Re Matthews and Francis

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Martin Wendall Matthews

and

Arnold Ward Francis

2018 IIROC 16

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

Heard: April 20, 2018 in Vancouver, BC
Decision: May 9, 2018

Hearing Panel:
Catharine Esson, Chair, Barbara Fraser and David Duquette
Appearance:
Paul Smith, Enforcement Counsel
Shayne Strukoff, Counsel for the Respondents

DECISION ON SETTLEMENT AGREEMENT

¶ 1 In a closed hearing on April 20, 2018, the Hearing Panel was asked to accept a Settlement Agreement entered into between the Investment Industry Regulatory Organization of Canada ("IIROC") and the Respondents. The Respondents were not present, but they were represented by Mr. Strukoff. The Hearing Panel reserved judgment on the Settlement Agreement on April 20, 2018.

¶ 2 The Hearing Panel has subsequently decided to accept the Settlement Agreement. These are the reasons for that decision.

¶ 3 The facts are set out in the Settlement Agreement. The Respondents have admitted the following contravention:

> Between March 2012 and July 2012, the Respondents each accepted remuneration for securities related activities from someone other than their Dealer Member firm contrary to Dealer Member Rules 18.15 and 29.1.

¶ 4 The parties have agreed on the following sanction and costs, with each Respondent paying 50% of the total:

a) A total fine of $99,600 (which includes a disgorgement of $84,600); and

b) Total costs of $5,000.

¶ 5 The Hearing Panel's jurisdiction in reviewing a settlement agreement is set out in IIROC's Consolidated Enforcement Rule 8215(5) which allows a Hearing Panel to accept or reject a settlement agreement. The Hearing Panel cannot amend a settlement agreement.

¶ 6 The standard for reviewing a settlement agreement is well settled. It should accept the settlement agreement unless the proposed sanction clearly falls outside a reasonable range of sanction for the admitted misconduct. The Hearing Panel should not substitute its judgment for that of the parties. This test respects the public interest benefits of a settlement and the realities of the settlement process. The benefits and realities of settlement are discussed in numerous previous cases, including those referred to by the parties in this hearing (Re Donnelly [2016] IIROC 23; Re: Wood [2014] IIROC 50; Rault v. Law Society of Saskatchewan [2009] SKCA 81 (CA); Re Deutsche Bank Securities Ltd. [2013] IIROC 7; Re: Clark [1999] IDA 40 and Re St John 2018 IIROC 04).

¶ 7 The agreed upon sanction in this case consists of disgorgement of the full amount of the profits, a small fine and costs. The Hearing Panel was advised that IIROC Staff did not consider it necessary that the Respondents, who have been in the industry for a considerable period of time with no other disciplinary history, retake the Conduct and Practices Handbook course.

¶ 8 The panel was referred to two decisions approving settlement agreements where the Respondent had admitted receiving remuneration from a source other than his Dealer Member: Re: Arapis [2011] IIROC 37 and Re Raby [2013] IIROC 30. The circumstances of these cases involve elements which are more serious and elements which are less serious than the case at bar but they are roughly comparable. In both, the sanction included disgorgement and a fine of $10,000 for doing business outside of the firm.

¶ 9 The Settlement Agreement discloses the following mitigating facts:

a. There was no evidence that the investments were unsuitable for the clients;

b. There were no client complaints regarding the investments;

c. The investments produced a positive rate of return;

¶ 10 In this case, the Hearing Panel was concerned that the portion of the fine in excess of the disgorgement was low, given the admitted misconduct. It reserved judgment to allow closer consideration of the reasonableness of the proposed sanction. After hearing additional submissions on this point and considering the authorities presented, the Hearing Panel concluded that the fine was not so low that the sanction clearly falls outside the reasonable range.

¶ 11 For these reasons, the Hearing Panel has accepted the Settlement Agreement.

Dated at Vancouver, BC, this 9th, day of May 2018.

Catharine Esson

Chair

Barbara Fraser

David Duquette

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Investment Industry Regulatory Organization of Canada ("IIROC") will issue a Notice of Application to announce that it will hold a settlement hearing to consider whether, pursuant to Section

8215 of the Consolidated Enforcement, Examination and Approval Rules of IIROC, a hearing panel ("Hearing Panel") should accept the settlement agreement ("Settlement Agreement") entered into between the staff of IIROC ("Staff") and Martin Wendall Matthews ("Matthews") and Arnold Ward Francis ("Francis") (together the "Respondents").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff and the Respondents jointly recommend that the Hearing Panel accept this Settlement Agreement in accordance with the terms and conditions set out below.

PART III – AGREED FACTS

3. For the purposes of this Settlement Agreement, the Respondents agree with the facts as set out in Part III of this Settlement Agreement

Overview

4. The Respondents are Registered Representatives ("RRs") who work at the IIROC Dealer Member firm PEAK Securities Inc. ("PEAK Securities"). The Respondents work together as partners at a small office location in Surrey, British Columbia. They joined PEAK Securities in 2013 but had been at the same office location and registered with the IIROC Dealer Member firm Raymond James Ltd. ("Raymond James") from 2008 - 2013.

5. From March 2012 through July 2012 while they were working at Raymond James, the Respondents received payments related to the sale of a security that was purchased by some of their Raymond James clients. The security was never approved for sale by Raymond James and was not recorded on the books of Raymond James.

6. None of the money received by the Respondents was reported to Raymond James.

The Respondents

7. Francis was first registered in 1987 with Midland Doherty. From 1990 – 1999 he was registered at Dominion Securities and then in May 1999 he joined TWC Securities Inc.

8. Matthews was first registered in 2000 at TWC Securities Inc.

9. From TWC Securities the Respondents were continuously registered and followed the same registration path. In April 2004 they joined Berkshire Securities Inc. In January 2008 they joined Raymond James. In October 2013 they joined Peak Securities.

WIP

10. WIP Investment Properties Limited Partnership ("WIP") is a British Columbia Limited Partnership in the business of acquiring and operating a portfolio of working class residential apartment buildings in the greater Vancouver area of British Columbia.

11. Pursuant to an Offering Memorandum dated March 24, 2011 WIP raised funds to acquire properties through the sale of Class A Limited Partnership Units ("Units").

12. The Offering Memorandum stated that WIP would pay a 9% commission to any selling agents who introduced purchasers of the Units to WIP.

Raymond James Refused to Authorize WIP

13. The Respondents had recommended and sold a previous offering of WIP before they joined Raymond James and they were aware that a second offering of WIP was planned.

14. In May 2009 the Respondents approached their head of business development at Raymond James, to facilitate a meeting with Raymond James' corporate finance department to discuss the marketing of WIP.

15. The WIP Units were never approved for sale by Raymond James and were never approved to be held in Raymond James accounts. The Respondents knew this by at least, October 2009.

Introducing Purchasers to WIP

16. Despite knowing that WIP Units were not approved for sale by Raymond James and could not be held in Raymond James accounts, the Respondents continued to introduce their Raymond James clients to WIP and the Units.

The Investment Opportunity Meeting

17. On March 15, 2012, a WIP employee emailed Matthews a draft advertisement marketing an open investment information meeting ("Meeting") with WIP's President. The Meeting was to be held in golf course banquet room in Surrey, BC on March 27, 2012.

18. In the email the WIP employee instructed Matthews to edit the invitation and add any of his own personal information that he wanted to include. WIP also suggested that Matthews fill in the contact and RSVP information with his own contact information, but Matthews did not include it. The invitation stated the minimum investment was $25,000 and that the next investment closing date was April 30, 2012.

19. On March 16, 2012, Matthews emailed WIP a list of 38 client names and email addresses and told WIP that the people named on the list might want to attend the Meeting.

20. The Meeting was held on March 27, 2012. At the Meeting, Matthews stood up and addressed those in attendance. He told the attendees that the Units were not a Raymond James investment product and that he and Francis were attending as investors only and that they weren't representing Raymond James.

Following up on the Meeting

21. On March 28, 2012, a WIP employee emailed Matthews a spreadsheet tracking all of the individuals invited to the meeting and those who attended. The spreadsheet showed that those who did not attend were emailed an electronic presentation and identified people who received Subscription Documents. The message sent with the spreadsheet was "Who got what."

22. The spreadsheet also included follow up notes for some individuals such as

- "Arnie to call them" – (Arnie is a reference to Francis)
- "Done" – (noted next to two client names)
- "Have docs already" – (noted next to two client names)

23. The Respondents would have been in continual contact with the individuals in any event for financial planning and risk allocation purposes.

The Distributions and Finder's Fees

24. On four separate dates in 2012 WIP filed Exempt Distribution Reports with the British Columbia Securities Commission ("BC Commission") to disclose that WIP had paid a finder's fee for securities that were distributed to purchasers on the following dates:

- March 30, 2012
- April 23. 2012
- May 9, 2012
- May 31, 2012

25. Twenty – two (22) of the purchasers were clients of the Respondents at Raymond James who were first introduced to WIP by the Respondents after Raymond James had refused to allow the Units to be held

on the books of Raymond James. These 22 clients purchased a combined $940,000 worth of WIP Units.

26. The Respondents received $84,600 in finder's fees from WIP for the purchases made by those 22 clients. That amount is consistent with the 9% finder's fee stipulated in the WIP offering memorandum for the amount of WIP Units purchased by the 22 clients.

27. None of the money received by the Respondents was ever reported to Raymond James.

28. None of the WIP Units were recorded on the books of Raymond James.

Letter from BC Commission

29. On July 30, 2012 the BC Commission wrote to the Respondents requesting information on their securities related activities and the receipt of commissions from WIP.

30. On August 7, 2012 Matthews replied in writing to the BC Commission and advised that they had not provided any services to WIP.

31. Although some of their Raymond James clients purchased the Units after this date and WIP was prepared to compensate the Respondents by paying a referral fee, the Respondents did not accept any further payments from WIP.

Move to PEAK Securities

32. In October 2013, the Respondents transferred their registration to PEAK.

33. When they joined PEAK the Respondents requested to have the WIP Units approved for sale by PEAK. PEAK allowed the existing WIP Units to be transferred and kept on the books of PEAK, but expressly informed the Respondents that no new purchases of WIP Units could be made from the time they joined PEAK.

34. When they joined PEAK, both Raymond James and PEAK remained unaware that the Respondents had accepted referral fees from WIP in 2012.

35. The Respondents received no compensation from WIP after they joined PEAK.

Raymond James Policy Manual

36. The Raymond James Policy and Procedures Manual ("Policy Manual") in effect at the time prohibited RRs from engaging in any securities related activity outside the firm.

37. The Policy Manual also prohibited referral arrangements except those that met all of the following conditions:

- approved by Raymond James's legal department
- signed by the referrer, the referee, and the client
- structured so that all resulting fees flowed through Raymond James

38. The Policy Manual further stated that under no circumstances should a referral be paid directly to an RR.

Mitigating Factors

39. There is no evidence to suggest that the Units were unsuitable for any of the clients and IIROC received no client complaints regarding the Units.

40. The Units produced a positive rate of return as was the case with the previous offering of WIP.

PART IV – CONTRAVENTIONS

41. By engaging in the conduct described above, the Respondents committed the following contraventions of IIROC's Rules:

Between March 2012 and July 2012, the Respondents each accepted remuneration for securities related activities from someone other than their Dealer Member firm contrary to Dealer Member Rules 18.15 and 29.1.

PART V – TERMS OF SETTLEMENT

42. The Respondents agree to the following sanction and costs:

    a) A total fine of $99,600 (which includes a disgorgement of $84,600); and

    b) Total costs of $5,000 for a total payment of $104,600.

43. Each Respondent will pay a 50% proportionate share of the total fine and costs listed in paragraph 42 (a) and (b) as follows:

    a) Matthews will pay a $49,800 fine plus costs of $2,500 for a total payment of $52,300.

    b) Francis will pay a $49,800 fine plus costs of $2,500 for a total payment of $52,300.

44. If this Settlement Agreement is accepted by the Hearing Panel, the Respondents agree to pay the amounts referred to above within 30 days of such acceptance unless otherwise agreed between Staff and the Respondents.

PART VI – STAFF COMMITMENT

45. If the Hearing Panel accepts this Settlement Agreement, Staff will not initiate any further action against the Respondents in relation to the facts set out in Part III and the contraventions in Part IV of this Settlement Agreement, subject to the provisions of the paragraph below.

46. If the Hearing Panel accepts this Settlement Agreement and the Respondents fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Rule 8200 against the Respondents. These proceedings may be based on, but are not limited to, the facts set out Part III of this Settlement Agreement.

PART VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT

47. This Settlement Agreement is conditional on acceptance by the Hearing Panel.

48. This Settlement Agreement shall be presented to a Hearing Panel at a settlement hearing in accordance with the procedures described in Sections 8215 and 8428, in addition to any other procedures that may be agreed upon between the parties.

49. Staff and the Respondents agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing, unless the parties agree that additional facts should be submitted at the settlement hearing. If the Respondents do not appear at the settlement hearing, Staff may disclose additional relevant facts, if requested by the Hearing Panel.

50. If the Hearing Panel accepts the Settlement Agreement, the Respondents agree to waive all rights under the IIROC Rules and any applicable legislation to any further hearing, appeal and review.

51. 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 based on the same or related allegations.

52. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.

53. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IIROC will post a full of copy of this Settlement Agreement on the IIROC website. IIROC will also publish a summary of the facts, contraventions, and the sanctions agreed upon in this Settlement Agreement.

54. If this Settlement Agreement is accepted, the Respondents agree that neither they nor anyone on their behalf, will make a public statement inconsistent with this Settlement Agreement.

55. The Settlement Agreement is effective and binding upon the Respondents and Staff as of the date of its acceptance by the Hearing Panel.

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

56. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.

57. A fax or electronic copy of any signature will be treated as an original signature.

AGREED TO by Martin Wendall Matthews at "Surrey", British Columbia, this "10th" day of April, 2018.

"Witness"	"Martin Wendall Matthews"
Witness	Martin Wendall Matthews

AGREED TO by Arnold Ward Francis at "Surrey", British Columbia, this "10th" day of April, 2018.

"Witness"	"Arnold Ward Francis"
Witness	Arnold Ward Francis

AGREED TO by Staff at Vancouver, British Columbia, this "19th" day of April, 2018.

"Witness"	"Paul Smith"
Witness	PAUL SMITH Senior Enforcement Counsel on behalf of Staff of IIROC

ACCEPTED at Vancouver, British Columbia, this "24th" day of April, 2018, by the following Hearing Panel:

"Catherine Esson"
Catherine Esson, Chair

"David Duquette"
David Duquette

"Barbara Fraser"
Barbara Fraser