

# Re Jeske

IN THE MATTER OF:

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

**and**

**Steven Rodney Jeske**

2014 IIROC 07

Investment Industry Regulatory Organization of Canada  
Hearing Panel (Pacific District)

Hearing date: August 19, 2013  
Decision: August 19, 2013  
Reasons: January 29, 2014

**Hearing Panel:**

Stephen D. Gill, (Chair), Barbara Fraser and Chris Lay

**Appearances:**

Paul Smith, IIROC, Senior Enforcement Counsel;  
Dana Prince, Counsel for the Respondent

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## DECISION AND REASONS

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### BACKGROUND

¶ 1 This Panel was constituted pursuant to the Rules of the Investment Industry Regulatory Organization of Canada (“IIROC”) to consider, pursuant to Rule 20.36, a Settlement Agreement signed by the Respondent and Enforcement Counsel on the 19th day of August, 2013. The Settlement Agreement was recommended by both counsel. A copy of the Settlement Agreement is attached as Appendix A to these Reasons.

¶ 2 In the Settlement Agreement the Respondent admitted to the following contraventions of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:

- (a) In August and September, 2011, the Respondent acted contrary to IIROC Dealer Member Rule 1300.4 by using discretion with respect to transactions in the account of his client JS;
- (b) In August and September, 2011, the Respondent acted contrary to:
  - (i) IIROC Dealer Member Rule 1300.4, by using discretion with respect to transactions in the accounts of three clients; and
  - (ii) IIROC Dealer Member Rule 1300.1 (o) when the discretionary transactions in the accounts of two of these clients resulted in those clients free riding on his firm’s capital rather properly settling the purchases in their accounts.

¶ 3 IIROC staff and the Respondent agreed to the following terms of settlement:

- (a) The Respondent’s registration is suspended for 60 days;
- (b) The Respondent shall pay a \$15,000 (fifteen thousand dollars) fine; and

- (c) The Respondent shall successfully recomplete the Conduct and Practices Handbook course by August 1, 2014.

## SUBMISSIONS

¶ 4 Mr. Smith, Counsel for IIROC, reviewed the Rules dealing with settlement hearings (20.35, 20.36, 20.37) and noted that under Rule 20.33 a hearing panel may impose any one or more penalties upon the approved person including a reprimand; a fine; a suspension of approval for any period of time and upon any conditions or terms; and/or terms and conditions of continued approval. Mr. Smith also pointed out that no costs were being assessed pursuant to Rule 20.49.

¶ 5 Mr. Smith referred the Panel to the decision of *Re Clark*<sup>1</sup> in which the Panel stated:

“It was submitted by staff and accepted by the panel that its role under By-law 20.26 is not the same as its role under By-law 20.10 following a hearing. In considering a settlement under By-law 20.26 the panel should not simply substitute its discretion for that of staff who negotiated the settlement. The panel must be cognizant of the importance of the settlement process and should not interfere lightly in a negotiated settlement. In our view, as a result, panels must also be careful in using previous settlements as precedent. The settlement process is one of negotiation and compromise and the penalty imposed following a settlement will often be less onerous than one imposed following a hearing where similar findings are made.”

¶ 6 Further, Mr. Smith referred us to the oft quoted case of *Re Milewski*<sup>2</sup> in which the Panel stated:

“Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. 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. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.

This understanding is reflected in paragraph 20.26 of the By-laws which authorizes the District Council to “accept”, rather than approve, a settlement agreement. In each case a District Council must determine appropriateness, but the standards applicable to its doing so on a settlement hearing differ from those in a contested hearing. ...”

¶ 7 Mr. Smith took the Panel through the Settlement Agreement, and submitted that it was clear from the facts set forth in the Settlement Agreement that the Respondent had got into considerable difficulty in dealing with a sophisticated client making a purchase in the account before the client gave confirmed instructions to make the purchase. Although the client accepted the purchase, the Respondent did not receive proper trade instructions prior to initiating the trade.

¶ 8 Further, in August and September, 2011 the Respondent executed discretionary trades in three other client accounts, with the consent of those clients, but without the proper documentation, or approval from his firm. Some of the transactions were made when the clients had insufficient cash in the accounts to properly settle those purchases, and no apparent intention of depositing other monies in the accounts, a practice commonly known as “free riding”.

¶ 9 Mr. Smith submitted that the penalty agreed to in the terms of settlement were in accordance with the disciplinary sanction guidelines, and were appropriate for the facts and contraventions set forth in the

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<sup>1</sup> *Re Clark*, [1991] I.D.A.C.D. No. 40, November 29, 1999 at p. 4

<sup>2</sup> *Re Milewski*, [1999] I.D.A.C.D. No. 17, July 28, 1999 at p.12

## Settlement Agreement.

¶ 10 Mr. Smith also submitted that the Respondent had previous discipline on June 28, 2004 which resulted in a Settlement Agreement. In that case the Respondent admitted that:

“He engaged in business conduct or practice which was unbecoming or detrimental to the public interest contrary to Association By-law 29.1 by running his own book of business, and by being the primary person responsible for servicing accounts for his clients, and by signing New Client Application Forms for the accounts, thereby acting as a Registered Representative, when he was only qualified and registered as an Investment Representative.”

The penalties assessed against the Respondent in that Settlement Agreement were a fine in the amount of \$15,000.00 and a condition of his continuing approval to act in a registered capacity with any Member that the fine and costs therein be paid. Mr. Jeske was also required to pay \$2,000.00 towards the Association’s costs.<sup>3</sup>

¶ 11 Mr. Smith submitted that the prior disciplinary history was approximately seven years ago, and was of limited significance in respect of the present Settlement Agreement.

¶ 12 Mr. Smith also referred us to the Dealer Member Disciplinary Sanction Guidelines, and referred particularly to paragraph 3 – Key Considerations When Determining Sanctions, and referred specifically to paragraphs 3.1, 3.5, 3.6, 3.7 and 4.2. He submitted on the facts of this case there was no harm to clients, employer and/or the securities market (3.1) and that the Respondent’s prior disciplinary record (from 2004) was not particularly relevant (3.5). He submitted that the Respondent accepted responsibility, and acknowledged his misconduct (3.6) and this was a mitigating factor, and that the Respondent did cooperate and identify some of the second group of trades and should receive credit pursuant to Rule 3.7.

¶ 13 Referring to paragraph 4.2, Mr. Smith submitted that a suspension in this case was appropriate primarily due to the Respondent’s disciplinary history. He further submitted that the Respondent had accepted the suspension, and had organized his affairs to ensure that his firm and clients weren’t affected.

¶ 14 With respect to prior cases, Mr. Smith referred us to *Re Futher*<sup>4</sup>, *Re Karcz*<sup>5</sup> and *Re Shamseer*<sup>6</sup> and submitted that the penalties imposed in those cases, which all involved a fine and a suspension was for not dissimilar conduct. He submitted that by reference to these three cases, the penalty agreed to here was reasonable and appropriate; that is, it fits the Guidelines, and also fits with these three prior cases.

¶ 15 It is worth repeating the following paragraphs from the decision of the panel in *Re Shamseer* at page 5:

**26** In *Re Wenzel* [2005] A.S.C.D. No. 153, the Alberta Securities Commission stated that “when a person effects a securities transaction for a client without obtaining from the client, in advance, specifics as to four elements of the transaction – quantity, security, price and timing – that person is exercising “discretion”.

**27** Whenever registrants exercise discretion in clients’ accounts, they are making decisions on behalf of clients. These decisions could, and often do, have a profound impact on these accounts. These decisions may, and often do, give rise to conflicts of interest between the clients and the registrants.

**28** The purpose of IDA Regulation 1300.4, and the current IROC Dealer Member Rule 1300.4, is to protect the interests of the clients by imposing a regime of a heightened level of scrutiny and supervision.

**29** As was recently stated by an IROC Hearing Panel: “...it is important that

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<sup>3</sup> *Re Jeske*, [2004] I.D.A.C.D. No. 40, June 28, 2004

<sup>4</sup> *Re Futher*, 2008 LNIROC 29, November 3, 2008

<sup>5</sup> *Re Karcz*, 2010 LNIROC 22, May 18, 2010

<sup>6</sup> *Re Shamseer*, 2011 LNIROC 5, January 24, 2011

representatives comply in all points with the regulations respecting discretionary accounts. By prescribing that these accounts be formally approved by a senior executive of a dealer member and be executed only by experienced representatives, the applicable regulations impose strong supervision on these accounts and therefore mitigate the risk for the customers.”

Re: Re Karcz [2010] IIROC No. 22, at para. 14.

¶ 16 Mr. Prince, Counsel for the Respondent, reviewed portions of the Settlement Agreement and submitted with respect to the first count, that although the Respondent used discretion with respect to transactions in the account of his client JS, that it was simply a case of not obtaining full and complete instructions from the client. With respect to the other discretionary transactions, the Respondent had the client’s consents but did not have proper documentation. He submitted that there should be significant mitigation taken into account because the Respondent had admitted the errors, and had taken responsibility for his actions. Further he submitted that the past disciplinary history was seven years ago, and is not particularly relevant to the present circumstances.

¶ 17 Mr. Prince also pointed out that in the previous disciplinary case involving the Respondent, namely the Settlement Agreement accepted June 28, 2004, in paragraph 11 of the decision the council stated at page 7:

“11 The District Council accepts the Settlement Agreement with great reluctance.”

¶ 18 Mr. Prince also submitted that the Shamseer case, on its facts, was clearly distinguishable, and was not relevant to the Respondent’s Settlement Agreement.

¶ 19 Mr. Prince further submitted that clearly the Respondent has accepted responsibility for his conduct, and this negotiated settlement should not be rejected because it was within a reasonable range of appropriateness.

## **DECISION**

¶ 20 Having carefully considered the Settlement Agreement, the Disciplinary Sanction Guidelines, the prior cases referred to, and the submissions of counsel, this Panel is satisfied that the Settlement Agreement is consistent with the Disciplinary Sanction Guidelines, and the case law, and is an appropriate disposition of the impugned conduct.

¶ 21 The Hearing Panel therefore approved and signed the Settlement Agreement at the conclusion of the Hearing on August 19, 2013.

Dated at Vancouver, British Columbia this 29th day of January, 2014.

This Decision may be signed in counterpart.

Barbara Fraser, Panel Member

Chris Lay, Panel Member

Stephen D. Gill, Chair

## **SETTLEMENT AGREEMENT**

### **I. INTRODUCTION**

1. IIROC Enforcement Staff (“Staff”) and Steven Rodney Jeske (the “Respondent”) consent and agree to the settlement of this matter by way of this agreement (the “Settlement Agreement”).
2. The Enforcement Department of IIROC has conducted an investigation (“the Investigation”) into the Respondent’s conduct.
3. The Investigation discloses matters for which the Respondent 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. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
5. The Respondent admits to the following contraventions of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:
  - a) In August and September 2011, the Respondent acted contrary to IIROC Dealer Member Rule 1300.4 by using discretion with respect to transactions in the account of his client JS.
  - b) In August and September 2011, the Respondent acted contrary to:
    - (i) IIROC Dealer Member Rule 1300.4 by using discretion with respect to transactions in the accounts of three clients; and
    - (ii) IIROC Dealer Member Rule 1300.1 (o) when the discretionary transactions in the accounts of two of these clients resulted in those clients free riding on his firm’s capital rather than properly settling the purchases in their accounts.
6. Staff and the Respondent agree to the following terms of settlement:
  - a) The Respondent’s registration is suspended for 60 days;
  - b) The Respondent shall pay a \$15,000 (fifteen thousand dollars) fine; and
  - c) The Respondent shall successfully recomplete the Conduct and Practices Handbook by August 1, 2014.

## **III. STATEMENT OF FACTS**

### **(i) Acknowledgment**

7. 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) Factual Background**

#### **Overview**

8. These particulars relate to the period from June 1, 2011 to September 30, 2011 (“the Relevant Period”) when the Respondent was a Registered Representative (“RR”) at Global Securities Inc. (“Global”) in Vancouver. In August 2011 the Respondent made a purchase in the account of one client before the client gave confirmed instructions to make the purchase. Although the client accepted the purchase a few minutes after, the Respondent did not receive proper trade instructions before trading in the client’s account. In August and September, 2011 the Respondent executed discretionary transactions in three other client accounts with the clients’ consent but without proper documentation or approval from his firm. Some of these transactions were made when the clients had insufficient cash in the accounts to properly settle those purchases and no apparent intention of depositing other monies in the accounts, a practice commonly known as “free-riding”.

#### **The Respondent and the clients**

9. The Respondent was first registered in the securities industry in 1994. Since that time, he has been continuously registered with different firms. In 2005 he joined Global as an RR.

#### **The JS Account**

10. JS was a sophisticated client who had an account at Global (the “JS Account”). The Respondent was the RR responsible for the JS Account.
11. On August 30, 2011 JS called the Respondent to get a detailed quote on a company that traded on the TSX Venture Exchange which JS was following closely. The Respondent advised JS that 17,000 shares

were offered for sale at \$0.15 per share. JS told the Respondent that he was thinking about purchasing those 17,000 shares and that he would call the Respondent back.

12. Before he had any further contact with the Respondent, JS noticed that someone had purchased the 17,000 shares that were offered at \$0.15 per share and called the Respondent to see which firm had made the purchase. The Respondent told JS that he made the purchase in the JS Account. JS reminded the Respondent that he had planned to call the Respondent back with instructions but after being advised that the Respondent himself would take the shares in his own account if JS didn't want them, JS accepted the purchase.
13. Approximately 45 minutes later, JS called the Respondent back. At this point another 15,000 shares were offered for sale at \$0.15 per share. JS told the Respondent that he would buy these shares if the Respondent took ownership of the 17,000 shares purchased in the previous transaction. The Respondent refused to take ownership of the 17,000 shares previously purchased and told JS that he should buy the 15,000 in addition to the 17,000. JS agreed and the order was completed, leaving 32,000 shares in the JS Account.
14. On September 9, 2011 the Respondent called JS and asked him when he would pay for the 32,000 shares which settled leaving a debit in the JS Account. JS reminded the Respondent that he didn't ever give instructions for the Respondent to buy the original 17,000 shares. The Respondent suggested to JS that he could designate the 17,000 purchase as an error and have the shares immediately sold. This, however, would drive the quoted share price down and JS did not want that to happen.
15. On September 15, 2011 JS and the Respondent had another telephone disagreement about who was responsible to pay for the debit balance left in the JS Account by the original 17,000 share purchase. The Respondent again suggested to JS that he could designate the 17,000 purchase as an error and have the shares immediately sold. This would drive the quoted share price of down which JS did not want. Later that same day JS called Global's compliance department and told them that the Respondent placed the original 17,000 share purchase without his instructions. Global reversed the trade in the JS Account.

#### **Other discretionary transactions – JC, TD, GD**

16. JC, TD and GD were three other separate clients who had accounts at Global. The Respondent was the RR responsible for their accounts. From August 15 – September 15, 2011 (the period that IIROC Investigators analyzed), the Respondent made discretionary transactions related to the same four companies in these clients' accounts with their consent but without proper documentation or the approval of his firm, as follows:
  - a) In JC's account between August 16 and September 9, 2011, on 14 different days the Respondent exercised discretion and made 12 purchases of three securities totaling approximately \$35,000 and 12 sales of four securities totaling approximately \$40,000.
  - b) In TD's accounts between August 15 and September 6, 2011, on 5 different days the Respondent exercised discretion and made three purchases of one security totaling approximately \$5,000 and 7 sales of three securities totaling approximately \$23,500.
  - c) In GD's account between August 15 and September 12, 2011, on 7 different days the Respondent exercised discretion and made four purchases of one security totaling approximately \$6,000 and three sales of three securities totaling approximately \$40,000.
17. Neither the JS Account, nor any of the accounts for JC, TD or GD were designated or approved as discretionary accounts by Global.

#### **Free Riding**

18. The Delinquent Cash Report is a daily report received by individual RRs which lists the accounts of each RR that are in violation of the cash account rules. These rules require payment of securities purchased in a cash account by settlement date. The Delinquent Cash Report list debit balances in

accounts as at Trade Date and the debit balances that will exist on Settlement Date.

19. From at least June 1, 2011 until the end of September 2011, the accounts of JC and GD were regularly noted on Global's Delinquent Cash Report for the Respondent's accounts.
20. On six out of the nine days when the Respondent made discretionary purchases in JC's account and three out of the four days when the he made discretionary purchases in GD's account there were both Trade Date and Settlement Date debit balances in the accounts as follows:

<b>JC's Account</b>		
<b>Trade Date</b>	<b>Trade Date Debit Balance</b>	<b>Settlement Date Debit Balance</b>
Aug. 18 / 2011	9,003	23,820
Aug. 26 / 2011	7,828	788.
Aug. 31 / 2011	13,641	7,828
Sept. 1 / 2011	15,436	10,088
Sept. 6 / 2011	14,676	13,641
Sept. 7 / 2011	23,336	15,436

<b>GD's Account</b>		
<b>Trade Date</b>	<b>Trade Date Debit Balance</b>	<b>Settlement Date Debit Balance</b>
Aug. 15 / 2011	910	3,110
Sept. 1 / 2011	2,811	417
Sept. 12 / 2011	3,226	2,006

21. Notwithstanding the fact that both accounts had been regularly identified on the Delinquent Cash Reports received by the Respondent for failing to properly settle purchase transactions, the Respondent made discretionary purchases in the accounts of JC and GD without reasonably assuring himself that the clients would have funds in their accounts to pay for the purchases when they settled or could pay for the purchases any other way.
22. During the Relevant Period, none of the above clients made deposits to their accounts. Any settled debit balances were covered by sales of securities.

#### **Disciplinary History**

23. The Respondent was previously disciplined by the Investment Dealers Association of Canada in 2004 after entering into a Settlement Agreement. The Respondent paid a \$15,000 fine after acknowledging that he acted as a Registered Representative, when he was only qualified and registered as an Investment Representative.

#### **IV. TERMS OF SETTLEMENT**

24. 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.
25. The Settlement Agreement is subject to acceptance by the Hearing Panel.
26. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the

date of its acceptance by the Hearing Panel.

27. 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.
28. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her/its right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
29. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement; or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.
30. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
31. Staff and the Respondent 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.
32. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
33. 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 at Vancouver, British Columbia, this 19th day of August, 2013.

“John Brighten” \_\_\_\_\_

**WITNESS**

“Steven Jeske” \_\_\_\_\_

**RESPONDENT**

**AGREED TO** by Staff at Vancouver, British Columbia, this 19th day of August, 2013.

“Michael Smith” \_\_\_\_\_

**WITNESS**

“Paul Smith” \_\_\_\_\_

**PAUL SMITH**

Enforcement Counsel on behalf of Staff of the  
Investment Industry Regulatory Organization of  
Canada

**ACCEPTED** at the Vancouver, British Columbia, this 19th day of August, 2013, by the following Hearing Panel:

Per: “Stephen Gill” \_\_\_\_\_

Panel Chair

Per: “Barbara Fraser” \_\_\_\_\_

Panel Member

Per: “Chris Lay” \_\_\_\_\_

Panel Member

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