanctions proposed fall within a range of reasonable outcomes and should be approved as being in the public interest. It is important to note that a negotiated agreement will not generally yield the same sanctions that might follow a fully contested hearing. A settlement is based on the facts agreed to by the parties, which may or may not be the facts that the Panel would find after a contested hearing.
- [21] In our view, as I have indicated, this Settlement Agreement is reasonable and its approval is in the public interest. Questrade's willingness to make a voluntary payment of \$2.9 million is a clear acknowledgement of the seriousness of Questrade's misconduct. This payment, in combination with other agreed sanctions, will serve to deter not only Questrade, but other registrants from engaging in similar misconduct.
- [22] This settlement will also emphasize to industry participants the importance of establishing and following a rigorous process to anticipate and respond to conflicts of interest to avoid putting investors at risk.
- [23] In coming to this conclusion, the Panel took note of a number of mitigating factors that have been raised by the parties including the fact that Staff is not alleging dishonest or wilful misconduct. We understand that.
- [24] Questrade will provide Staff with the results of an independent consultant's review of the suitability of WisdomTree ETFs for all clients in all affected PIQ portfolios.
- [25] Questrade has provided prompt, detailed and candid cooperation to Staff, and Questrade, on its own initiative, took steps to improve its system of compliance relating to the identification, avoidance, management and mitigation of conflicts of interest, and has reported, I understand, these improvements to Staff.
- [26] Finally, the Settlement Agreement includes a reprimand of Questrade. It should be understood that the Panel imposed the reprimand of Questrade on the basis of it being a strong statement of disapproval of Questrade's conduct, which is the subject of this hearing. We trust that Questrade, through its personnel, its directors, officers and employees, whatever their position, accept and understand the reprimand on that basis.

- [27] We would like to acknowledge the presence of Mr. Edward Kholodenko, which allows the Panel to convey to Questrade and Mr. Kholodenko directly the importance of these matters.
- [28] So for the reasons outlined, we approve the Settlement Agreement on the terms proposed by the parties. An order will be issued following this hearing in substantially the form proposed by the parties. The published reasons shall substantially reflect what I've read and will follow.

Approved by the Panel on this 10th day of December, 2018.

"Robert P. Hutchison"

Robert P. Hutchison

"Deborah Leckman"

Deborah Leckman

"Lawrence P. Haber"

Lawrence P. Haber