Re Trapeze Capital

IN THE MATTER OF:

The Dealer Member Rules of the Investment Industry Regulatory Organization of Canada (IIROC)

and

The By-Laws of the Investment Dealers Association of Canada (IDA)

and

Trapeze Capital Corp., Herbert Abramson and Randall Abramson

2012 IIROC 25

Investment Industry Regulatory Organization of Canada
Hearing Panel (Ontario District Council)

Heard: April 27, 2012 in Toronto, Ontario
Decision: May 7, 2012

Hearing Panel:
Hon. Patrick T. Galligan, Q.C. (Chair), Debbie L. Archer, F. Michael Walsh
Appearance:
Melissa MacKewn & Milton Chan, Enforcement Counsel
Phil Anisman, Counsel for the Respondents

Reasons for Decision

¶ 1 The Staff of Investment Industry Regulatory Organization of Canada ("IIROC") and the Respondents entered into a Settlement Agreement which they had negotiated pursuant to Part 3 of Universal Market Integrity Rules ("UMIR") and Policy 10.8. They submitted the Settlement Agreement to this Hearing Panel pursuant to Section 3.4 of Part 3 for approval or rejection. After considering the material filed and the submissions made by counsel, we issued an order accepting the Settlement Agreement. These are our reasons for making that order.

THE CONTRAVENTIONS

¶ 2 The Respondents have admitted to the following contraventions of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:

Count 1

On or between 2007 to 2010 (the "Material Time"), in the manner described in paragraphs 24-31 of this Settlement Agreement, the Respondents failed to ensure that the investment recommendations made to clients were suitable for all of them, contrary to IIROC Dealer Member Rules 1300.1(a), (p) and (q) (IDA Regulations 1300.1(a), (p) and (q) prior to June 1, 2008).

Count 2

During the Material Time, the Respondents failed to ensure that all sales literature and correspondence issued or sent to clients adequately presented the potential risks of investing with the Respondents in the manner described in paragraph 32 of this Settlement Agreement, thereby engaging in business conduct that was detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1 (IDA By-law 29.1 prior to June 1, 2008).

Count 3

During the Material Time, Trapeze failed to properly discharge its Know-Your-Client obligations for a number of client accounts in the manner described in paragraphs 33 and 34 of this Settlement Agreement, contrary to IIROC Dealer Member Rule 1300.1(a) (IDA By-law 1300.1(a) prior to June 1, 2008).

TERMS OF SETTLEMENT

¶ 3 Staff and the Respondents have agreed to the following terms of settlement:

a) Trapeze shall submit to a review of its practices and procedures by an independent person to be approved by Staff (the "Consultant") at Trapeze's expense in accordance with the Terms of Reference attached as Schedule "A" to the Settlement Agreement;

b) within 30 days of the Settlement Agreement being accepted, Trapeze shall send a written communication to all clients, in a manner and form acceptable to Staff, outlining Trapeze's intention to conduct account reviews per the Terms of Reference and explaining that the reviews are required by IIROC to ensure that (i) each client's current KYC information is collected and documented, and (ii) the investments in each client's account(s) are suitable given the client's age, financial circumstances, investment needs and objectives and risk tolerance;

c) Trapeze shall conduct account reviews with all of their clients as soon as reasonably practicable after the acceptance of the Settlement Agreement in accordance with the Terms of Reference and shall explain to each client that the review is required because of concerns regarding understatement of risk arising from the Respondents' failure during the Material Time to adequately consider factors such as concentration risk, price volatility risk and liquidity risk;

d) Trapeze agrees that it shall not increase its fees or take any other steps that would result in its clients bearing any costs or expenses that are incurred by it relating to this Settlement Agreement, including any costs associated with retaining the Consultant;

e) The Respondents shall, within 60 days of the Settlement Agreement being accepted, pay, jointly and severally, a fine to IIROC in the amount of $500,000; and

f) The Respondents shall, within 60 days of the Settlement Agreement being accepted, pay costs to IIROC in the sum of $200,000.

THE CIRCUMSTANCES

¶ 4 The circumstances are set out, in detail, in paragraphs 10-34 of the Settlement Agreement, which is attached as Appendix "A" to the reasons for decision. The following is a brief summary of them.

¶ 5 During the Material Time, the Respondents inaccurately assessed the risk associated with many of the investments purchased on behalf of some clients in managed accounts. The Respondents did not give adequate consideration to certain risks, resulting in purchased securities being assessed as medium risk, with the exception of authorized short-selling which was considered high risk. Adequate consideration of these risks would have resulted in higher than medium risk ratings being assigned to securities and client portfolios during the Material Time.

¶ 6 During the Material Time, Trapeze accounts were managed by the Respondents on a discretionary basis and were invested predominantly in securities of the same issuers, in varying proportions depending on the

investment mandate selected by clients.

¶ 7 As a result of the Respondents' misclassifications of risk of securities and their investments on behalf of virtually all clients in securities of the same issuers, the Respondents failed to ensure that investments made during the Material Time were suitable for all of their clients, the vast majority of whom had a medium risk tolerance. Further, in some cases, the Respondents failed to adequately ascertain clients' investment needs, experience, investment objectives and risk tolerance, prior to investing their assets.

¶ 8 At certain points in time during the Material Time, many clients experienced substantial declines in the market value for their accounts at Trapeze.

SERIOUSNESS OF THE CONTRAVENTIONS

¶ 9 The circumstances giving rise to each of the contraventions are, in themselves, serious. Cumulatively, we consider the conduct of the Respondents encompassed by the three contraventions to be very serious. That conduct is serious because it could have had the effect of permitting some of their clients' funds to be invested in securities which were not suitable for them.

CIRCUMSTANCES OF MITIGATION

¶ 10 In the determination of an appropriate penalty, it is always necessary to consider circumstances of mitigation. We note that these contraventions are substantially systemic ones. What is of particular importance is that the major part of this settlement is directed to rectifying those systemic problems. We will not examine the details of the Respondents' agreement to have a Consultant review and make recommendations about its practices and procedures. The terms of that agreement are set out in Schedule "A" to the Settlement Agreement. What we emphasize is that the Respondents have agreed "to implement all of the recommendations" which will be contained in the Consultant's final report. Thus, the heart of this settlement is the rehabilitation of the Respondents. Rehabilitation is a very important element of the disciplinary process.

¶ 11 There are other circumstances of mitigation which we have taken into consideration. They are:

a) the Respondents co-operated with Staff in the investigation of this matter;

b) the Respondents state that they have always acted in what they believed to be their clients' interests; and

c) under its standard contract with its clients, Trapeze was entitled to charge a performance fee of twenty percent of any return over an eight per cent hurdle, after base management fees and costs. In response to the loss of value suffered by clients in 2007 and 2008, Trapeze voluntarily decided to forego charging performance fees until its continuing clients' accounts return to or exceed the value of their accounts on January 1, 2007. As a result of its commitment to forego charging performance fees, Trapeze voluntarily waived performance fees of at least $1,100,000 to which it would have been entitled for its performance in 2010, in respect of its continuing clients.

DUTY OF A HEARING PANEL UPON A SETTLEMENT HEARING

¶ 12 It is clear from jurisprudence emanating from the courts and from Hearing Panels of IIROC, Investment Dealers Association and the Mutual Fund Dealers Association, that our task is not to decide whether, in this case, we would have arrived at the same decision as that reached by the parties. Rather, our duty is to determine whether the penalty is a reasonable one and that it meets the objectives of the disciplinary process which are to maintain the integrity of the investment industry. We cite from the recent decision of the Hearing Panel in *Re CIBC World Markets Inc.*, [2011] IIROC No. 38:

> 13 Finally, hearing panels will not lightly interfere with a negotiated settlement. As was said in *Re Milewski*, [1999] IDACD No. 17,
>
> > … a District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly

falling outside a reasonable range of appropriateness.

14 Or, as put by Winkler J. (albeit in another context) in *Gilbert v. CIBC*, [2004] O.J. 4260:

> There is a presumption of fairness when a proposed class settlement negotiated at arms length … is presented to the court for approval. A court will only reject a proposed settlement when it finds that the settlement does not fall within a range of reasonableness.
>
> The test to be applied is whether the settlement is fair and reasonable … This allows for a range of possible results and there is no perfect settlement. Settlement is a product of compromise, which by definition, necessitates give and take.

15 In our view, the settlement, negotiated as it was by the parties assisted by capable counsel, does not clearly fall "outside a range of appropriateness" and it should therefore be, and was, accepted by the panel.

OTHER DECISIONS

¶ 13 Decisions in other cases can often be of some assistance by helping to indicate what might be a reasonable range of monetary penalties. This case is somewhat unique in that the focus of the remedy is mainly directed at rehabilitation rather than at general and specific deterrence which are often the main objects of the disciplinary process. Counsel did refer us to a number of decisions in other cases. We have decided that the cases cited to us are so different from this one that an analysis of them would not be particularly helpful. Monetary penalties are necessary to act as general and specific deterrence. The amounts chosen by the parties in this case, a fine of $500,000 and costs of $200,000, are significant. We have not been advised of the criteria used by the parties when they arrived at that total penalty of $700,000. We, therefore, find ourselves in the same position as were the hearing panels in *Re Canaccord Financial*, [2009] IIROC 56 and *Re Credential Securities*, [2009] IIROC 55. Like those panels we see no reason to question the amount of fine and costs arrived at by the parties and conclude that they are within a reasonable range of appropriateness.

DECISION

¶ 14 After the hearing, we considered the circumstances of this case and reached the conclusion that the settlement was a reasonable one. Therefore, we accepted it.

DATED this 7th day of May 2012.

The Hon. P. T. Galligan, Q.C., Chair

Debbie L. Archer, Industry Representative

F. Michael Walsh, Industry Representative

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff ("**Staff**") and the respondents, Trapeze Capital Corp. ("**Trapeze**"), Herbert Abramson ("**H. Abramson**"), and Randall Abramson ("**R. Abramson**") (Trapeze, H. Abramson and R. Abramson, referred to collectively herein as, the "**Respondents**"), 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 the Respondents.

3. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada (the "**IDA**") and Market Regulation Services Inc. Pursuant to the

Administrative and Regulatory Services Agreement between the IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for the IDA to carry out its regulatory functions.

4. The Respondents consent to be subject to the jurisdiction of IIROC.

5. 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

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

7. The Respondents admit to the following contraventions of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:

Count 1

On or between 2007 to 2010 (the "**Material Time**"), in the manner described in paragraphs 24-31 of this Settlement Agreement, the Respondents failed to ensure that the investment recommendations made to clients were suitable for all of them, contrary to IIROC Dealer Member Rules 1300.1(a), (p) and (q) (IDA Regulations 1300.1(a), (p) and (q) prior to June 1, 2008).

Count 2

During the Material Time, the Respondents failed to ensure that all sales literature and correspondence issued or sent to clients adequately presented the potential risks of investing with the Respondents in the manner described in paragraph 32 of this Settlement Agreement, thereby engaging in business conduct that was detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1(IDA By-law 29.1 prior to June 1, 2008).

Count 3

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8. Staff and the Respondent agree to the following terms of settlement:

a) Trapeze shall submit to a review of its practices and procedures by an independent person to be approved by Staff (the "**Consultant**") at Trapeze's expense in accordance with the Terms of Reference attached hereto as Schedule "A";

b) within 30 days of the Settlement Agreement being accepted, Trapeze shall send a written communication to all clients, in a manner and form acceptable to Staff, outlining Trapeze's intention to conduct account reviews per the Terms of Reference attached as Schedule "A", and explaining that the reviews are required by IIROC to ensure that (i) each client's current KYC information is collected and documented, and (ii) the investments in each client's account(s) are suitable given the client's age, financial circumstances, investment needs and objectives and risk tolerance;

c) Trapeze shall conduct account reviews with all of their clients as soon as reasonably practicable after the acceptance of the Settlement Agreement in accordance with the Terms of Reference attached hereto as Schedule "A", and shall explain to each client that the review is required because of concerns regarding understatement of risk arising from the Respondents' failure during the Material Time to adequately consider factors such as concentration risk, price volatility risk and liquidity risk;

d) Trapeze agrees that it shall not increase its fees or take any other steps that would result in its clients bearing any costs or expenses that are incurred by it relating to this Settlement Agreement, including any costs associated with retaining the Consultant;

e) The Respondents shall, within 60 days of the Settlement Agreement being accepted, pay, jointly and severally, a fine to IIROC in the amount of $500,000; and

f) The Respondents shall, within 60 days of the Settlement Agreement being accepted, pay costs to IIROC in the sum of $200,000.

III. STATEMENT OF FACTS

(i) Acknowledgment

9. Staff and the Respondent 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) Overview

10. During the Material Time, the Respondents inaccurately assessed the risk associated with many of the investments purchased on behalf of clients in managed accounts. The Respondents did not give adequate consideration to certain risks (as described in paragraph 30 below), resulting in purchased securities being assessed as medium risk, with the exception of authorized short-selling which was considered high risk. The Respondents acknowledge that adequate consideration of these risks would have resulted in higher than medium risk ratings being assigned to securities and client portfolios during the Material Time.

11. During the Material Time, Trapeze accounts were managed by the Respondents on a discretionary basis and were invested predominantly in securities of the same issuers, in varying proportions depending on the investment mandate selected by clients (as described in paragraph 28 below).

12. As a result of the Respondents' misclassifications of risk of securities and their investments on behalf of virtually all clients in securities of the same issuers (as described below), the Respondents failed to ensure that investments made during the Material Time were suitable for all of their clients, the vast majority of whom had a medium risk tolerance. Further, in some cases, the Respondents failed to adequately ascertain clients' investment needs, experience, investment objectives and risk tolerance, prior to investing their assets.

13. At certain points in time during the Material Time, many clients experienced substantial declines in the market value for their accounts at Trapeze.

(iii) The Parties

14. Throughout the Material Time, Trapeze was a regulated Member of IIROC (or its predecessor, the IDA) with its head office located in Toronto, Ontario. It was registered as an investment dealer engaging in the trading activities of Securities, Options & Managed Accounts.

15. R. Abramson was the President, Chief Compliance Officer ("CCO"), Ultimate Designated Person and a director of Trapeze throughout the Material Time. He was registered as a Portfolio Manager (Securities) and a Registered Representative. R. Abramson ceased to be CCO for Trapeze on September 7, 2011.

16. H. Abramson was the Chairman, Alternative Designated Person, and a director of Trapeze throughout the Material Time. He was registered as a Portfolio Manager (Securities) and a Registered Representative. H. Abramson has never served as CCO for Trapeze.

17. During the Material Time, R. Abramson and H. Abramson were the operating and directing minds of Trapeze, and had ultimate authority and responsibility for the management and oversight of Trapeze's operations.

(iv) Background

18. During the Material Time, the Respondents opened new client accounts, provided new and existing clients with investment advice and managed client investment portfolios on a discretionary basis.

19. During the Material Time, almost all Trapeze accounts were managed on a discretionary basis by R. Abramson and/or H. Abramson.

20. During the Material Time, Trapeze had more than 400 clients with over 600 accounts and more than $130 million of assets under management.

21. During the Material Time, Trapeze earned fees from its clients by charging a percentage fee for assets under management and a performance fee on returns above a hurdle rate (collectively, the "**Management Fees**").

22. Trapeze earned Management Fees in each fiscal year during the Material Time ranging from $760,000 in 2009 to $3,698,000 in 2007.

23. At certain points in time during the Material Time, many clients saw their investment portfolios decline in value by approximately 50% to 90%. Also at certain points in time during the Material Time, the markets in which the Respondents invested on behalf of their clients experienced declines.

Count 1 - Suitability

24. The Respondents have advised Staff that during the Material Time, they followed a "value investment" approach for selecting issuers of securities for investment and for determining the risk levels for each security offered by those issuers. The Respondents state that this approach focused on risks relating to an issuer's business, seeking securities that the Respondents believed were undervalued and provided significant potential increase over the longer term.

25. The Respondents represented to clients that their "value investment" approach was an effective means of identifying medium risk securities in which to invest, and that they relied on their "value investment" approach for that purpose.

26. The "value investment" approach is not generally accepted in the investment industry as a means for determining the risk level of securities.

27. While the Respondents invested for their clients in some large and medium cap issuers, the majority of the securities the Respondents purchased for clients were in small cap issuers, many of which were in the junior energy (oil and gas) sector and in basic materials, such as gold. During the Material Time, the Respondents' client accounts were concentrated in small cap issuers in these sectors, at times holding over fifty per cent in oil and gas issuers and as much as twenty per cent in gold issuers.

28. The Respondents have advised Staff that during the Material Time, they offered their clients a choice of three "mandates" for their accounts, namely, a growth mandate, an income mandate and a balanced mandate, which included both growth and income in proportions selected by the client. The Respondents managed these mandates based on notional model portfolios to clients with growth and income mandates (the "Model Portfolios"). The Respondents also offered clients an ability to invest in the Trapeze Value Trust ("TVT"), a pooled fund based on the growth mandate managed by Trapeze's affiliate, Trapeze Asset Management Inc. All client managed accounts and TVT held a base position of securities in the same issuers invested in by the Respondents.

29. During the Material Time, the Respondents assessed the risk of all securities in which the Respondents invested on behalf of clients as medium, with the exception of authorized short-selling which was considered high risk. Accordingly, each mandate and Model Portfolio and the TVT was described to clients by the Respondents as medium risk. The vast majority of the Respondents' clients during the Material Time indicated a medium risk tolerance.

30. The Respondents acknowledge that, in part, as a result of their emphasis on issuer-related risks and longer term investment periods, the Respondents did not give adequate weight to sector and individual security concentration risk, price volatility risk and liquidity risk when assessing the risks associated with securities invested in on behalf of their clients. The Respondents acknowledge that adequate consideration of those factors would have resulted in higher than medium risk ratings being assigned during the Material Time.

31. As a result of the Respondents' misclassification of risk and their investments on behalf of virtually all clients in securities of the same issuers, the Respondents failed to ensure that investments made during the Material Time were suitable for all of their clients.

Count 2 – Sales Literature

32. As a result of the Respondents' failure to adequately assess the risk of the investments made on behalf of clients, in the manner described herein, statements made in marketing materials distributed by the Respondents to their clients during the Material Time, understated the risks associated with Trapeze's investing strategy and a number of recommended investments.

Count 3 - Know Your Client

33. For accounts managed during the Material Time, Trapeze registrants completed and maintained a new account application form ("**NAAF**") for each client, the purpose of which was to identify the client's net assets, investment needs and objectives and risk tolerance. However, in some cases Trapeze registrants did not adequately ascertain the client's investment needs and objectives and risk tolerance.

34. The NAAF contained three risk tolerance classifications: low, medium and high. During the Material Time, Trapeze registrants identified the vast majority of their clients on the NAAFs relating to the client accounts as having a medium risk tolerance. In some cases, despite not adequately ascertaining the clients' investment needs, objectives and risk tolerance, the Respondents managed those clients' assets on a discretionary basis, often investing those assets in securities that were higher than medium risk, or which were or at times became high risk.

IV. RESPONDENTS' POSITION

35. The Respondents request that the Hearing Panel consider the following mitigating circumstance:

    a) the Respondents co-operated with Staff in the investigation of this matter;

    b) the Respondents state that they have always acted in what they believed to be their clients' interests; and

    c) under its standard contract with its clients, Trapeze was entitled to charge a performance fee of twenty per cent of any return over an eight per cent hurdle, after base management fees and costs. In response to the loss of value suffered by clients in 2007 and 2008, Trapeze voluntarily decided to forego charging performance fees until its continuing clients' accounts return to or exceed the value of their accounts on January 1, 2007. As a result of its commitment to forego charging performance fees, Trapeze voluntarily waived performance fees of at least $1,100,000 to which it would have been entitled for its performance in 2010, in respect of its continuing clients.

V. TERMS OF SETTLEMENT

36. 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.

37. The Settlement Agreement is subject to acceptance by a Hearing Panel.

38. The Settlement Agreement shall become effective and binding upon the Respondents and Staff as of the date of its acceptance by the Hearing Panel.

39. The Settlement Agreement will be presented to the Hearing Panel at a hearing ("the **Settlement Hearing**") for acceptance. Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.

40. If the Hearing Panel accepts the Settlement Agreement, the Respondents waive their right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.

41. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondents may enter into another settlement agreement, or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.

42. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.

43. 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 statement inconsistent with the Settlement Agreement.

44. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondents are payable immediately upon the effective date of the Settlement Agreement.

45. Unless otherwise stated, all terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

AGREED TO by Trapeze Capital Corp. at the City of Toronto in the Province of Ontario, this 11th day of April, 2012.

"Witness signature"	**"Trapeze Capital Corporation"**
Witness	**Trapeze Capital Corp, Respondent**

AGREED TO by Herbert Abramson at the City of Toronto in the Province of Ontario, this 11th day of April, 2012.

"Witness signature"	**"Herbert Abramson"**
Witness	**Herbert Abramson, Respondent**

AGREED TO by Randall Abramson at the City of Toronto in the Province of Ontario, this 11th day of April, 2012.

"Witness signature"	**"Randall Abramson"**
Witness	**Randall Abramson, Respondent**

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this 11th day of April, 2012.

"Witness signature"	**"Milton Chan"**
Witness	**Milton Chan** 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 27th day of April, 2012, by the following Hearing Panel:

Per: "Patrick Galligan"

Panel Chair

Per: "Debbie Archer"

Panel Member

Per: "Michael Walsh"

Panel Member

SCHEDULE "A"

Terms of Reference for a review of Trapeze's practices and procedures

1. The Consultant shall be appointed promptly following the acceptance of the Settlement Agreement, but in any event by no later than 30 days following the acceptance, by mutual agreement between Trapeze Capital Corp. ("**Trapeze**") and Staff of the Investment Industry Regulatory Organization of Canada ("**Staff**").

2. The Consultant's reasonable compensation and expenses shall be borne exclusively by Trapeze.

3. The agreement with the Consultant ("**Agreement**") shall be in a form acceptable to Staff and will provide that the Consultant will examine Trapeze's internal policies, practices and procedures for:

   a. collecting and documenting clients' Know Your Client ("**KYC**") information;

   b. determining the risk levels for individual securities and portfolios of securities having regard to concentration in specific securities or specific industries, price volatility risk, liquidity risk, default risk and counterparty exposure risk;

   c. determining and ensuring the suitability of investments for clients based on their KYC information and having regard to the risk considerations set out in paragraph 3(b) above;

   d. explaining to clients the risks associated with their investments;

   e. enabling management to oversee Trapeze's activities in respect of its compliance with its internal policies, practices and procedures and IIROC rules;

   f. preparing and approving marketing materials (including its website and investment letters to clients and marketing material currently used by Trapeze); and

   g. otherwise ensuring compliance with IIROC rules and Ontario securities law in respect of the matters enumerated herein, including in particular *Dealer Member Rules* 29.1, 1300 and 2500.

   (collectively the "**Review**")

4. In addition to the Review, the Agreement shall provide that the Consultant and Trapeze together will prepare procedures for:

   a. opening new client accounts and obtaining each client's KYC information in compliance with any revised practices and procedures resulting from the Review and ensuring that the investments solicited and/or sold to each client are suitable having regard to IIROC rules and in particular *Dealer Member Rule* 1300, and where reasonably practicable, Trapeze shall afford the Consultant an opportunity to attend meetings where new client accounts are being opened, and the Consultant shall be present at a select sample of such meetings, as determined in the Consultant's discretion, acting reasonably;

   b. updating each of Trapeze's existing client's KYC information in compliance with any revised practices and procedures resulting from the Review and ensuring that the investments held by each client are suitable having regard to IIROC rules and Ontario securities law and in particular *Dealer Member Rules* 1300 and 2500, and where reasonably practicable, each client will be provided an opportunity to meet face to face for the account review and the Consultant shall be

present at a select sample of account reviews, as determined in the Consultant's discretion, acting reasonably;

c. determining with the agreement of the Consultant, acting reasonably, that the review of specific accounts as set out in section 4(b) above need not include the explanation required by subparagraph 8(c) of the Settlement Agreement; and

d. documenting the results of each account review required by subsections 4(a) and 4(b) above to evidence that the KYC information has been obtained and/or updated and that the suitability analysis have been done.

5. The Consultant shall have reasonable access to all of Trapeze's books and records necessary to complete the Consultant's mandate and the ability to meet privately with Trapeze's officers and employees. Trapeze shall require its officers, directors and employees to cooperate fully with the Consultant with respect to the Review.

6. The Consultant shall make and keep notes of interviews conducted and keep a copy of documents gathered in connection with the performance of his or her responsibilities.

7. The Consultant shall issue a draft report to Trapeze within six months of appointment.

8. The Consultant shall engage in discussions with Trapeze regarding the draft report to get feedback with a view to finalizing the report within one month of the delivery of the draft report (the "**Final Report**").

9. The Consultant will deliver the Final Report to Trapeze and Staff.

10. The Consultant's draft report and Final Report shall include a description of the review performed, the conclusions reached, and the Consultant's recommendations for any changes or improvements to Trapeze's policies and procedures that the Consultant reasonably deems necessary to conform to regulatory requirements and best practices, including the reasons for such recommendations, and possible procedures for implementing the recommended changes or improvements.

11. Within 30 days after receipt of the Consultant's Final Report, Trapeze will advise Staff of a timetable to implement any recommendations contained in the Final Report. The timetable shall provide for the implementation of such recommendations within six months of the delivery of the timetable. Trapeze may request the consent of Staff not to implement one or more of the recommendations in the Final Report; if Trapeze so requests, it shall provide Staff and the Consultant with the reason(s) for its position, for each request, and if applicable, any alternative actions, policies or procedures it proposes to adopt instead.

12. Staff may attend at the premises of Trapeze with respect to implementation of the Consultant's recommendations.

13. Trapeze shall implement all of the recommendations contained in the Final Report unless Staff consents otherwise.

14. Once completed, Trapeze shall certify to Staff, by certificate executed on its behalf by the Chief Compliance Officer, that Trapeze has implemented the recommendations contained in the Final Report (the "**Trapeze Certificate of Implementation**").

15. The Consultant shall review the implementation of the recommendations in the Final Report and provide a report on the progress of the implementation to Trapeze and Staff within one month after receipt of the Trapeze Certificate of Implementation.

16. The Consultant's term of appointment shall continue until the Consultant has certified, in writing, to Trapeze and Staff that all recommendations in the Final Report have been substantially implemented for at least one fiscal quarter (the "**Consultant's Certificate of Completeness**").

17. For the term of appointment and for a period of three years after delivery of the Consultant's Certificate

of Completeness, the Consultant shall not enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Trapeze or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such, and shall require that any firm with which the Consultant is affiliated or of which the Consultant is a member or any person engaged to assist the Consultant in performance of the Consultant's duties under the Settlement Agreement not, without prior written consent of Staff, enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Trapeze, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

18. The Consultant shall agree to treat all information obtained from Trapeze relating to its business and clients in confidence, shall maintain the confidentiality of such information, shall not use any such information for any purpose other than the purposes of the Settlement Agreement, and shall not reveal any such information to any person, other than for purposes of fulfilling his or her obligations with respect to the Settlement Agreement. For purposes of this paragraph, information is not confidential, if it has been or is subsequently publicly disclosed, other than by the Consultant or a person who is excluded from being retained or employed by Trapeze under paragraph 17, above.

19. For greater certainty, the terms of the Review do not limit in any respect the authority of Staff to undertake, as part of its normal course activities, a review of all matters within the scope of the Review or any other aspect of Trapeze's business, including obtaining copies of all Consultant's notes and supporting documents.