

The Eleventh Hour: Ontario Securities Commission Approves Yet Another No Contest Settlement

David Kelman, John M. Picone

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The Ontario Securities Commission (OSC) has now approved 11 no-contest settlements, securing more than \$368 million in compensation for investors since implementation of this settlement regime in 2014.

Key Takeaways

- The trend toward no-contest settlements highlights the OSC's continued commitment to early resolution of certain matters without requiring admissions of liability in appropriate cases of self-detection and self-reporting.
- The benefits to market participants of a no-contest settlement include avoidance of reputational damage that could result from a full hearing.

Summary and Background

On June 27, 2018, the OSC approved its 11th no-contest settlement involving IPC Securities Corporation and IPC Investment Corporation (the IPC Dealers). This no-contest settlement followed self-reporting by the IPC Dealers of certain inadequacies in their internal controls systems which resulted in some clients incurring excess fees on their fee-based accounts and other clients not being advised that they qualified for a mutual fund series that had a lower management expense ratio than the series of the same fund in which the client was invested. The IPC Dealers agreed to pay \$10,970,518 in compensation to clients, \$30,000 in costs, and to make voluntary payments of \$460,000 to the OSC for allocation to the consolidated revenue fund.

In considering the settlement, the Panel noted the difficulties associated with approving a settlement in the absence of admitted facts regarding alleged wrongdoing, but determined that the circumstances warranted approval of the settlement on a no-contest basis in accordance with the *OSC Staff Notice 15-702- Revised Credit for Cooperation Program*. In a particular, the Panel noted the following factors that favoured a no-contest settlement in this instance:

- self-discovery and prompt self-reporting upon discovering the alleged inadequacies;
- steps taken to address the underlying causes of the alleged inadequacies immediately upon identifying the inadequacies;
- the provision of prompt, detailed and candid cooperation with Staff throughout the investigation;

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- no evidence of dishonest conduct; and
- the commitment to take corrective action, including implementing enhanced procedures, controls, and monitoring systems designed to prevent a recurrence of the alleged inadequacies, which will be subject to review and approval by the OSC.

The Trend

No-contest settlements, which were introduced in 2014 in an effort to achieve more timely and efficient resolution of enforcement matters, have been frequently utilized to address the discovery of inadequate internal controls that have resulted in excess fees being charged to clients. The IPC Dealers, collectively, represent the ninth major financial institution that has agreed to a no-contest settlement relating to similar allegations.

We continue to expect an uptick in no-contest settlements going forward as market participants develop a better understanding of the landscape, including criteria for eligibility and expected consequences, and the OSC continues to reap the benefits of timely and cost-efficient resolutions. The benefits to market participants associated with a no-contest settlement include not only a resolution without any admission of liability, but also avoidance of the reputational damage that could result from a full hearing.

A link to the Oral Ruling and Reasons of the OSC can be found [here](#).

For further information regarding self-reporting to the OSC, please contact Wendy Berman, John M. Picone, David Kelman, or any other member of our Securities Litigation Group.

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