Unofficial English Translation

Re PEAK Securities

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

PEAK Securities Inc.

2020 IIROC 36

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

Hearing (electronic): September 15, 2020, in Montréal
Decision: September 15, 2020
Reasons for decision: October 7, 2020

Hearing Panel
Michèle Rivet, C.M., Ad.E., Chair, Michel Duchesne and Isabelle Primeau
Appearances
Francis Larin and Fanie Dubuc, Senior Enforcement Counsels, on behalf of IIROC Staff
Jean Carrier, President, PEAK Securities Inc.

REASONS FOR DECISION ON SETTLEMENT AGREEMENT

¶ 1 These are the reasons for a decision rendered on the day of the hearing, after deliberation, concerning a settlement agreement signed by Jean Carrier, President, PEAK Securities Inc. and by IIROC's Enforcement Counsels, on behalf of IIROC Enforcement Staff, on July 21, 2020.

¶ 2 The Settlement Agreement is appended to this decision and forms an integral part hereof.

¶ 3 Under the terms of Rule 8215 of IIROC's Consolidated Enforcement, Examination and Approval Rules (Consolidated Rules), shall the Hearing Panel accept or reject the Settlement Agreement as presented? That is the question that the Hearing Panel must answer.

¶ 4 The Respondent admits having contravened IIROC Dealer Member Rules 38.1 and 2500.

¶ 5 More specifically, as stated in count 1, between February 2016 and May 2018, the Respondent admits having failed to establish and maintain a system that allowed adequate supervision of the activities of its personnel, contrary to IIROC Dealer Member Rule 38.1.

¶ 6 Furthermore, between January 2012 and May 2018, the Respondent also admits, under Count 2, having failed to establish and maintain a system of internal controls and monitoring that was reasonably

designed to ensure compliance with IIROC's regulatory requirements, thus failing to fulfill its supervisory responsibilities with respect to the fees invoiced in certain accounts, contrary to IIROC Dealer Member Rule 38.1 and Rule 2500.

¶ 7 Consequently, the Respondent agrees to the following sanctions as stated in the Settlement Agreement:

a) A fine in the amount of $80,000 for count 1;

b) A fine in the amount of $50,000 for count 2;

c) Costs to IIROC in the amount of $5,000.

¶ 8 It should also be noted that if the Hearing Panel accepts the Settlement Agreement, Staff will not initiate any further action against the Respondent in relation to the facts set out in the Agreement, unless the Respondent fails to comply with any of the terms of the Settlement Agreement.

¶ 9 Before analyzing the facts in this matter, it is appropriate to review what the powers of a hearing panel consist of.

I. THE POWERS OF THE HEARING PANEL

¶ 10 The power of the hearing panel, when seized of a settlement agreement, is clearly set out in Rule 8200 of the Consolidated Rules. As Rule 8215 (5) states, the hearing panel may either accept or reject the agreement.[1]

¶ 11 The case law is consistent: it is up to the hearing panel to assess whether, given the contraventions admitted by the Respondent, the sanctions in the agreement fall within a reasonable range; to this end, it is important both to review the IIROC *Sanction Guidelines*, dated February 2, 2015, and to look at the relevant case law.

¶ 12 It is well recognized that a hearing panel should accept a settlement agreement as long as the penalties provided fall within a reasonable range of appropriateness.[2] This principle is a constant in all decisions rendered by hearing panels. A settlement agreement must be accepted unless it is unfit, unreasonable, contrary to the public interest or brings the administration of IIROC's Rules into disrepute, or must be departed from for good and cogent reasons.[3]

¶ 13 This consistent case law dates back more than two decades now, having been set down for the first time in *Re Milewski*[4] where it was ruled:

> "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."

¶ 14 It is reprised notably in the decisions cited by Mr. Francis Larin, Enforcement Counsel on behalf of IIROC Staff.[5]

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[1] Rule 8200 - *Enforcement Proceedings*.

[2] *Re Maurice* 2019 IIROC 20.

[3] *Re Laurentian Bank Securities Inc.* 2020 IIROC 24, para 92.

[4] *Re Milewski* [1999] I.D.A.C.D. No. 17.

[5] *Re Maurice,* supra; *Re M Partners & Isenberg* 2018 IIROC 25; *Re Jacob* 2017 IIROC 17.

¶ 15 What happens if the hearing panel, after arguments, questions in a significant way the merits of the settlement agreement? Must or might the hearing panel inform the legal counsels of this questioning, to permit them to explain or modulate the settlement agreement, or is its only option to reject the agreement during deliberation? This question has been posed in a few hearing panel decisions[6] since the 2016 Canada Supreme Court judgment in *R. v. Anthony-Cook*[7], a criminal matter in which the court notably examines the public interest test when deciding whether or not to accept a joint submission on sentence.

¶ 16 The question is academic here, since the Hearing Panel approved the Settlement Agreement at the hearing. Nevertheless, given the pleadings by counsel for both parties, we believe it would be useful to examine it briefly. Mr. Francis Larin has argued that the Supreme Court judgment can find no application here, which the hearing panels in *Re Jacob* and *Re Maurice*[8] also concluded, in the book of authorities. For its part, the 2018 ruling in *Re Lemire* concluded the opposite.[9]

¶ 17 In the Canada Supreme Court judgment *R. v. Anthony-Cook,* Justice Moldaver, writing on behalf of his colleagues, elaborates on the stringent nature of the test that applies when analyzing the public interest.[10] He states the importance "of exhibiting restraint, rejecting joint submissions only where the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system."[11] Thus, trial judges should approach the joint submission on an "as-is" basis. That is to say, the public interest test applies whether the judge is considering varying the proposed sentence or adding something to it that the parties have not mentioned[12], for example "jumping" or "undercutting" a joint submission.[13] When faced with a contentious joint submission, "trial judges will undoubtedly want to know about the circumstances leading to the joint submission — and in particular, any benefits obtained by the Crown or concessions made by the accused."[14] Furthermore, if dissatisfied with the sentence proposed by counsel, the trial judge "should notify counsel that he or she has concerns, and invite further submissions on those concerns, including the possibility of allowing the accused to withdraw his or her guilty plea, as the trial judge did in this case." [15]

¶ 18 *Re Jacob* (2017) [16] sets out the reasons why this Supreme Court judgment would not apply: Rule 8215 is clear: "the possibility of [a settlement agreement being rejected] tends to put some pressure on the parties to come up with reasonable settlements in the eyes of the members of the Panel" [17]; "the contexts with respect to the regulatory process and the criminal process are different." [18]; there are significant differences between the regulatory process and the criminal process, such as the potential penalties, […]and the use of

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[6] *Re Jacob,* supra; *Re Lemire* 2018 IIROC 24; *Re Maurice,* supra.

[7] 2016 SCC 43.

[8] *Re Jacob* and *Re Maurice,* supra.

[9] *Re Lemire,* supra.

[10] *R. v. Anthony-Cook*, para 14.

[11] *R. v. Anthony-Cook*, paras 49 to 61.

[12] *R. v. Anthony-Cook*, para 51.

[13] *R. v. Anthony-Cook*, para 52.

[14] *R. v. Anthony-Cook*, para 53.

[15] *R. v. Anthony-Cook*, para 58.

[16] *R. v. Anthony-Cook*, pars. 24 to 31.

[17] *Re Jacob* , para 26.

[18] *Re Jacob* , para 28.

industry representatives on the Panels." [19] The decision in *Re Jacob* therefore reiterates, without exception, the 1999 *Milewski* test, "which has stood the test of time." [20]

¶ 19 In *Re Lemire*, the hearing panel concluded, to the contrary, that it was appropriate to apply the principles stated in the Canada Supreme Court judgment *R. v. Anthony-Cook.* The hearing panel cited both the General Principles of Rule 8403 of the *Rules of Practice and Procedure*, and the comparison of Rule 20.36 *Corporation Hearing Process* with the new Rule 8200 *Enforcement Proceedings,* namely paragraph 15 of section 8215, where the word "only" no longer appears. "The regulator's intention, in omitting the word "only" in the new rules was to support the settlement hearings with a more flexible framework that coincides with the one stated by the Supreme Court in *Anthony-Cook*." [21] Finally, the hearing panel cited two decisions of the Financial Markets Administrative Tribunal[22], in which the hearings on settlement agreements were suspended to allow the parties to explore the possibility of adjusting the agreements in light of the hearing panel's concerns.

¶ 20 Consequently, we repeat, the principles relating to the security of the justice system clearly demand that a hearing panel, in its deliberations, may not alter a settlement agreement that it cannot accept as is. Still, with all due respect to the contrary opinion, it is the duty of the hearing panel, as was decided in *Re Lemire*[23], to inform the counsels of its "discomfort", its "concerns" to use the expression in *R. v. Anthony Cook*, immediately following counsels' arguments and before taking the matter under advisement:

> "This flexibility and agility in no way undermine the existing system; to the contrary, they contribute to a healthy administration of justice. They ensure its efficiency. Modulating the agreement so that it can be ratified helps avoid the risk, if it is rejected by the Hearing Panel during deliberations, of having to start the proceedings over in front of a new panel, from square one."[24]

II. THE FACTS

¶ 21 In September 2017, following an integrated examination that included, notably, the examination conducted by its Business Conduct Compliance Department (BCC), IIROC Staff informed the Respondent of several major deficiencies concerning its internal controls at the time. The Respondent had failed to correct deficiencies noted during a previous examination by BCC, in December 2015, to which it had formally committed and even mentioned having commenced in February 2016.

¶ 22 The findings included in the examination report of September 22, 2017 detailed numerous compliance related deficiencies. These concerned:

- Level II supervision for the period of May to October 2016;
- Inadequate or non-existent supervision of employees' outside accounts;
- Referral arrangements respecting conflicts of interest or the description of service offerings;
- Internal inspections of business locations and follow-up of problems with supervision of fee-based accounts;

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[19] *Re Jacob* , para 30.

[20] *Re Jacob* , para 31.

[21] *Re Lemire* , para 19.

[22] *Autorité des marchés financiers c. Alliance pour la santé étudiante au Québec inc.,* 2016 QCTMF 54; *Autorité des marchés financiers c. Financière Banque Nationale inc.*, 2018 QCTMF 6.

[23] *Re Lemire* , para 30.

[24] *Idem.*

- Monthly supervision of non-trading activities, and supervision of social media;
- Internal control – continuing education;
- Maintenance of the policies and procedures manual;
- Pre-trade disclosure of charges;
- Remote supervision – Level I supervision

¶ 23 Thus, in March 2018, IIROC Staff recommended the imposition of conditions on the Respondent's membership, in accordance with Rule 9208 of the Consolidated Rules, which conditions the Respondent accepted. As requested, the Respondent retained the services of a compliance consultant and submitted a remedial action plan, which was approved by IIROC in May 2018. In June 2020, the conditions were lifted.

¶ 24 As well, in May 2018, the Respondent informed IIROC that, from 2012 to 2018, it erroneously charged annual fees to nearly 500 clients who held fee-based accounts, for a total of approximately $191,500. Indeed, because of the controls in place, which proved inadequate in spotting securities that paid trailing commissions, securities containing embedded compensation were not excluded from the annual fee calculation, and some clients therefore overpaid. Following this meeting, the Respondent committed to reimburse the clients whose fee-based accounts had been erroneously charged since 2012.

¶ 25 Since June 2018, the Respondent has reimbursed overbilled clients who erroneously paid a total of $25 or more per account between January 2012 and May 2018. The Respondent also paid the overbilled clients nearly $24,000 in interest, as compensation. Finally, the Respondent paid $2,500, which could not be returned to overbilled clients, to a nonprofit organization that aids women victims of violence, without requesting a receipt for charity donations in return. In the end, the Respondent did not benefit financially from the erroneously charged fees.

III. THE ANALYSIS

¶ 26 The purpose of disciplinary sanctions is to set high standards of conduct for the securities industry, to safeguard the marketplace integrity and the public trust in it, and to improve professional standards and practices. Such is the first principle of the *IIROC Sanction Guidelines.*

¶ 27 Penalties act as a deterrent. They are determined by considering the aggravating or mitigating factors analyzed in Part II of the Guidelines *« Key Factors in Determining Sanctions».* Does the weighting of the different aggravating and mitigating factors allow the hearing panel to accept this settlement agreement and conclude that the penalties are reasonable under the meaning of the applicable legislation? Do the penalties mentioned in the Settlement Agreement before us fall within "a reasonable range of appropriateness"?[25] These are the questions that must be answered.

¶ 28 Penalties must be neither lenient, nor harsh to the point of being unreasonable, contrary to the public interest or of a nature to bring the administration of IIROC's disciplinary process into disrepute.[26]

¶ 29 To this end, it is appropriate to look at the applicable legislative or regulatory texts and the relevant case law and compare the penalties to those proposed here.

¶ 30 Rule 38 on *Compliance and Supervision* sets out a series of rules with which the Dealer Member must

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[25] This "reasonable range of appropriateness" is a constant in the case law: *Re Kloda* 2016 IIROC 50; *Re Maurice* 2019 IIROC 20; *Re Laurentian Bank Securities Inc.* 2020 IIROC 24.

[26] *Re JitneyTrade* 2017 IIROC 25, para 26; *Re Kloda* 2016 IIROC 50 , para 15, as cited in *Re Laurentian Bank Securities Inc.* 2020 IIROC 24, para 90.

comply. Section 1 states that the Dealer Member must establish a system to supervise the activities of each partner, director, registered representative, investment representative, employee and agent.

¶ 31 This supervision system must contain several elements, enumerated in Rule 38.1, including the establishment, maintenance and enforcement of written policies and procedures acceptable to the Corporation regarding the conduct of the types of business in which the dealer member engages, as well as adequate supervision. These policies and procedures shall be reasonably designed to achieve compliance with the applicable laws, rules, regulations and policies.

¶ 32 The *Compliance and Supervision* Rule also covers the designated person who is responsible for the conduct of the firm and the supervision of its employees, the Chief Financial Officer, the Chief Compliance Officer who is responsible for establishing the policies and procedures and overseeing their enforcement, for reporting cases of noncompliance as soon as possible, and for submitting an annual report to the Board of Directors.

¶ 33 Furthermore, Rule 2500 on *Minimum Standards for Retail Customer Account Supervision* stipulates the minimum requirements necessary to ensure that a Dealer Member has in place procedures to properly supervise retail customer account activity.

¶ 34 This Rule elaborates on the account supervisory structure that must provide reasonable assurance that the Dealer Member is meeting its regulatory obligations, including those to clients, such as suitability, and gatekeeper obligations such as preventing market abuses. It covers establishing and maintaining procedures, delegation and education; opening new accounts; account supervision generally and two-tier reviews.

¶ 35 The two-tier review mechanism is detailed at length. The Rule lists the components very specifically, from first-tier daily and monthly reviews to second-tier daily and monthly reviews.

¶ 36 To support their arguments, IIROC's counsels submitted decisions that distinguish between each count. Mr. Larin, for count 1 **Supervision**, cited the following decisions: *Re Laurentian Bank Securities*[27]*; Re Kingsdale Capital & Prange*[28]; *Re JitneyTrade*[29]; *Re OptionsXpress Canada Corp.*[30] Ms. Dubuc, for count 2 **Erroneous billing of charges in certain fee-based accounts (overbilling)**, cited these decisions: *Re Raymond James*[31]; *Re Worldsource Securities*[32]; *AMF c. Banque Nationale Investissements inc. et Financière Banque Nations inc.*[33]; *AMF c. Valeurs mobilières Banque Laurentienne et BLC Services Financiers inc*.[34]

¶ 37 For count 1, the Settlement Agreement concluded between the parties provides for an $80,000 fine.

¶ 38 In the 2020 decision, *Re Laurentian Bank Securities*, a settlement agreement was accepted by a hearing panel, the allegations, repeated failures to comply with supervision obligations, had occurred over a period of approximately two years. The objective gravity is considerable[35], notably the Respondent party having refused to honour the commitments made to IIROC. It is only through tough enforcement measures, almost as

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[27] 2020 IIROC 24.

[28] 2019 IIROC 34.

[29] 2013 IIROC 42.

[30] 2012 IIROC 72.

[31] 2018 IIROC 48.

[32] 2018 IIROC 48.

[33] Admission, agreement and commitment, June/July 2017.

[34] Admission, agreement and commitment, June/July 2017.

[35] See paragraphs 68, 69, 73 and 74.

a last resort in the circumstances, that the Respondent's compliance record could be restored to an acceptable level by IIROC.[36] Furthermore, the Respondent had had two disciplinary infractions in prior years – one of which occurred during the material period applicable here – for failing to supervise compliance with the requirements of IIROC's *Dealer Member Rules.* In that matter, the aggravating factors clearly dominated. The fine was $250,000, with costs to IIROC in the amount of $25,000.

¶ 39 In *Re Kingsdale Capital & Prange*[37] in 2019*,* Regent Capital, which had acquired a majority holding in Kingsdale Capital in January 2019, agreed in a settlement agreement approved by the hearing panel, to pay a fine of $50,000, while Mr. Prange, the designated person responsible for supervision, agreed to pay a fine of $45,000 and was permanently barred from acting as an Ultimate Designated Person.

¶ 40 In 2013, in *Re Jitney Trade*[38]*,* a hearing panel accepted a settlement agreement, and a $90,000 fine was imposed, along with $10,000 in costs to IIROC. In that matter, some of Jitney Trade's Direct Market Access clients engaged in events of, or attempts at spoofing and layering. Jitney Trade failed to perform its trading supervision obligations. The hearing panel considered mitigating as well as aggravating factors.

¶ 41 In 2012, in *Re OptionsXpress Canada Corp.*, a hearing panel accepted an agreement, which led to a fine of $65,000 and costs in the amount of $2,500 to IIROC, for deficiencies identified during a review of its internal controls by IIROC. The hearing panel took certain mitigating factors into consideration. The Respondent had no disciplinary record, had given IIROC its full cooperation, and there had been no client complaints.

¶ 42 For count 2, the agreement recommends a $50,000 fine.

¶ 43 In *Re Raymond James Ltée*[39], the hearing panel accepted an agreement which imposed a $125,000 fine and costs. Absence of a system of internal controls, conflicts of interest, problems that persisted from 2010 to 2016, more than 6,000 clients affected, involving some $2,346,000. However, Raymond James Ltd. made a considerable effort to repay the clients, which it did almost in full. For the hearing panel, this was an important mitigating factor.

¶ 44 The AMF, after conducting a targeted examination in 2015, found deficiencies in the internal controls and procedures of two registrants which led to the overpayment of client fees in *AMF c. Banque Nationale Investissements inc. et Financière Banque Nationale inc.*; a settlement agreement was signed in July 2017. NBF and NBI had failed to establish adequate internal control systems to provide reasonable assurance that they were acting in accordance with legislative and regulatory provisions. NBF and NBI gave their full cooperation throughout the investigation and introduced corrective measures. All the clients were compensated for the deficiencies. The amount of the fine was $65,000.

¶ 45 Finally, also after a targeted examination conducted in 2015, the AMF found a deficiency in the internal controls and procedures of two registrants, which led to the overpayment of client fees in *AMF c. Valeurs mobilières Banque Laurentienne et BLC Services financiers.* The amount of the fine was also $65,000.

¶ 46 The case law presented at the hearing convinced the Hearing Panel to approve the Settlement Agreement on the spot. Why?

¶ 47 The penalties agreed with the Respondent fall within the "reasonable range" considering the analyzed case law, the facts admitted in the Settlement Agreement, the aggravating factors as well as the mitigating

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[36] At paragraph 80.

[37] 2019 IIROC 34.

[38] 2013 IIROC 42.

[39] 2019 IIROC 08.

circumstances for which the *Sanction Guidelines* offer guidance. The Hearing Panel could have decided differently, but that is not the question.

¶ 48 In short:

- From 2012 to 2018, the Respondent erroneously charged annual fees to nearly 500 clients with fee-based accounts, for a total of approximately $191,500.
- In September 2017, the Respondent failed to correct deficiencies noted during a previous BCC examination in December 2015, to which it had formally committed and even mentioned having commenced in February 2016.
- The Respondent subsequently retained the services of a consultant and submitted a remedial action plan, which was approved by IIROC in May 2018. In June 2020, the conditions were lifted.
- The Respondent reimbursed the overbilled clients who erroneously paid a total of $25 or more per account between January 2012 and May 2018. The Respondent also paid the overbilled clients nearly $24,000 in interest, as compensation.
- The Respondent paid $2,500, which could not be returned to overbilled clients, to a nonprofit organization that aids women victims of violence, without requesting a receipt for charity donations in return.
- The Respondent has no disciplinary record.

¶ 49 The penalties are sufficiently harsh to prevent and discourage future misconduct by the Respondent (specific deterrence) and to deter others from engaging in similar misconduct (general deterrence).[40]

IV. CONCLUSION

¶ 50 **FOR THESE REASONS**, the Hearing Panel:

UPHOLDS its decision of September 15, 2020 to accept the Settlement Agreement which is appended hereto, and notably, the agreed penalties against PEAK Securities Inc.

Dated at Montréal, Québec, this 7th day of October 2020.

Michèle Rivet

Michel Duchesne

Isabelle Primeau

SETTLEMENT AGREEMENT

PART I - INTRODUCTION

1. The Investment Industry Regulatory Organization of Canada (IIROC) will issue a Notice of Application to announce that a settlement hearing will be held before a Hearing Panel (the Hearing Panel) to consider whether, pursuant to Rule 8215 of IIROC's Enforcement, Examination and Approval Rules, it should accept a settlement agreement (the Settlement Agreement) between IIROC Staff (Staff) and PEAK Securities Inc. (the Respondent).

[40] IIROC Sanction Guidelines, Part I, Sanction Principles for IIROC Disciplinary Proceedings, February 2, 2015, reprised in *Re Proulx*, para 19.

PART II - JOINT SETTLEMENT RECOMMENDATION

2. Staff and the Respondent 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 Respondent agrees with the facts as set out in Part III of this Settlement Agreement.

REGISTRATION HISTORY

4. PEAK Securities Inc. has been a duly registered Dealer Member of IIROC since September 29, 2000.

I. COUNT 1 – SUPERVISION

Overview

5. In September 2017, following an integrated examination that included, notably, the examination conducted by its Business Conduct Compliance Department ("BCC"), IIROC Staff informed the Respondent of several major deficiencies concerning its internal controls at the time;

6. It was noted, on this occasion, that the Respondent had failed to correct deficiencies noted during a previous examination by BCC, even though it had committed to doing so.

Examination reports dated December 23, 2015 and September 22, 2017

7. On December 23, 2015, after an examination conducted by BCC staff, IIROC sent the Respondent a report detailing a number of deficiencies, among them eight (8) findings that were considered significant.

8. On February 5, 2016, the Respondent responded in writing to this report, stating to IIROC Staff, among others, that corrective measures had been implemented or were about to be;

9. On September 22, 2017, after an integrated examination conducted by IIROC Staff, a report was sent to the Respondent, once again detailing numerous compliance related deficiencies;

10. More specifically, as regards the BCC, the report noted eight (8) findings that were considered significant and repetitive, in the following areas:

    A. Level II supervision;

    B. Supervision of employees' outside accounts;

    C. Referral arrangements;

    D. Internal inspections of business locations and follow-up of problems;

    E. Supervision of fee-based accounts;

    F. Monthly supervision of non-trading activities;

    G. Supervision of social media; and

    H. Internal control – continuing education.

11. The report also highlighted eleven (11) other findings considered significant by IIROC Staff, including:

    I. Maintenance of the policies and procedures manual;

    J. Pre-trade disclosure of charges; and

    K. Remote supervision – Level I supervision.

Principal findings – September 22, 2017 report

12. The eleven (11) findings enumerated above, including the examination report of September 22, 2017, resulted from the following elements among others:

A. Level II supervision

13. It appears that from May to October 2016, this supervision was inadequate or not performed in a timely fashion;

14. These findings notably concerned the review of the daily commission reports, daily margin call reports and accounts with a debit balance, as well as the monthly reports on margin account concentrations.

B. Supervision of employees' outside accounts

15. For many employees of the Respondent, this supervision was inadequate or non-existent;

16. Moreover, for two of its employees, the Respondent failed to submit the necessary correspondence to the firms concerned.

C. Referral arrangements

17. Deficiencies were observed concerning the Respondent's analysis of conflicts of interest;

18. In some cases, the client disclosure or referral arrangement contained no description of the services offered by each of the parties concerned.

D. Internal inspections of business locations and follow-up of problems

19. For the majority of the Respondent's business locations concerned, the established schedule of inspections of these locations was not followed;

20. There was no follow-up by the Respondent, once the inspection reports regarding the business locations concerned were issued.

E. Supervision of fee-based accounts

21. Deficiencies and delays were noted with respect to the monthly supervision of feebased accounts.

F. Monthly supervision of non-trading activities

22. Deficiencies were identified by IIROC Staff in this regard, specifically between May and October 2016.

G. Supervision of social media

23. IIROC Staff were unable to track down proof of supervision performed by the Respondent, at this level;

24. Furthermore, some employees of the Respondent had a LinkedIn account without prior approval.

H. Internal control – continuing education

25. Deficiencies were noted with respect to the content of a course offered internally by the Respondent, as well as its tracking of the continuing education taken by its Registered Representatives.

I. Maintenance of the policies and procedures manual

26. IIROC Staff found that the Respondent's policies and procedures manual was incomplete and obsolete.

J. Pre-trade disclosure of charges

27. For most of the trades examined by IIROC Staff, there was no evidence of pre-trade disclosure of charges to the Respondent's clients.

K. Remote supervision – Level I supervision

28. The Respondent was unable to demonstrate that timely periodic visits were made to four (4) of its business locations.

Conditions imposed on the Respondent's membership

29. On or around March 23, 2018, given all of its findings, among other things, IIROC Staff recommended the imposition of terms and conditions on the Respondent's membership, in accordance with Rule 9208 of the Consolidated Enforcement, Examination and Approval Rules of IIROC;

30. On or around April 6, 2018, the Respondent accepted the imposition of these terms and conditions, as recommended;

31. On or around May 3, 2018, a decision was rendered by IIROC confirming the imposition of these terms and conditions;

32. Among the terms and conditions thus imposed, the Respondent was required, notably, to retain the services of a compliance consultant and implement corrective measures for each of the deficiencies highlighted in the BCC examination report of September 22, 2017.

Monitoring of the terms and conditions imposed on the Respondent's membership

33. In accordance with the terms and conditions imposed on it, the Respondent retained the services of such a consultant and submitted a remedial action plan, which IIROC approved in July 2018;

34. In April 2020, the Respondent and the consultant submitted an attestation of implementation of the recommendations contained in the remedial action plan, in accordance with the terms and conditions that had been imposed on the Respondent;

35. IIROC Staff took note of the tests conducted by the consultant, relative to the deficiencies that had led to the imposition of terms and conditions on the Respondent;

36. In consideration of the foregoing, notably, the terms and conditions that had been imposed on the Respondent on May 3, 2018 were lifted on June 26, 2020.

II. COUNT 2 – ERRONEOUS BILLING OF CHARGES IN CERTAIN FEE-BASED ACCOUNTS (OVERBILLING)

Overview

37. In May 2018, the Respondent met with IIROC Staff to declare that, between 2012 and 2018, it had erroneously billed annual fees to certain clients who held fee-based accounts (the fee-based accounts);

38. In all, the Respondent erroneously collected excessive fees (overbilling) on the fee-based accounts of nearly 500 clients, for a total of approximately $191,500;

39. The Respondent reported the overbilling problem to IIROC voluntarily and has since made diligent efforts to return this money to its current and former clients (overbilled clients).

Control and Supervision Failures

(i) The Fee-Based Accounts

40. The Respondent would offer fee-based accounts to its clients. The clients who held this type of product paid no fees on individual trades effected in their account and, instead, paid a fixed charge based on a percentage of the value of the securities in the account. The Respondent's fee-based accounts were supposed to be free of products for which a trailing commission is normally charged;

41. Thus, because of the controls in place, which proved inadequate in spotting securities that paid trailing

commissions, securities containing embedded compensation were not excluded from the annual fee calculation and some clients therefore overpaid;

42. In all, from January 2012 to May 2018, the Respondent erroneously collected approximately $191,500 in fee overpayments from fee-based accounts.

(ii) Self-Reporting

43. In 2017, IIROC sent its Dealer Members a request for information to ensure that dealers were adequately managing potential conflicts in connection with fee-based accounts and managed accounts. In so doing, IIROC was asking its Dealer Members to examine their internal policies and procedures respecting the prevention and analysis of compensation-related conflicts and to report the existence of any problems;

44. In the course of its analysis, the Respondent examined every security that was held in a fee-based account since January 2012;

45. In May 2018, after completing its analysis, the Respondent met with IIROC Staff to communicate the existence of the overbilling problem in fee-based accounts, as well as its extent. Following this meeting, the Respondent undertook to reimburse the clients whose fee-based accounts had been erroneously billed since 2012.

(iii) Measures taken by the Respondent to reimburse clients

46. Since June 2018, the Respondent has made diligent efforts to repay the amount of $191,500 to its overbilled clients;

47. The Respondent has reimbursed overbilled clients who erroneously paid a total of $25 or more per account between January 2012 and May 2018;

48. Furthermore, the Respondent also paid the overbilled clients nearly $24,000 in interest, as compensation, in addition to the reimbursed fees of $25 or more;

49. In the end, an amount a little over $2,500 could not be repaid to the overbilled clients. This amount represents clients who erroneously paid less than $25 in total fees per account, or former clients who were untraceable;

50. The Respondent therefore paid this amount to a non-profit organization that aids women victims of violence, without requesting a receipt for charity donations in return. The Respondent therefore did not benefit financially from the erroneously charged fees.

PART IV – CONTRAVENTIONS

51. By engaging in the conduct described above, the Respondent contravened Rule 38.1 and Rule 2500 of the IIROC Dealer Member Rules.

Count 1

Between February 2016 and May 2018, the Respondent failed to establish and maintain a system that allowed adequate supervision of the activities of its personnel, contrary to IIROC Dealer Member Rule 38.1.

Count 2

Between January 2012 and May 2018, the Respondent failed to establish and maintain a system of internal controls and monitoring that was reasonably designed to ensure compliance with IIROC's regulatory requirements, thus failing to fulfill its supervisory responsibilities with respect to the fees invoiced in certain accounts, contrary to IIROC Dealer Member Rule 38.1 and Rule 2500.

PART V - TERMS OF SETTLEMENT

52. The Respondent agrees to the following sanctions and costs:

    a) A fine in the amount of $80,000 for count 1;

    b) A fine in the amount of $50,000 for count 2;

    c) Costs to IIROC in the amount of $5,000.

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

PART VI – STAFF COMMITMENT

54. If the Hearing Panel accepts the Settlement Agreement, Staff will not initiate any further action against the Respondent 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;

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

PART VII – SETTLEMENT ACCEPTANCE PROCEDURE

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

57. The Settlement Agreement shall be presented to a Hearing Panel at a settlement hearing held 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.

58. Staff and the Respondent 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 Respondent does not appear at the settlement hearing, Staff may disclose additional relevant facts, if requested by the Hearing Panel.

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

60. 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 same allegations or to related allegations.

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

62. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IIROC will post a full 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.

63. If this Settlement Agreement is accepted, the Respondent agrees that neither it, nor anyone on its behalf, will make a public statement inconsistent with this Settlement Agreement.

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

PART VIII – SIGNATURE OF THE SETTLEMENT AGREEMENT

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

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

SIGNED this July 21, 2020

(S) Jean Carrier

Name: Jean Carrier

Title: President

PEAK Securities Inc.

Respondent

SIGNED this July 21, 2020

(S) Fanie Dubuc

Fanie Dubuc

Senior Enforcement Counsel,

On behalf of IIROC Enforcement Staff

SIGNED this July 21, 2020

(S) Francis Larin

Francis Larin

Senior Enforcement Counsel,

On behalf of IIROC Enforcement Staff