



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

22<sup>nd</sup> 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 THE *SECURITIES ACT*,  
R.S.O. 1990, c. S.5, AS AMENDED**

**- and -**

**IN THE MATTER OF  
MARK STEVEN ROTSTEIN and EQUILIBRIUM PARTNERS INC.**

**STATEMENT OF ALLEGATIONS  
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission (“Staff”) make the following allegations:

**A. Overview**

1. The respondents Mark Steven Rotstein (“Rotstein”), a former registrant, and his company, Equilibrium Partners Inc. (“EQ”), engaged in the business of trading in and advising in respect of securities without being registered, in breach of the requirements of the Ontario *Securities Act*, R.S.O. 1990, C.S5, as amended (the “*Securities Act*”).
2. Rotstein was registered under the *Securities Act* for more than 15 years, from 1997 until 2012.<sup>1</sup> In October 2012, just over three months after he ceased to be registered, Rotstein incorporated EQ. Rotstein was the founder, owner and directing mind of EQ, as well as its sole director, officer and employee. EQ has never been registered under the *Securities Act*.
3. Between July 2, 2013 and October 4, 2014 (the “Material Time”), Rotstein and EQ carried out more than 500 transactions for and with clients, with a settlement value exceeding \$14,450,000. Rotstein and EQ obtained personal and corporate information from clients, including their passwords. Rotstein then communicated with market participants in order to execute buy and

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<sup>1</sup> But for a two month period in 2011, as explained at paragraph 4, below.

sell orders for clients, and to convey or obtain information about clients. During most of these communications, Rotstein impersonated his clients. In so doing, he repeatedly misled market participants and their employees, in order to conduct activity for which he and EQ should have been, but were not, registered.

**B. Rotstein's Disciplinary History While a Registrant**

4. Rotstein resides in Toronto, Ontario. He was registered under the *Securities Act* from February 1997 until April 2011, and from July 2011 until July 2012.

5. While he was a registrant, Rotstein was named in two disciplinary proceedings brought by the Investment Industry Regulatory Organization of Canada ("IIROC").

6. Rotstein worked for RBC Dominion Securities Inc. ("RBC DS") from February 1997 until April 2011. By the spring of 2011, while still employed by RBC DS, Rotstein had about 2000 client accounts, with assets valued at about \$500,000,000.

7. Rotstein was terminated for cause by RBC DS on April 5, 2011. IIROC brought a proceeding stemming from Rotstein's conduct while at RBC DS.

8. Meanwhile, Rotstein had joined Scotia Capital Inc. ("Scotia Capital") in April 2011. Many of Rotstein's RBC DS clients moved their business to Scotia Capital. Rotstein was subject to close supervision at Scotia Capital as a term of his reactivated registration.

9. While still employed at Scotia Capital, Rotstein settled the IIROC proceeding and admitted that he had engaged in a practice, for over a decade, of signing client names and passing those signatures off as the clients' on account and investment documents, in dozens and potentially hundreds of instances. An IIROC hearing panel accepted the settlement agreement on April 18, 2012. Among other things, Rotstein paid a fine of \$250,000.

10. Scotia Capital asked Rotstein to resign on July 10, 2012, which resulted in the automatic suspension of his registration. IIROC then brought another proceeding. Rotstein settled this second IIROC proceeding, and admitted that in June 2012, he had entered a trade for a client without the client's knowledge or authorization, contrary to IIROC Dealer Member Rule 29.1.

11. An IIROC hearing panel accepted the settlement agreement on July 3, 2014. Among other things, Rotstein was prohibited from registering with IIROC for a period of 18 months and, in the event that his registration was reactivated, he agreed he would be subject to strict supervision and to terms and conditions regarding his record keeping. As a result, Rotstein was not eligible for registration until January 3, 2016 at the earliest. However, as described below, by the time the second IIROC settlement was accepted, Rotstein had incorporated EQ, and they had been engaging in unlawful trading and advising for a year.

**C. Rotstein Incorporates EQ and They Trade and Advise Unlawfully in Order to Operate Outside of the Registration Regime**

12. Rotstein incorporated EQ on October 29, 2012. Rotstein is the founder, owner and directing mind of EQ, as well as its sole director, officer and employee. Rotstein is responsible for all activities undertaken by EQ. EQ has never been registered under the *Securities Act*.

13. Rotstein created a website for EQ, and described the company as being “in the business of partnering with individuals and families to help ensure financial and personal balance in their lives, delivered through a ‘Family Office [which] acts as a trusted advisor to families and individuals.’”

14. Rotstein and EQ solicited and otherwise obtained clients, some of whom had been Rotstein’s clients when he worked as a registrant at RBC DS and/or Scotia Capital. During the Material Time, Rotstein and EQ traded and advised by, among other things:

- (a) recommending that clients open self-directed investment accounts;
- (b) assisting clients with the investment account opening process;
- (c) accessing clients’ investment accounts;
- (d) preparing investment planning reports for clients;
- (e) offering an opinion about an issuer or its securities;
- (f) making recommendations about an investment in an issuer or its securities;
- (g) communicating with market participants in order to execute buy and sell orders for clients, and to obtain and provide information about clients and their investments; and

(h) exercising *de facto* discretionary authority over client investment accounts.

15. Rotstein encouraged clients to set up self-directed investment accounts, and had the clients provide him with information, including their date of birth, social insurance number and their passwords, which he could use to access their accounts. On most occasions, when communicating with employees of market participants, Rotstein impersonated clients, thereby misleading the employee and the firm as to his true identity.

16. Rotstein also engaged in trading and advising when clients maintained a trading or advising relationship with a registered dealing representative. For example, Rotstein recommended the purchase or sale of specific securities to an EQ client, who in turn communicated those trading instructions to a registered dealing representative.

17. During the Material Time, Rotstein and EQ conducted about 511 transactions, of which about 486 were carried out electronically and about 25 via telephone. Of these transactions, 354 were buy transactions and 157 were sell transactions. The settlement value of these transactions was approximately \$14,450,000.

18. Rotstein and EQ charged clients for the services that they provided, including their unregistered trading and advising. The fee arrangements varied among clients, but mainly consisted of an annual retainer.

#### **D. Breaches of Ontario Securities Law and Conduct Contrary to the Public Interest**

19. During the Material Time, without being registered to do so, Rotstein and EQ engaged in, or held themselves out as engaging in, the business of trading in securities and engaged in, or held themselves out as engaging in, the business of advising with respect to investing in, buying or selling securities, and as such, breached subsections 25(1) and (3) of the *Securities Act*.

20. Further, Rotstein authorized, permitted or acquiesced in EQ's non-compliance with Ontario securities law and as such is deemed to have not complied with Ontario securities law pursuant to section 129.2 of the *Securities Act*.

21. Rotstein's and EQ's misconduct was contrary to the public interest and harmful to the integrity of Ontario's capital markets. One of the stated purposes of the *Securities Act* is that

investors should be protected from unfair and improper practices. Further, it is a fundamental principle of the legislation that high standards of fitness and business conduct are maintained, in order to ensure honest and responsible conduct by market participants. The primary means by which this is achieved is through registration under the *Securities Act*. Throughout the Material Time, Rotstein and EQ did not comply with the registration requirements of the *Securities Act*, thereby avoiding any regulatory oversight, and depriving their clients of the protections to which they were entitled.

22. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

**DATED** at Toronto, this 29<sup>th</sup> day of February, 2016.