Unofficial English Translation

Re RBC Dominion Securities

IN THE MATTER OF:

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

and

The By-Laws of the Investment Dealers Association (IDA) of Canada

and

RBC Dominion Securities Inc., Jean-Pierre Ménard and Serge Leclaire

[2012] IIROC No. 44

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

Heard: June 14, 2012
Decision: July 23, 2012

Hearing Panel:
Michèle Rivet, Esq. (Chairwoman), Mr. Yves Julien, Ms. Danielle Le May
Appearances:
Yan Paquette, Esq., Enforcement Counsel for IIROC
Robert Torralbo, Esq., Julie-Martine Loranger, Esq., for the Respondents

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REASONS FOR DECISION ON SETTLEMENT AGREEMENT

¶ 1 This decision relates to a Settlement Agreement between the Investment Industry Regulatory Organization of Canada ("IIROC" or, in French "OCRCVM"), RBC Dominion Securities ("RBC DS" or, in French, "RBC DVM"), Serge Leclaire and Jean-Pierre Ménard signed and submitted in accordance with Rule 20.35 through 40 of the IIROC Dealer Member Rules and Rule 15 of the Dealer Member Rules of Practice and Procedure.

¶ 2 The Settlement Agreement was signed on June 11, 2012 and reads as follows:

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Enforcement staff of the Investment Industry Regulatory Organization of Canada ("**IIROC**") and the Respondents, RBC Dominion Securities Inc. ("**RBC DS**"), Jean-Pierre Ménard ("**Ménard**") and Serge Leclaire ("**Leclaire**") (together the "**Respondents**"), consent and agree to the settlement of this matter by way of this agreement (the "**Settlement Agreement**").

2. IIROC's Enforcement Department has conducted an investigation (the "Investigation") into the Respondents' conduct.

3. The Investigation discloses matters for which the Respondents may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C (the "**Hearing Panel**").

II. JOINT SETTLEMENT RECOMMENDATION

4. IIROC staff (the "**Staff**") and the Respondents jointly recommend that the Hearing Panel accept this Settlement Agreement.

5. The Respondents admit to the following contraventions of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:

   (i) RBC DS, Ménard and Leclaire admit that from August 2003 to December 31, 2008, they failed to adequately perform their roles as gatekeepers to the capital markets by:

   a. allowing Earl Jones to hold multiple trading authorizations for multiple unrelated clients; and

   b. by not questioning some withdrawals in some accounts for which Earl Jones had trading authorization.

   Contrary to Dealer Member Rule 29.1 [IDA by-law 29.1 prior to June 1st 2008];

6. Staff and the Respondents agree to the following terms of settlement:

   (a) Ménard and Leclaire shall each be suspended from any registered capacity with IIROC for a period of six (6) months, the two (2) periods of suspension to be served consecutively;

   (b) Ménard and Leclaire shall each pay IIROC a fine in the amount of $100,000.; and

   (c) RBC DS shall pay IIROC a fine in the amount of $500,000.

7. The Respondents agree to pay IIROC the sum of $20,000. in total to reflect the costs that Staff incurred in connection with this matter.

III. STATEMENT OF FACTS

(i) Acknowledgement

8. Staff and the Respondents agree with the facts set out in this Section III and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts.

(ii) The Respondents and RBC DS

9. At all material times, Ménard and Leclaire were (and are to this day) Registered Representatives and employed as Investment Advisors at the Montréal Place Ville Marie branch of RBC DS.

10. Ménard is 67 years old. Prior to joining RBC DS in August 2003, he was an investment advisor at Scotia McLeod and its predecessors from 1976 to August 2003.

11. Leclaire is 60 years old. Prior to joining RBC DS in August 2003, he exercised different functions at Scotia McLeod from 1995 to August 2003, including five years as a Regional Manager. In October 2000, he joined Ménard as a Registered Representative to form the team of Ménard, Leclaire.

12. On April 30, 2004, Leclaire was registered as an Associate Portfolio Manager and in May 2006, he was registered as a Portfolio Manager.

13. On April 6, 2008, Ménard was registered as an Associate Portfolio Manager.

14. Ménard and Leclaire's business consists of more than 400 client accounts with assets valued at approximately $350 million, with more than $200 million being managed on a discretionary basis.

(iii) Factual Background

A. Introduction - Earl Jones

15. Earl Jones is a convicted criminal who has never been registered with IIROC or the *Autorité des Marchés Financiers*.

16. In 2010, Earl Jones pleaded guilty to two charges of fraud in relation to a *Ponzi* scheme that he masterminded and perpetrated from 1982 to 2009, whereby he defrauded more than 100 of his clients of more than $50 million. Earl Jones was sentenced to 11 years in prison.

17. Ménard met Earl Jones at Montréal Trust where they both worked in 1960s.

18. In the late 1970s, Ménard encountered Earl Jones again. Earl Jones had set up a business offering estate administration and related services to his clients. Ménard knew that Earl Jones was not registered and could not offer investment advice to his clients.

19. In the 1980s, Earl Jones began to refer clients to Ménard, then at Scotia McLeod. Most of the clients referred by Earl Jones to Ménard granted a trading authorization on their accounts to Earl Jones.

20. In October 2000, Leclaire joined Ménard as a Registered Representative to form the team of Ménard and Leclaire. From October 2000 onwards, Leclaire became the primary contact with Earl Jones and handled the day-to-day administration of most of the accounts of the clients referred by Earl Jones. However, both Menard and Leclaire, as partners, were jointly responsible for their client accounts.

B. Transfer of Ménard and Leclaire to RBC DS

21. In August 2003, Ménard and Leclaire joined RBC DS.

22. Approximately 39 clients that had been referred by Earl Jones to Ménard and Leclaire while at ScotiaMcLeod, with assets totalling approximately $21 million, transferred to RBC DS. Each of those clients had granted a trading authorization to Earl Jones.

23. Because of the transfer, RBC DS Account Opening Application Form, Know Your Client Form and Trading Authorization Form needed to be completed in a short period time.

24. Ménard and Leclaire relied on Earl Jones to provide the information required to complete these documents for some of the clients.

25. Notwithstanding that the said clients had previously granted a trading authorization to Earl Jones during the time that their accounts were at ScotiaMcLeod, since these documents bore the name of Earl Jones and needed to be reviewed and approved by the Respondents during a short period of time, Earl Jones significant role in multiple clients' accounts should have been questioned by the Respondents.

26. The circumstances surrounding the transfer of these multiple accounts should have prompted further inquiry from the Respondents for the following reasons:

    a. Earl Jones held trading authorizations for a significant number of client accounts;

    b. Earl Jones obtained trading authorizations from numerous individuals who were apparently unrelated, therefore excluding the possibility that he could be a close friend or relation of all these clients;

    c. Earl Jones was operating a business, raising questions regarding the financial interest or role he might have in the clients' accounts.

27. Notwithstanding the foregoing, Ménard and Leclaire did not question the role of Earl Jones and did not contact some of the clients nor did RBC DS put in place specific supervisory procedures for the accounts of those clients;

C. Transfer into discretionary accounts

28. In August 2004, as it was becoming increasingly difficult to speak to or meet with Earl Jones to make investment recommendations respecting the clients for which he had a trading authorization, Leclaire began to contact some of the said clients directly in order to offer them the opportunity to convert their accounts to discretionary accounts.

29. Between August 2004 and December 31, 2008, the accounts of 16 of the clients referred by Earl Jones were converted to discretionary accounts.

30. As at December 31, 2007, the total value of the assets in the accounts of the clients referred by Earl Jones was $25,812,413. Of that amount, $22,705,797. was managed by Menard and Leclaire on a discretionary basis, without any interaction with or involvement of Earl Jones.

31. However, during the same period, some of the clients were not contacted by Ménard or Leclaire to be offered to convert their accounts to discretionary.

32. Some of the client accounts that were not converted to discretionary accounts continued to be subject to a trading authority in favour of Earl Jones without any intervention or inquiry on the part of Ménard, Leclaire or RBC DS.

D. Withdrawals

33. Between January 2004 and December 2007, a total of approximately $3,674,862.20 was withdrawn from the accounts of 16 clients referred by Earl Jones.

34. Each of these withdrawals was preceded by a letter of authorization signed by the client which included directions as to whom and where to deliver the cheque to be issued.

35. In respect of each of the aforementioned withdrawals, the cheques were issued by RBC DS payable to the client and some were delivered to Earl Jones' office.

36. One of the assistants of Ménard and Leclaire verified the signature of the client on the letter of authorization, and called Earl Jones' office to confirm the withdrawal and delivery instructions.

37. Paragraph 18 of the RBC DS Account Agreement relating to the accounts of all clients of RBC DS, including the clients referred by Earl Jones, at the relevant time provided that:

> "**18. Trading authorization**
>
> You can give another person authorization to trade securities in your account, including buying and selling on margin or short selling, by completing the appropriate trading authorization form. We will act on this person's instructions without conducting any inquiries or investigations into the propriety of such instructions. If you give authorization to more than one person, each person can deal independently with us without the consent of the others. This trading authorization will not survive your death or incapacity.
>
> **This person may withdraw money or securities from your account if the money is payable to you or the securities are registered in your name.**
>
> If you want to end another person's trading authorization on your account, you must send a notice in writing to this effect by registered mail to:
>
> Manager Compliance Department
>
> RBC Dominion Securities Inc.
>
> Royal Bank Plaza, North Tower
>
> 200 Bay Street

Toronto, ON M5J 2W7

The notice will be effective on the day after the business day we receive it. We may act on any instructions that we received from this person before the notice became effective.

You assume the risk on all transactions involving a trading authorization on your account. You agree to indemnify us from all debts, costs, damages and losses, including legal costs, we may incur from a transaction involving a trading authorization on your account."

38. Notwithstanding the foregoing and further notwithstanding that some of the withdrawals:

(i) were for large amounts;

(ii) resulted in the deregistration of some of the registered accounts, which would trigger tax consequences;

(iii) resulted in the liquidation of the accounts;

(iv) in all cases were in respect of accounts for which Earl Jones had a trading authorization;

(v) were made within a short timeframe or concomitant with other withdrawals for other clients for whom Earl Jones held a trading authorization; and

(vi) were accompanied by a request to deliver the cheques payable to the clients to Earl Jones or to one of his employees,

neither RBC DS, Ménard or Leclaire: questioned these withdrawals, contacted any of the 16 clients to inquire about the withdrawals, obtain their verbal confirmation of the withdrawals and delivery instructions.

39. The majority of the said clients acknowledged to IIROC Staff during the investigation that they were aware of the withdrawals and that the cheques payable to the clients were being delivered to Earl Jones, so that the sums could be invested by Earl Jones in a special trust account that he had set up at RBC, which would purportedly generate a guaranteed return of 8% or more.

40. As a result of Ménard and Leclaire's infrequent contact with the 16 clients, they were unaware that Earl Jones was withdrawing their money to put it into a special trust account outside of RBC DS.

41. Earl Jones defrauded the 16 clients of the amounts that were withdrawn from their accounts. RBC DS, Ménard and Leclaire were unaware of and not complicit in this fraud.

42. From 2003 to 2009, the gross commissions generated from the accounts for which Earl Jones held trading authorizations amounted to approximately $390,000. The gross commissions generated from the accounts of the aforementioned 16 clients with whom the Respondents had infrequent contacts amounted to $86,046.

E. Failure to act as Gatekeeper

43. In light of the foregoing, RBC DS, Ménard and Leclaire failed to adequately perform their role as gatekeepers by:

a. allowing one individual to hold a significant number of trading authorizations for a significant number of unrelated clients; and

b. allowing one individual holding a significant number of trading authorizations to make numerous withdrawals in the accounts of 16 clients without questioning those transactions or contacting the clients

IV. MITIGATING FACTORS

44. Notwithstanding the failure of RBC DS, Ménard and Leclaire to meet the required standard in their role as gatekeepers, there are the following mitigating factors.

45. Notwithstanding that all of the clients referred by Earl Jones received a copy of the account agreement including the trading authorization, account statements and trade confirmations, at no time during the relevant period did a single client referred to Ménard and Leclaire by Earl Jones ever complain to the Respondents.

46. At no time did RBC DS, Ménard or Leclaire compensate Earl Jones in any way for any client referred to them.

47. At all times, all of the investment recommendations relating to all of the clients referred by Earl Jones were made by Ménard or Leclaire. At no time did Ménard or Leclaire accept or act upon an investment recommendation made by Earl Jones. At no time did anyone complain about the suitability of the investments made by Ménard and Leclaire.

48. On December 8, 2008, one of the clients referred by Earl Jones (HL) instructed the Respondents to liquidate her RRIF account. Leclaire contacted the client (HL) and discovered that Earl Jones was purportedly giving investment advice to this client in that he recommended to her to liquidate her account at RBC DS and invest the proceeds in a "tax shelter". Leclaire dissuaded HL from liquidating her account and withdrawing any sums to remit to Earl Jones to be invested in a "tax shelter".

49. For Ménard or Leclaire it was an indication that Earl Jones was potentially engaged in an illegal activity namely, he apparently was giving investment advice to his clients (but they did not suspect that Earl Jones was engaged in fraudulent conduct). Leclaire immediately reported the foregoing to his branch manager.

50. The Respondents have cooperated with Staff throughout the course of the Investigation.

51. Ménard and Leclaire have no disciplinary or regulatory history over lengthy careers.

52. RBC DS's Compliance Policies and Procedures relating to gatekeeping and supervision of accounts were in accordance with regulatory requirements.

53. The Royal Bank of Canada paid $17 million to settle the class action brought on behalf of the victims of Earl Jones' fraudulent conduct.

V. TERMS OF SETTLEMENT

54. 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.

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

56. The Settlement Agreement shall become effective and binding upon the Respondents and Staff as of the date of its acceptance by the Hearing Panel.

57. 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.

58. The Respondents hereby waive their rights under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal in the event that the Hearing Panel accepts the Settlement Agreement.

59. 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 in relation to the matters disclosed in the Investigation.

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

61. Staff and the Respondents 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.

62. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondents are payable within thirty (30) days of the effective date of the Settlement Agreement.

63. Unless otherwise stated, the first of the suspensions to be served consecutively and other terms of the Settlement Agreement shall commence within thirty (30) days of the effective date of the Settlement Agreement.

64. This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument.

AGREED TO by the Respondent RBC Dominion Securities Inc., at the City of Toronto, in the Province of Ontario, this 11th day of June, 2012.

Witness **RBC DOMINION SECURITIES INC.**

Per: David J. Agnew, Chief Executive Officer

AGREED TO by the Respondent Jean-Pierre Ménard at the City of Montréal, in the Province of Québec, this 11 day of June, 2012.

Witness **JEAN-PIERRE MÉNARD**

AGREED TO by the Respondent Serge Leclaire at the City of Montréal, in the Province of Québec, this 11 day of June, 2012.

Witness **SERGE LECLAIRE**

AGREED TO by Staff at the City of Montréal, Province of Québec, this 11 day of June, 2012.

Witness **INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA**

Per: Carmen Crépin, Vice President, Québec

ACCEPTED at the City of Montréal, in the Province of Québec, this 14 day of June, 2012, by the following Hearing Panel:

Mtre. Michele Rivet

Mr. Yves Julien

Ms. Danielle Le May

¶ 3 The acts committed by the Respondents, which they admit to in the Settlement Agreement, are contrary to Rule 29.1 of the Dealer Member Rules (IDA By-Law 29.1 prior to June 1, 2008).

¶ 4 The first subsection of this provision reads as follows:

> "1. Dealer Members and each partner, Director, Officer, Supervisor, Registered Representative, Investment Representative and employee of a Dealer Member (i) shall observe high standards of ethics and conduct in the transaction of their business, (ii) shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest, and (iii) shall be of such character and business repute and have such experience and training as is consistent with the standards described in clauses (i) and (ii) or as may be prescribed by the Board."

¶ 5 Specifically, RBC DS, Mr. Ménard and Mr. Leclaire acknowledge that, between August 2003 and December 31, 2008, they failed to perform their duty as gatekeepers to the capital markets by allowing Earl Jones to hold multiple trading authorizations for multiple unrelated clients and by not questioning some withdrawals in certain accounts for which Earl Jones had trading authorization.

¶ 6 The Settlement Agreement details the facts which the Respondents have acknowledged; it is not useful to repeat them here exhaustively.

¶ 7 In particular, Mr. Ménard and Mr. Leclaire relied on Earl Jones to obtain the requisite information to fill out the Account Opening Application Forms, namely RBC DS's "Know Your Client Form" and the "Trading Authorization Form"; furthermore, RBC DS did not put in place specific supervisory procedures for the accounts of those clients.

¶ 8 Over the years, some of the client accounts were converted to managed accounts; as for the other accounts, they remained subject to the trading authorization granted to Earl Jones without any intervention or enquiry on the part of Mr. Ménard, Mr. Leclaire or RBC DS.

¶ 9 Neither RBC DS nor Mr. Ménard or Mr. Leclaire questioned the approximately $3,674,862.00 which were withdrawn between January 2004 and December 2007 by Earl Jones from the accounts of the 16 clients that had not been converted into managed accounts. They did not make any enquiry from these clients regarding these withdrawals nor did they obtain the oral confirmation of the withdrawals and of the delivery instructions.

¶ 10 Mr. Ménard or Mr. Leclaire rarely contacted these 16 clients and they did not know that Earl Jones was withdrawing their money in order to deposit it in a special trust account set up outside RBC DS.

¶ 11 RBC DS, Mr. Ménard and Mr. Leclaire failed in their duty as gatekeepers of the capital markets by not questioning the fact that an individual could hold multiple trading authorizations for a significant number of unrelated clients and by not questioning the numerous withdrawals from the accounts of 16 clients without ever contacting said clients.

¶ 12 The issue before the Hearing Panel, namely the only issue over which it has jurisdiction, involves a determination of whether, in light of the violations, the penalties fall "within a reasonable range of appropriateness". Hence, the Panel may either accept or reject the Settlement Agreement. It may under no circumstances amend such Settlement Agreement or take cognizance of facts not disclosed by said agreement. This is the extent of the authority of the Hearing Panel.

¶ 13 This is set out in the regulatory provisions with respect to the approval or rejection of a Settlement Agreement by a Hearing Panel. These regulatory provisions are set out in Rule 20.35 to 40 of the IIROC Dealer Member Rules and in Rule 15 of the Dealer Member Rules of Practice and Procedure.

¶ 14 As regards the jurisdiction of the Hearing Panel, both the regulatory provisions and the case law interpreting them are very clear. In this respect, the matter of Renolds and Chang[1] reiterates the ongoing state of the law in this matter. The role of the Panel is, therefore, restricted to determining the reasonableness of the Settlement Agreement in question by taking into consideration only the facts stated therein as well as the requirements that have been breached.

¶ 15 The interpretation of these provisions leaves no room for ambiguity. As stated in the matter of Biron[2]:

a. "[…] [I]f the penalty is not unreasonable in light of the totality of the circumstances, the Panel must give effect thereto, even if it would not necessarily have reached the same conclusion if it had been called upon to impose penalties in respect of the violation.

b. In this respect, the Panel acknowledges that a Settlement Agreement is a sound procedure which is to be encouraged within the confines of the disciplinary process. It involves negotiation and compromise on the part of both parties. And, to the extent that the result is not unreasonable and

[1] Renolds and Chang (Re), 2009 IIROC No. 50
[2] Re Biron 2012 IIROC 4

meets the objectives sought to be achieved through disciplinary regulation, in particular the protection of the public and the reputation of securities trading, the Panel must give effect thereto." (the underlining is ours)

¶ 16 In the matter of Gaudet[3], the Panel reiterated a principle laid down by the Court of Appeal of Saskatchewan[4], namely that an administrative tribunal must apply the same principles as those applicable to the joint recommendations with respect to sentencing in criminal matters, that is to say (1) the tribunal has the duty to seriously examine a joint recommendation with respect to sentencing to which counsel have agreed unless it is inadequate or unreasonable or contrary to the public interest and (2) one should not depart therefrom (the joint recommendation) unless there are valid and convincing reasons for doing so.

¶ 17 In this respect, the Court of Appeal of Québec[5] sets out the principles applicable in the event of a joint recommendation in criminal matters:

[TRANSLATION]

c. "On the one hand, if he (the judge) was doubtful as to the merits of the joint recommendation and intended to reject it, he was required to announce his intent or to indicate his concerns, summarily in this respect, and to afford the parties the opportunity to submit additional arguments to him.

d. On the other hand, it is apparent from his judgment that the judge was of the view that the suggested sentence was too lenient. However, in the matter at hand, that was not sufficient to make a determination that it was unreasonable, especially since the sentence recommended by the parties, although it was rather light, falls within the range of penalties imposed in such matters."

¶ 18 With these principles in mind, how should one consider penalties for violations of this nature in the matter at hand?

¶ 19 The Dealer Member Disciplinary Sanction Guidelines issued in March 2009 set out the key considerations in the determination of penalties.

¶ 20 Disciplinary penalties are a means of deterrence. As set out in the second paragraph of Section 2 of the Guidelines: "General deterrence will follow from an appropriate decision and deter others from engaging in similar misconduct and improve overall business standards in the securities industry. This can be achieved if a sanction strikes an appropriate balance by addressing a registrant's specific misconduct, but also being in line with industry expectations".

¶ 21 Section 3 of these Guidelines states as follows: "Since sanctions should be tailored to address the misconduct involved in a particular case, a penalty must be proportionate the gravity of the misconduct and the relative degree of responsibility of a respondent". The Section goes on to provide a non-exhaustive list of factors which the Hearing Panel ought to take into consideration: harm to clients, employer and/or the securities market; blameworthiness; degree of participation; extent to which the respondent was enriched by the misconduct; prior disciplinary record; acceptance of responsibilities, acknowledgement of misconduct and remorse; credit for cooperation; voluntary rehabilitative efforts; reliance on the expertise of others; planning and organization; multiple incidents of misconduct over an extended period of time; vulnerability of victim; failure to cooperate with the investigation; significant economic loss to the client and/or Dealer Member firm.

¶ 22 How does the matter at hand fit into this scheme?

¶ 23 Counsel have submitted to us several decisions which bear examination here.

¶ 24 Hence, in the matter of Bergeron[6], a penalty decision, the broker was found guilty of wilful blindness contrary to By-Law 29.1, by opening 47 accounts at the request of a third party without having met each of the clients or having spoken to them, although he knew or ought to have known that the circumstances surrounding

[3] Gaudet (Re), (2010) IIROC No. 29
[4] Rault v. Law Society of Saskatchewan, 2009, SKCA, Can LII
[5] Paradis v. R. 2009 QCCA 1312 (decision handed down from the bench)
[6] André Bergeron (Re) 2008 IIROC No. 17

the applications for the opening of new accounts were or could be an indication of suspicious activity or activity contrary to the interests of his clients. The broker was suspended for a year, and was required to successfully complete the Conduct and Practices Handbook Examination before reapplying for registration. In addition, he was ordered to pay fines amounting in the aggregate to some $75,000.

¶ 25 In the matter of Roy[7], a decision on a Settlement Agreement, for a period of some two years, the broker failed to use due diligence to ensure that he learned all the essential facts relative to his clients and received and followed trading instructions from an unauthorized third party. During this period, some 187 transactions were carried out without knowledge of who the clients were. The penalty was a fine of $20,000, a suspension from acting in any capacity whatsoever for 5 years, a permanent prohibition from acting in a management or supervisory capacity and close supervision for a period of 6 months in the event of a return to the securities market.

¶ 26 In the matter of Leung[8] handed down in 2005, namely a decision on a Settlement Agreement, once again several clients were brought over by an individual without the representative ever meeting the clients. The facts submitted show that some $2,000,000 were lost. The fines amounted to approximately $75,000, to which were added a suspension of 5 years as well as close supervision for a period of 12 months upon return to the profession.

¶ 27 Finally, in the matter of National Bank[9], a Panel approved a Settlement Agreement imposing a fine of $795,000 on National Bank Financial Inc. for having exhibited, during the period between 1990 and 2002, in particular, an unwarranted tolerance of the known and repeated misconduct of a branch representative as well as that of a team of representatives at the branch of the head office.

¶ 28 In the matter at hand, what are the mitigating and aggravating factors which determine the appropriate sanction to levy against RBC DS, Mr. Leclaire and Mr. Ménard?

¶ 29 As stated in paragraph 45 of the Settlement Agreement, although all the clients recommended by Earl Jones had received a copy of the account agreement, including the trading authorization, account statements and trade confirmations, at no time during the relevant period did a single client referred to Mr. Leclaire and Mr. Ménard ever complain or even contact the representatives for a follow-up.

¶ 30 At no time did Mr. Ménard or Mr. Leclaire accept or follow an investment recommendation made by Earl Jones and, here again, no one complained about the suitability of the investments made by Mr. Ménard and Mr. Leclaire.

¶ 31 At no time did RBC DS, Mr. Ménard or Mr. Leclaire compensate Earl Jones in any way for any client referred to them.

¶ 32 In 2008, Mr. Leclaire dissuaded a client from liquidating her RRIF account and withdrawing any sums to remit to Earl Jones in order to be invested in a tax shelter. Mr. Ménard and Mr. Leclaire saw in that conduct a sign that Earl Jones was potentially engaged in an illegal activity and they then reported such conduct immediately to the branch manager.

¶ 33 Both Mr. Ménard, who is 67 years old, and Mr. Leclaire, who is 60, have had a very long career without reproach and unmarred by any disciplinary record whatsoever. In addition, they cooperated fully throughout the investigation.

¶ 34 RBC DS' procedures and policies with respect to gatekeeping obligations and account supervision were in keeping with the requirements set out in the regulations.

¶ 35 Finally, one should note that the Royal Bank of Canada paid 17 million dollars pursuant to a class action suit in order to indemnify the victims of Earl Jones' fraudulent conduct.

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[7] Roy (Re) 2011 IIROC No. 9
[8] Leung (Re) 2005 1 D.A.C.D. No. 45
[9] National Bank Financial (Re), (2007) 1 D.A.C.D. No. 38

¶ 36 The Settlement Agreement provides the following penalty:

Ménard and Leclaire shall each be suspended from any registered capacity with IIROC for a period of six months, the two periods of suspension to be served consecutively.

One may ask oneself why consecutive instead of concurrent suspensions were imposed; the Panel is of the view that this peculiarity is reasonable under the circumstances of the matter, since, otherwise, in light of the unusual practice of the two representatives, concurrent suspensions would undoubtedly have amounted to a permanent deregistration: indeed, since the clients of these two representatives could not be served during this period of six (6) months, they would no doubt have sought out other representatives to serve them and would probably not have returned to these two representatives upon termination of the suspension period.

In addition, the clients' interests themselves required the imposition of a consecutive rather than concurrent suspension due to the complexity and difficulty in transferring a large number of clients and finding new properly-licensed representatives to offer discretionary portfolio management services to such clients.

¶ 37 Ménard and Leclaire shall each pay IIROC a fine in the amount of $100,000.

¶ 38 RBC DS shall pay IIROC a fine in the amount of $500,000.

¶ 39 Mr. Ménard, Mr. Leclaire and RBC DS agree to pay IIROC the sum of $20,000 in total to reflect the costs that Staff incurred in connection with this matter.

¶ 40 **BEARING IN MIND** IIROC's Dealer Member Rules, Guidelines, By-Laws or Policies, specifically Rule 29.1 of the Dealer Member Rules;

¶ 41 **BEARING IN MIND** the jurisdiction of a Hearing Panel which is restricted to either accepting or rejecting a Settlement Agreement;

¶ 42 **BEARING IN MIND** the facts which the parties have acknowledged in this Settlement Agreement;

¶ 43 **BEARING IN MIND** the objective seriousness of the breaches committed by RBC DS, Mr. Ménard and Mr. Leclaire;

¶ 44 **BEARING IN MIND** the mitigating factors both with respect to RBC DS and to Mr. Ménard and Mr. Leclaire who have led a long career without being involved in legal proceedings or committing ethical breaches;

¶ 45 **BEARING IN MIND** the case law in certain matters somewhat analogous hereto;

¶ 46 **BEARING IN MIND THAT** the penalties provided pursuant to the Settlement Agreement negotiated between the parties are not "unreasonable" but rather fall "within a reasonable range of appropriateness";

¶ 47 **NOW, THEREFORE, the Hearing Panel:**

ACCEPTS the Settlement Agreement between Mr. Ménard, Mr. Leclaire, RBC DS, on the one hand, and IIROC, on the other hand, and gives effect thereto as of the date hereof.

Montreal, July 23, 2012

Michèle Rivet, Esq., Chairwoman

Mr. Yves Julien

Ms. Danielle Le May