Unofficial English Translation

Re Poirier

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Richard Poirier

2017 IIROC 12

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

Hearing held on: December 14, 2016
Decision rendered on: February 21, 2017

Hearing Panel:
Me Alain Arsenault, Chair, Mr. François Gervais and Mr. John Ballard
Appearances:
Me Fanie Dubuc, Enforcement Counsel
Me Céline Tessier (Séguin, Racine, avocats), Counsel for Respondent

DECISION ON SETTLEMENT AGREEMENT

I. PREAMBLE

¶ 1 After investigation, the Enforcement Department of the Investment Industry Regulatory Organization of Canada ("IIROC") determined that Mr. Richard Poirier did commit violations for which he may be disciplined by a hearing panel appointed pursuant to Part C of Schedule C.1 to Transition Rule No. 1 of IIROC (hereinafter, the Hearing Panel):

a) In June 2008, the Respondent facilitated a client's investment in a private placement, an off-book transaction, without the knowledge and without the consent of the IIROC Dealer Member with whom he was employed, contrary to IIROC Dealer Member Rule 29.1;

b) On or around May 10, 2011, the Respondent accepted, directly or indirectly, a remuneration, gratuity, benefit, or other consideration from a person other than the Dealer Member, contrary to IIROC Dealer Member Rule 18.15.

¶ 2 On November 10 and 17, 2016, the parties consented and agreed to the settlement of these matters by way of this Settlement Agreement, a copy of which is appended to this Decision and is deemed to be an integral part hereof.

¶ 3 The Settlement Agreement signed by the parties, by which the Respondent acknowledges his guilt in respect of the offence, provides for the following terms of settlement:

a) An aggregate fine of $100,000, with costs;

b) Suspension of approval for one (1) month;

c) A twelve(12)-month period of close supervision should Mr. Poirier be re-approved in any capacity; and

d) Successful completion of the Conduct and Practices Handbook Course, and exam, within twelve (12) months following acceptance of this Settlement Agreement by the Hearing Panel.

¶ 4 The factual background in this matter is summarized in paragraphs 10 to 24 of this Settlement Agreement, as follows:

"Facilitation of a private placement

10. The Respondent stated to Staff of IIROC that he facilitated the investment by his client MR, in a private placement in the Orbite company, without the knowledge and without the consent of DS, with whom he was employed at the time;

11. On or around May 20, 2008, the Respondent received an email from RB, President of the Orbite company, forwarding to him the documents required in order to proceed with the private placement subscription in that company;

12. On or around June 13, 2008, the Respondent, via his assistant, sent an email to his client MR, forwarding to him the documents required to proceed with a private placement subscription in the Orbite company;

13. On or around June 16, 2008, the Respondent sent his client MR an email with, in attachment, a letter on DS letterhead, dated June 6, 2008, in which the Respondent confirms a private placement in the name of his client MR, and the mailing of a cheque for three thousand five hundred dollars ($3,500) in payment of ten (10) units. This letter is signed by the Respondent;

14. The Respondent stated to Staff of IIROC that he sent RB the required documents, including the letter of June 6, 2008, so that his client MR could proceed with the private placement subscription in the Orbite company;

15. On or around July 3, 2008, a certificate for two hundred and fifty thousand (250,000) shares in the Orbite company was issued in the name of the client MR;

16. On or around September 23, 2010, the client MR deposited the Orbite company share certificates with DS;

17. On or around February 11, 2011, the client MR exercised the Orbite company purchase warrants;

18. Between September 28, 2010 and May 13, 2011, the Respondent sold shares in the Orbite company for his client MR;

19. On or around May 19, 2011, the client MR realized a gain of approximately two hundred and forty thousand dollars ($240,000), after commission, as a result of the purchase warrant exercise and the sale of shares in the Orbite company;

Acceptance of a gift from a client

20. The Respondent stated to Staff of IIROC that, in 2011, he accepted a personal cheque from his client MR in the amount of one hundred and fifty thousand dollars ($150,000), without the knowledge and without the consent of DS;

21. On or around May 10, 2011, the Respondent deposited an amount of one hundred and fifty thousand dollars ($150,000) in his personal bank account;

22. The Respondent stated to Staff of IIROC that his client MR offered him the one hundred and fifty thousand dollars ($150,000) as a "gift";

23. The Respondent admitted to Staff of IIROC that he did not report his acceptance of this "gift" to DS when it was received in 2011;

24. In March 2015, the Respondent informed DS that his client MR had offered him a cheque in the amount of one hundred and fifty thousand dollars ($150,000) in 2011."

¶ 5 On December 14, 2016, a settlement hearing was held, during which the Hearing Panel heard the pleadings of the legal counsel for both parties, who jointly recommended acceptance of the Settlement Agreement that was concluded between them on November 10 and 17, 2016, pursuant to IIROC Dealer Member Rule 20.36 to 20.40 and Rule 15 of the Rules of Practice and Procedure.

¶ 6 At the hearing, the legal counsel for both parties outlined the aggravating and mitigating circumstances that, in their opinion, justify the terms of settlement agreed between the parties.

¶ 7 The aggravating circumstances raised by counsel for the parties are as follows:

a) The Respondent was reckless with respect to the existing regulatory requirements;

b) A real conflict of interest existed between the Respondent and the Dealer Member with whom he was employed;

c) The Respondent realised a financial benefit of $150,000 from the alleged trades;

d) The Respondent has not disgorged the financial benefit that he realised from his misconduct.

¶ 8 The mitigating circumstances raised by counsel are as follows:

a) The alleged violations occurred on just one occasion and involved only one client;

b) The Respondent presented no pattern of misconduct;

c) The client suffered no financial loss from the alleged violation;

d) The client has never complained about the Respondent;

e) The client was very experienced with securities investing and presented only a low level of vulnerability;

f) The Respondent had no disciplinary history;

g) The Respondent revealed his misconduct before it was detected by either his employer or IIROC;

h) The Respondent was dismissed by his employer, after revealing his misconduct;

i) The Respondent did not obstruct IIROC's investigation.

¶ 9 The Hearing Panel notes that, pursuant to *IIROC Dealer Member Rule 20.36 (1)*, its powers relative to a settlement agreement are limited to accepting or rejecting the agreement. It may in no case modify the content.

¶ 10 On this score, the Hearing Panel cites the following passage from *Re Sole*, 2016 IIROC 30 :

"15 In Re Melville *(2014 IIROC 51) the Hearing Panel capsulized the role of a Hearing Panel in reviewing the Settlement Agreement in the following terms:*

9. In the recent decision of Re Faber*, 2014 IIROC 14 (CanLII), the panel commented on the role of a Hearing Panel in considering a Settlement Agreement in the following terms:*

9. Under the provisions of IIROC's Rule 20.36, it is open to this Hearing Panel to

either accept or reject the Settlement Agreement tendered upon us by the parties. It is not a question of whether the agreed-upon penalties are ones which this Panel would have imposed had the matter come before us for determination at a hearing. It is also not open to us to amend, re-write or alter the terms of the agreement reached between the parties.

10. It is however our fundamental responsibility to be satisfied that the penalties set forth in the agreement are within a reasonable range of appropriateness in the circumstances set forth in the agreed-upon statement of facts.

11. The following excerpts from previously decided cases as recorded in the decision of Re Ast *(2012 IIROC 38) set forth the parameters of the Hearing Panel's decision-making processes when reviewing a Settlement Agreement presented to us by the parties to the dispute:*

Standard for Reviewing a Settlement Agreement

13. *The standard for reviewing a Settlement Agreement was well-stated in a recent Pacific District hearing,* Re Johnson *(2012 IIROC 19), where the panel stated:*

> *'The test applicable to a decision whether to accept or reject a settlement is well known. Simply put, a panel should accept such an agreement unless it considers the penalty provided for clearly to fall outside a reasonable range of appropriateness.'*

14. *There are many similar statements. See, for example, […]* Re Trapeze Capital *(2012 IIROC 25), where the panel states:*

> *'It is clear from jurisprudence emanating from the courts and from Hearing Panels of IIROC, the 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.'*

15. *And, finally, see the statement in* Re Rotstein and Zackheim *(2012 IIROC 27):*

> *'Based upon this material, it is our responsibility to review the agreement in order to satisfy ourselves that it falls within a reasonable range of appropriateness to the offence and circumstances recorded in the agreement and that there is nothing in the agreement which would be contrary to the public interest or bring the administration of the Rules of IIROC into public disrepute. If we are satisfied that the Settlement Agreement does not offend these principles then it should be accepted.'*

¶ 11 In *Re MacEachern*, 2014 IIROC 37, the hearing panel also abided by these principles in its decision to accept the settlement agreement submitted by the parties. It expressed itself as follows on the subject:

> *"6. In considering the terms of the settlement agreement, the Hearing Panel must decide whether the sanctions strike a reasonable balance between fairness to the Respondent in the circumstances while considering the need to protect the investing public, the industry*

membership, the integrity of the discipline process, the integrity of the securities markets and the prevention of a repetition of the offense.

7. […] This principle was succinctly stated in the Decision of Milewski (Re), *[1999] IDACD No 17 Aug 5, 1999 at p. 11; See also* Clark (Re)*, [1999] IDACD No 40, Bulletin No 2674, Dec 14, 1999:*

> *"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 the settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.""*

¶ 12 In this instance, the Hearing Panel must analyze the content of the Settlement Agreement concluded between the parties to determine whether the penalties that it provides are reasonable. To do so, it will draw inspiration, notably, from the objectives stated in the Dealer Members' Disciplinary Sanction Guidelines, which stipulate the following:

> ***"Part I – Sanction Principles for IIROC Disciplinary Proceedings***
>
> *The following principles provide a framework that should be considered in connection with the imposition of sanctions in all cases.*
>
> ***1. Disciplinary sanctions are preventative in nature and should be designed to protect the investing public, strengthen market integrity, and improve overall business standards and practices.***
>
> *The purpose of sanctions in a regulatory proceeding is to protect the public interest by restraining future conduct that may harm the capital markets. In order to achieve this, sanctions should be significant enough to prevent and discourage future misconduct by the respondent (specific deterrence), and to deter others from engaging in similar misconduct (general deterrence).* [References omitted]
>
> *When considering specific and general deterrence in the imposition of sanctions, […] with respect to an individual respondent, consideration should be given to a bona fide inability to pay when imposing a fine […].*
>
> *General deterrence can be achieved if a sanction strikes an appropriate balance by addressing a Regulated Person's specific misconduct but is also in line with industry expectations.*[1] *Any sanction imposed must be proportionate to the conduct at issue and should be similar to sanctions imposed on respondents for similar contraventions in similar circumstances. The sanction should be reduced or increased depending on the relevant mitigating and aggravating factors.*
>
> *[…]*
>
> ***3. For multiple violations, the total or cumulative sanction should appropriately reflect the totality of the misconduct.***
>
> *Where there are multiple violations, the overall sanction imposed should not be excessive or disproportionate to the gravity of the total misconduct at hand. For this reason, a global approach to sanctioning may be appropriate where the imposition of a sanction for each contravention would have the effect of imposing on the respondent a cumulative sanction*

[1] In *Mills*, [2001] I.D.A.C.D. No. 7 at p. 3, the Hearing Panel observed: "[...] *Thus the responsibility of the [hearing panel] in a penalty hearing is to determine a penalty appropriate to the conduct and respondent before it, reflecting that* ***its primary purpose is prevention, rather than punishment***." [our emphasis]

that is excessive.

[…]

4. Sanctions should ensure that a respondent does not financially benefit as a result of the misconduct.

It is a fundamental tenet that wrong-doers should not benefit from their wrong-doing. Accordingly, in cases where the respondent benefited financially from the misconduct, the sanction, where possible, should include a disgorgement of the amount of any such financial benefit. […]

5. A suspension should be considered where:

[…]

- *The misconduct in question has caused some measure of harm to investors, the integrity of a marketplace or the securities industry as a whole.*

[…]

7. Inability to pay is a factor when considering an appropriate monetary sanction or costs only when raised by the respondent.

Inability to pay is a relevant consideration in determining the appropriate financial sanctions to be imposed on a respondent. It should not be considered a predominant or determining factor, but it is a relevant factor depending on the circumstances of the misconduct.

[…]

9. Remedial sanctions tailored to the specific misconduct can be a useful tool in effectively addressing regulatory misconduct.

Sanctions in disciplinary proceedings are intended to prevent the recurrence of misconduct and deter others from similar misconduct. Therefore, sanctions may be tailored to the misconduct at issue in each case. This necessitates a review of the nature of the misconduct and both the aggravating and mitigating factors and the degree of responsibility by the respondent.

- *To address the misconduct effectively in any given case, a hearing panel may design specific remedial sanctions in addition to, and other than, a fine, disgorgement or suspension. For example, a hearing panel may impose sanctions that:*

  […]

  (v) require professional re-qualification by the writing of an exam or the successful completion of a remedial course of study.

[…] »

¶ 13 Since sanctions should be tailored to address the misconduct involved in a particular case, a penalty must be proportionate to the egregiousness of the misconduct and the relative degree of responsibility of a respondent. To properly assess the egregiousness of specific misconduct, the hearing panel should look to a number of factors, enumerated in the IIROC Sanction Guidelines:

"Part II – Key Factors in Determining Sanctions

The following list of key factors should be considered, where applicable, when determining the appropriate sanctions. This list sets out commonly considered factors and is intended to be illustrative, not exhaustive.

1. *The number, size and character of the transactions at issue.*
2. *Whether the respondent engaged in numerous acts and/or a pattern of misconduct.*
3. *Whether the respondent engaged in the misconduct over an extended period of time.*
4. *Whether the misconduct was intentional, willfully blind, or reckless with respect to regulatory requirements.*
5. *Extent of harm to clients or other market participants.*
6. *Extent of harm to market integrity or the reputation of the marketplace, or both.*
7. *The level of vulnerability of the injured or affected client(s).*
8. *The respondent's relevant disciplinary history […].*
9. *Extent to which the respondent obtained or attempted to obtain a financial benefit from the misconduct […].*
10. *In the case of individuals, whether the respondent accepted responsibility for and acknowledged the misconduct to his or her employer or the regulator prior to detection and intervention by the Dealer Member or the regulator.*

[…].

12. *Whether an individual respondent was subject to internal discipline by the Dealer Member […].*

[…]

14. *Whether the respondent made voluntary acts of compensation, including voluntary disgorgement of commissions, profits, other benefits and/or payment of restitution to clients.*
15. *Whether the respondent provided proactive and exceptional assistance to IIROC in the investigation of the misconduct […].*
16. *Whether the respondent attempted to delay IIROC's investigation, to conceal information from IIROC, or intentionally provided inaccurate or misleading testimony or documentary information to IIROC.*

[…]

19. *Whether the respondent attempted to conceal his or her misconduct or to lull into inactivity, mislead, deceive or intimidate a client, regulatory authorities or, in the case of an individual respondent, the member firm with which he or she is/was associated. The number, size and character of the transactions at issue.*

[…]"

¶ 14 To determine the reasonable nature of the Settlement Agreement reached by the parties in the matter before us, the Hearing Panel shall also consider the seven (7) decisions submitted by Counsel for IIROC.

¶ 15 First, in *Re MacEachern,* cited earlier, the respondent was alleged to have recommended and facilitated an off-book investment in securities for which he had conducted no due diligence, all without the knowledge or the consent of his employer. In all, 17 investors invested a total of $178,000 in securities recommended by the respondent.

¶ 16 Following a settlement hearing, the hearing panel confirmed the settlement agreement entered into between the parties, which provided the following sanctions:

a. a fine in the amount of $25,000;

b. a six(6)-month period of strict supervision;

c. successful completion of the Conduct and Practice Handbook Course and exam within twelve (12) months from acceptance of this settlement agreement; and

d. costs in the amount of $5,000.

¶ 17 In *Re Raby*, 2013 IIROC 30, the respondent was alleged to have engaged in off-book activities for eight (8) years and received $14,000 in remuneration for these trades, all without the knowledge of her employer. These trades involved five (5) client investors.

¶ 18 Following a settlement hearing, the hearing panel confirmed the settlement agreement entered into between the parties, which provided the following sanctions:

a) an aggregate fine in the amount of $20,000;

b) disgorgement of the financial benefit realized from the offence ($14,000);

c) two (2) years of close supervision;

d) the obligation for the respondent to retake the Conduct and Practices Handbook course;

e) costs in the amount of $5,000.

¶ 19 In the reasons for its decision to confirm the settlement agreement reached by the parties, the hearing panel took into account the fact that the respondent was dismissed by her employer, ending a 20-year employment relationship "*which was certainly a severe punishment for the respondent.*" The hearing panel also took into account the disgorgement of the entire financial benefit realized by reason of the violations.

¶ 20 In *Re Smith*, 2013 IIROC 21, the respondent was alleged to have engaged in personal financial dealings with a couple who were his clients, without his employer's knowledge. It was further shown that the respondent had accepted a $60,000 cash gift from this couple, and had been named as a 75% beneficiary of the clients' estate, a value of approximately $917,000. Furthermore, the respondent had purchased the clients' property.

¶ 21 Following a settlement hearing, the hearing panel confirmed the settlement agreement entered into between the parties, which provided the following sanctions:

a) a $50,000 fine;

b) prohibition from reapproval in any capacity for a period of four years;

c) costs in the amount of $5,000.

¶ 22 In the reasons for its decision, the hearing panel noted, in particular, the fact that the respondent had been dismissed by his employer.

¶ 23 In *Re Bergeron*, 2013 IIROC 15, the respondent was alleged to have recommended and facilitated an off-book investment in securities for which he performed no due diligence, nor adequate follow-up, all without the knowledge and without the consent of his employer. In total, seven (7) investors invested a total of $181,500 in securities recommended by the respondent.

¶ 24 Following a settlement hearing, the hearing panel confirmed the settlement agreement entered into the parties, which provided the following sanctions:

a) a $40,000 fine;

b) a 60-day suspension;

c) a one(1)-month (sic) period of close supervision, once the suspension is lifted;

d) the obligation for the respondent to retake the Conduct and Practices Handbook course;

e) costs in the amount of $5,000.

¶ 25 In the reasons for its decision, the hearing panel took note, in particular, of the fact that 50% of the financial losses were recovered, and that the respondent did not benefit financially from the misconduct.

¶ 26 In *Re Lee*, 2013 IIROC 10, the respondent was alleged to have facilitated off-book investments for nine (9) of his clients over a three (3)-year period, and to have borrowed $100,000 from one of them, all without his employer's knowledge. Moreover, the respondent received $50,000 in remuneration for facilitating said investments.

¶ 27 Following a settlement hearing, the hearing panel confirmed the settlement agreement entered into the parties, which provided the following sanctions:

a) a $75,000 fine;

b) prohibition from reapproval in any capacity for a period of six (6) months;

c) costs in the amount of $5,000.

¶ 28 In the reasons for its decision, the hearing panel noted, in particular, the financial gain from which the complainant (sic) benefited as a result of the misconduct, and the fact that no client complaints were filed against him.

¶ 29 In *Re White*, 2010 IIROC 25, the respondent was alleged to have, over a two(2)-year period, facilitated the participation of ten (10) of his clients in private off-book investments, to have engaged in personal financial dealings with a group of his clients by participating in a private investment, and to have received remuneration in the amount of $97,000 arising from the alleged dealings, without the knowledge and without the consent of his employer.

¶ 30 Following a settlement hearing, the hearing panel confirmed the settlement agreement entered into by the parties, which provided the following sanctions:

a) a $97,000 fine;

b) a 45-day suspension;

c) one (1) year of close supervision;

d) the obligation for the respondent to retake the Conduct and Practices Handbook course;

e) costs in the amount of $15,000.

¶ 31 Finally, in *Re Paziuk*, 2009 IIROC 47, the respondent was alleged to have facilitated the purchase and sale of off-book securities in his clients' name, to have invested as well, and to have received remuneration in the amount of $3,500 from his clients, when his registration was restricted to selling mutual funds, all without the knowledge and without the consent of his employer. In this matter, the respondent was also alleged to have provided his employer with a deceptive document during the latter's internal investigation into accounts that were not recorded in the books.

¶ 32 Following a settlement hearing, the hearing panel confirmed the settlement agreement entered into by the parties, which provided the following sanctions:

a) an aggregate fine of $20,000 for all three counts;

b) one (1) year of strict supervision;

c) the obligation for the respondent to retake the Conduct and Practices Handbook course;

d) costs in the amount of $5,000.

¶ 33 In the reasons for its decision, the hearing panel took into account, in particular, the fact that the respondent had reimbursed his firm for nearly $20,000 in compliance and investigation costs, that no client complaint had been filed against him, and that he had lost his job as a result of the employer's internal investigation.

¶ 34 In this matter, the respondent is alleged to have engaged in off-book trading and to have received a consideration for the alleged trades, without his employer's knowledge, contrary to IIROC Dealer Member Rule 29. In this regard, the hearing panel subscribes wholeheartedly to the opinion expressed by the hearing panel in *Re Raby*, cited above, concerning the importance of observing this rule:

> *"16. Observance of Rule 29, the contravention of which by the Respondent is what gave rise to count a), is essential in that in order for the employer to carry out adequate supervision as required by the applicable legislation and thus ensure the protection of the investing public, the registered representative must adequately and completely disclose all outside business activities;*
>
> *17. To not do this completely or adequately constitutes, for the representative, a failure to observe high standards of professional conduct, which is all the more unacceptable in that the situation persisted for more than eight years;*
>
> *18. As for the facts – which also occurred over more than eight (8) years – that gave rise to count b), Rule 18.15 is peremptory: no representative may accept any remuneration for securities-related activities from any person other than his/her employer.*
>
> *19. To violate such rules can only bring about a breach in the relationship of trust between the employer and the representative;"*

¶ 35 Elsewhere, the hearing panel in *Re Smith*, cited above, mentions that because of the position of trust that investment advisors hold, it is crucial to the reputation of the securities industry that they avoid situations that might give rise to conflicts of interest:

> *"4. Investment advisors hold a uniquely privileged position of trust in the self-regulated securities industry. As a result of their position, it is critically important to the reputation of the securities industry that investment advisors either avoid situations which may give rise to conflicts between their interests and those of their clients or ensure proper disclosure of these situations. The harm inherent in failing to do so was well described in* Re: Little *[2007] IDACD No. 24:*
>
> > *42. It is our view that transgressions must be looked at in the light of the reputation which the investment industry must maintain in the eyes of the public and the effect which the transgression could have upon that reputation. The public interest demands that Members of the industry, and their employees, be held to a very high standard of financial probity. They must be trusted because they handle other people's money. They must be seen to be trustworthy. If conduct could even appear to cast doubt upon that probity, then it could be detrimental to the public interest and constitute conduct unbecoming.*
> >
> > *43. When the reputation for financial probity is involved, appearances are very important. That is recognized in both the Compliance Manual and in the Guidelines of Conduct. For example, in the Compliance Manual, the following appears as part of section 1.35:*
> >
> > > *... [E]mployees may not accept or offer ... gifts or favour or become involved in any situation or activity in which their personal interests may conflict or appear to conflict with those of the Firm or its clients.*
> >
> > *44. In the Guidelines of Conduct, under the heading Conflicts of Interest, the following is stated:*
> >
> > > *You must be constantly be (sic) vigilant to identify conflicts of interest. Rules and procedures have been developed to help you avoid situations which*

might give rise to an appearance of a potential conflict of interest, whether or not such a conflict of interest actually exists.

45. Taking a substantial gift from a client can do nothing other than raise a reasonable question about the propriety of the transaction."

¶ 36 Given the foregoing, the Hearing Panel is of the opinion that in this instance, the alleged violations are egregious.

¶ 37 As such, the sanctions provided in the Settlement Agreement reached by the parties appear inadequate, at first glance.

¶ 38 Nevertheless, certain mitigating factors are especially important in this matter, and the Hearing Panel must take these into account in evaluating the reasonableness of the Settlement Agreement reached by the parties.

¶ 39 First of all, although disgorgement of the financial benefit realised as a result of the commission of the offence is normally required of representatives, the record shows that the Respondent has provided IIROC authorities with evidence of his inability to pay an aggregate fine amount higher than that contained in the Settlement Agreement, as the agreement specifically states, moreover.

¶ 40 The Hearing Panel also takes into account the fact that only one client was involved in the trades, which occurred only once. It is therefore not a repetitive behaviour pattern on the part of the Respondent. Furthermore, the client, who was highly experienced in securities investing, suffered no harm and has made no complaint against the Respondent.

¶ 41 Moreover, the Respondent, who had no disciplinary history, admitted his responsibility and never attempted to cover up the facts themselves.

¶ 42 Finally, the most important mitigating factor is doubtless the ultimate sanction imposed on the Respondent by his employer, namely his dismissal in March 2015 and the fact that he has been unable to find employment in the industry since then.

¶ 43 As the Québec Court of Appeal reminded us in *Poulin* c. *La Reine*, 2010 QCCA 1854, a decision-maker may only set aside a joint recommendation if it is unreasonable:

[TRANSLATION]

"[10] Although the judge is not bound by the joint recommendation of the parties, he may not set it aside unless it is unreasonable, contrary to the public interest, or would tend to bring the administration of justice into disrepute. […]

[13] The Court wrote recently, on the subject of a joint recommendation involving a lenient penalty:

[…] What emerges from the judgment is that the judge was of the opinion that the recommended penalty was too lenient, notably given the appellant's judicial record. But this was not sufficient, in that instance, to conclude the unreasonableness of the recommendation, particularly since the penalty recommended by the parties, though lenient enough, falls within a reasonable range of appropriateness for disciplinary sanctions in similar matters." [reference omitted]

¶ 44 In conclusion, taking into account the few aggravating factors raised by the parties, and the magnitude of the mitigating factors mentioned above, the Hearing Panel estimates that, while the recommended sanctions in the appended settlement agreement are at the low end of the range of sanctions imposed for similar misconduct, they are not unreasonable, nor would they tend to bring the administration of justice into disrepute, particularly if we consider the very severe penalty already imposed on the Respondent, due to the fact that since his dismissal nearly two (2) years ago, he has been unable to find employment in the industry and is experiencing

substantial financial hardship as a result.

¶ 45 The Hearing Panel reiterates that it is not open to it to alter the Settlement Agreement submitted to it, nor to substitute sanctions that it might think are fairer, but that its role is limited solely to determining whether the agreement is reasonable or not, given all of the circumstances.

FOR THESE REASONS, THE HEARING PANEL:

ACCEPTS the Settlement Agreement signed by the parties on November 10 and 17, 2016, reproduced and appended hereto, and gives effect to it from this date.

DATED at Montréal, this 21st day of February 2017.

Alain Arsenault

François Gervais

John Ballard

SETTLEMENT AGREEMENT

I. BACKGROUND

1. The Enforcement Staff of IIROC and the Respondent, Richard Poirier, consent and agree to the settlement of these matters 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 Richard Poirier;
3. The Investigation disclosed matters for which the Respondent may be disciplined by a Hearing Panel appointed pursuant to Part C of Schedule C.1 to Transition Rule No. 1 of IIROC (the Hearing Panel).

II. JOINT SETTLEMENT RECOMMENDATION

4. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement;
5. The Respondent admits to the following contravention of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:
   a) In June 2008, Respondent facilitated a client's investment in a private placement, an off-book transaction, without the knowledge and without the consent of the IIROC Dealer Member with whom he was employed, contrary to IIROC Dealer Member Rule 29.1;
   b) On or around May 10, 2011, Respondent accepted, directly or indirectly, a remuneration or gratuity, benefit, or other consideration from a person other than the Dealer Member, contrary to IIROC Dealer Member Rule 18.15.
6. Staff and the Respondent have accepted the following terms of settlement:
   a) An aggregate fine of $100,000, with costs;
   b) Suspension of approval for one (1) month;
   c) Twelve (12) months of close supervision in the event of reapproval with IIROC; and
   d) Pass the exam based on the Conduct and Practices Handbook Course within twelve (12) months of acceptance of this Settlement Agreement by the Hearing Panel.
7. The Respondent agrees to remit to IIROC a cheque in the amount of $15,000 on the date of acceptance of the Settlement Agreement by the Hearing Panel;

8. In accordance with the IIROC Sanction Guidelines, the Respondent provided evidence of his inability to pay an aggregate fine amount higher than that contained in this agreement.

III. STATEMENT OF FACTS

(i) Acknowledgment

9. Staff and the Respondent agree with the facts set out in this section and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts.

(ii) Factual Background

Facilitation of a private placement;

10. The Respondent stated to Staff of IIROC that he facilitated the investment, by his client MR, in a private placement in the Orbite company, without the knowledge and without the consent of DS, with whom he was employed at the time;

11. On or around May 20, 2008, the Respondent received an email from RB, President of the Orbite company, forwarding to him the documents required in order to proceed with the private placement subscription in that company;

12. On or around June 13, 2008, the Respondent, via his assistant, sent an email to his client MR, forwarding to him the documents required to proceed with a private placement subscription in the Orbite company;

13. On or around June 16, 2008, the Respondent sent his client MR an email with, in attachment, a letter on DS letterhead, dated June 6, 2008, in which the Respondent confirms a private placement in the name of his client MR, and the mailing of a cheque for three thousand five hundred dollars ($3,500) in payment of ten (10) units. This letter is signed by the Respondent;

14. The Respondent stated to Staff of IIROC that he sent RB the required documents, including the letter of June 6, 2008, so that his client MR could proceed with the private placement subscription in the Orbite company;

15. On or around July 3, 2008, a certificate for two hundred and fifty thousand (250,000) shares in the Orbite company was issued in the name of the client MR;

16. On or around September 23, 2010, the client MR deposited the Orbite company share certificates with DS;

17. On or around February 11, 2011, the client MR exercised the Orbite company purchase warrants;

18. Between September 28, 2010 and May 13, 2011, the Respondent sold shares in the Orbite company for his client MR;

19. On or around May 19, 2011, the client MR realized a gain of approximately two hundred and forty thousand dollars ($240,000), after commission, as a result of the purchase warrant exercise and the sale of shares in the Orbite company.

Acceptance of a gift from a client

20. The Respondent stated to Staff of IIROC that, in 2011, he accepted a personal cheque from his client MR in the amount of one hundred and fifty thousand dollars ($150,000), without the knowledge and without the consent of DS;

21. On or around May 10, 2011, the Respondent deposited an amount of one hundred and fifty thousand dollars ($150,000) in his personal bank account;

22. The Respondent stated to Staff of IIROC that his client MR offered him the one hundred and fifty thousand dollars ($150,000) as a “gift”;

23. The Respondent admitted to Staff of IIROC that he did not report his acceptance of this “gift” to DS when it was received in 2011;

24. In March 2015, the Respondent informed DS that his client MR had offered him the one hundred and fifty thousand dollars ($150,000) as a “gift”;

IV. TERMS OF SETTLEMENT

25. 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.

26. The Settlement Agreement is subject to acceptance by the Hearing Panel.

27. The Settlement Agreement shall become effective and binding upon the Respondent and Staff from the date of its acceptance by the Hearing Panel;

28. 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.

29. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his right, under IIROC rules and any applicable legislation, to a disciplinary hearing, review or appeal;

30. 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.

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

32. 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.

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

34. 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 «Québec» (Québec), on November « 10, » 2016.

(s) Witness	(s) Richard Poirier
WITNESS	**RICHARD POIRIER**
	RESPONDENT

AGREED TO by Staff, at Montréal (Québec), this November «17, » 2016.

(s) Linda Vachet	(s) Fanie Dubuc
WITNESS	**FANIE DUBUC**
	Enforcement Counsel, for Staff of IIROC

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