

Re Walker and Foster & Associates Financial Services

IN THE MATTER OF:

**The Rules of the Investment Industry Regulatory Organization
of Canada**

and

Jeffrey Walker

and

Foster & Associates Financial Services Inc.

2017 IIROC 24

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

Heard: March 21, 2017

Decision: March 21, 2017

Written Reasons: April 24, 2017

Hearing Panel:

John Lorn McDougall, QC, Chair; Selwyn Kossuth and Ron Smith

Appearances:

Kathryn Andrews, Senior Enforcement Counsel

Colin Lovegrove, IIROC Investigator

Caitlin Sainsbury, For the Respondents

Jeffrey Walker - In Person

Christopher Foster - In Person

REASONS FOR DECISION

I. INTRODUCTION

¶ 1 By Notice of Application dated March 15, 2017, the Investment Industry Regulatory Organization of Canada (“IIROC”) announced that a hearing would be held on March 21, 2017 to consider whether, pursuant to Section 8215 of the Consolidated Enforcement Examination and Approval Rules of IIROC, a hearing panel (“Hearing Panel”) of IIROC should accept the settlement agreement dated March 15, 2017 (“Settlement Agreement”) entered into between Staff of IIROC (“Staff”) and the Respondents Jeffrey Walker (“Walker”) and Foster & Associates Financial Services Inc. (“Foster”) (collectively the “Respondents”).

¶ 2 IIROC had commenced a disciplinary proceeding in respect of the Respondents and alleged, and the Respondents have admitted for the purposes of this Settlement Agreement, that they committed the following contraventions of IIROC Rules:

Count 1

During November and December 2012, Jeffrey Walker provided information concerning an issuer that was confidential to certain clients who then purchased shares of that issuer, contrary to IIROC Dealer Member Rule 29.1.

Count 2

During November and December 2012, Jeffrey Walker traded in shares of an issuer in his own account and in certain clients' accounts, when he was in possession of information concerning that issuer that was confidential, contrary to IIROC Dealer Member Rule 29.1.

Count 3

During late 2012, Foster & Associates Inc. failed to adequately supervise the trading activity in certain of Jeffrey Walker's personal and client accounts, contrary to Dealer Member Rules 38 and 2500.

¶ 3 Staff sought an order abridging the time period for the service and filing of the Notice of Application and the filing of the Settlement Agreement, to which the Respondents consented, and such an order was granted by the Hearing Panel.

¶ 4 After considering the Settlement Agreement, together with the full submissions made by counsel for IIROC and by counsel for the Respondents as well as having received answers to the questions posed by Hearing Panel members, the Hearing Panel unanimously accepted the Settlement Agreement. The Hearing Panel made an order to this effect and indicated that Reasons for Decision would follow in due course. These are those Reasons.

¶ 5 The portions of the Settlement Agreement which are relevant to these Reasons for Decision are:

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. Walker is a Registered Representative with Foster in Toronto. In late 2012 Walker received and sent information, regarding a private placement involving Enpar Technologies Inc. ("ENP"), that was confidential to several clients. Walker did not seek his firm's approval to share this information. Walker also traded in ENP shares in both his personal account at Foster and in certain client accounts before a press release was issued by ENP regarding the private placement.
5. In the same time period, Foster failed to adequately supervise Walker in that the firm did not sufficiently contain the confidential information relating to ENP and did not adequately question the trading activity conducted by Walker in ENP shares.

Background

6. Walker is currently employed as a Registered Representative at Foster and has been employed in this role by Foster since 1994.
7. Foster is an IIROC Dealer Member firm with its head office located in Toronto.

8. Neither Walker nor Foster have any previous disciplinary history.

The issuer

9. ENP was a corporation involved in the design, development and manufacturing of electrochemical water treatment systems. GS was the President and CEO of ENP and held a trading account with Walker at Foster.
10. ENP’s annual general meeting (“AGM”) took place on November 23, 2012. According to Walker, a private placement and other methods of financing were discussed by ENP at the AGM.

Confidential information sent November 26, 2012

11. In a November 26, 2012, email sent from GS to Walker, Walker received information regarding an upcoming Private Placement by ENP (the “Private Placement”), that was confidential. In the email, GS sent Walker a copy of the subscription agreement for the Private Placement (“SA”). The email sent by GS to Walker contained no information or documents other than a copy of the attached SA.
12. The information sent by GS to Walker, while confidential, was neither a material fact nor a material change as defined in the Ontario *Securities Act*.

Walker’s actions

13. Starting November 26, 2012, Walker emailed the SA to eight of his clients. Four clients were sent the SA less than an hour after Walker received it from GS. On the same day, Walker entered orders for these clients to sell positions in ENP.
14. On November 27, 2012, Walker sent an email to Foster’s compliance department, informing the firm of some details relating to the Private Placement.
15. On that day the compliance department asked Walker if ENP had issued a press release regarding the Private Placement. Walker did not respond to this email. The compliance department did not follow up on this point with Walker, nor did they make any further inquiries of Walker regarding the Private Placement.
16. Walker and eight of his clients (including his spouse LW) signed SAs to participate in the Private Placement, as set out in the chart below:

Client Name	Quantity of Shares	Total Price	Date Subscription Agreement was signed
AW	100,000	\$10,000	November 27, 2012
WG	55,000	\$5,500	November 26, 2012
SL	75,000	\$7,500	November 27, 2012
YH	250,000	\$25,000	November 28, 2012
GK	200,000	\$20,000	November 26, 2012
Jeffrey Walker and LW	50,000	\$5,000	November 29, 2012
Jeffrey Walker	80,000	\$8,000	November 28, 2012
DG	50,000	\$5,000	December 3, 2012
EB	100,000	\$10,000	December 3, 2012

December 3 Press release

17. On December 3, 2012, ENP issued a press release regarding the Private Placement. Specifically, ENP announced that it was offering a non-brokered Private Placement of 6,000,000 units at a price of \$0.10 per unit. Funds were to be raised through the sale of these units to accredited investors in Ontario and elsewhere.
18. In total, nine of Walker's clients and Walker himself participated in the Private Placement. The 9 clients invested \$128,000 in the Private Placement and received 1,280,000 common shares and 1.28 million two tier full share warrants of ENP. Walker personally invested \$13,000 and received 130,000 shares and 130,000 two tier full share warrants of ENP.

Trade activity in Walker's and various clients' accounts

19. Walker traded ENP shares in his personal trading accounts at Foster during a time when he had knowledge of information regarding the Private Placement that was confidential. Walker sold 84,000 shares of ENP in his own accounts between November 26, 2012 and December 3, 2012.
20. In addition to the Private Placement, Walker also recommended that several other clients purchase ENP shares. He solicited the purchase of 198,000 ENP shares and the sale of 199,000 shares during this same time period. Four clients bought ENP shares and four clients sold ENP shares during this time period.
21. Three of Walker's clients (WG, SL and EB) sold ENP shares on the market at a price above .10 (prior to the press release) and subsequently participated in the Private Placement at a price of .10 and obtained the extra warrants as a result. Walker also sold ENP shares at .10 and .105 to buy into the Private Placement at .10 and obtained extra warrants as a result.
22. Walker failed to take sufficient steps to verify whether or not ENP had issued a press release regarding the Private Placement before he sent the SA to clients and before he entered orders relating to ENP shares in his account and in his clients' accounts.

Commission and finders fees

23. Walker received approximately \$587 in net commission from the ENP trades processed during this time period.
24. Walker also received finders fees of \$3,840 net and received 36,400 finders warrants for placing these trades.
25. As of December 31, 2012, Walker owned over 1.45 million shares of ENP. Walker and his clients combined held over 12.5 million shares of ENP. These holdings represented approximately 17% of the total ENP shares outstanding at the time.

Firm supervision of Walker

26. Foster acted as Finder in a Non-Brokered Private Placement Agreement with ENP dated November 26, 2012 (the "Agreement"), which Agreement entitled Foster to receive certain fees in connection with introducing potential participants to the Private Placement, as detailed in the Agreement.
27. Foster's supervision of Walker was inadequate in that the firm:
 - (a) failed to have sufficient policies and procedures in place at the time regarding the containment of confidential information;
 - (b) did not place ENP on the firm's grey list;

- (c) failed to adequately supervise the trading activity in ENP shares in Walker's own accounts or in his client accounts from November 26, 2012 until December 3, 2012;
- (d) failed to adequately question Walker regarding the Private Placement; and,
- (e) failed to adequately document any supervision taken regarding Walker's trading activity in ENP shares.

Other

- 28. The Respondents have expressed remorse for their actions.
- 29. Following these events Foster has improved its policies and procedures regarding private placement financing.

PART IV – CONTRAVENTIONS

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

Count 1

During November and December 2012, Jeffrey Walker provided information concerning an issuer that was confidential to certain clients who then purchased shares of that issuer, contrary to IIROC Dealer member Rule 29.1.

Count 2

During November and December 2012, Jeffrey Walker traded in shares of an issuer in his own account and in certain clients' accounts, when he was in possession of information concerning that issuer that was confidential, contrary to IIROC Dealer Member Rule 29.1.

Count 3

During late 2012, Foster & Associates Inc. failed to adequately supervise the trading activity in certain of Jeffrey Walker's personal and client accounts, contrary to Dealer Member Rules 38 and 2500.

PART V – TERMS OF SETTLEMENT

- 31. The Respondent Jeffrey Walker agrees to the following sanctions and costs:
 - (a) A fine in the amount of \$40,000;
 - (b) Close supervision for twelve months;
 - (c) Disgorgement of commission and fees in the amount of \$4,427; and,
 - (d) Costs of \$2,000.
- 32. The Respondent Foster & Associates Inc. agrees to the following sanctions and costs:
 - (a) A fine in the amount of \$35,000; and,
 - (b) Costs of \$2,000.
- 33. 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

34. 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 following paragraph.
35. If the Hearing Panel accepts this Settlement Agreement and the Respondents fail 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 in Part III of this Settlement Agreement.

PART VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT

36. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
37. 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.
38. 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.
39. 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.
40. 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.
41. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
42. 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.
43. 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.
44. The Settlement Agreement is effective and binding upon the Respondents and Staff as of the date of its acceptance by the Hearing Panel.

II. REASONS FOR DECISION

¶ 6 Staff advanced submissions on four bases in support of the argument that the Settlement Agreement should be accepted by the Hearing Panel. They were:

- 1) The penalty terms are proportionate to the facts in this case;
- 2) The principles of general and specific deterrence, as they are set out in the IIROC Sanction Guidelines, are met by the penalty terms;
- 3) The test to be applied by a Hearing Panel in considering whether to accept the Settlement Agreement has been met in this case;
- 4) The few cases which are factually similar suggest that the penalties agreed to are within an

appropriate range.

The Hearing Panel is of the view that the terms of the Settlement Agreement meet each of the foregoing requirements for acceptance.

¶ 7 As submitted by Staff, there are two types of misconduct involved in this case. Firstly, passing on and trading when in possession of confidential information. Secondly, the Respondent firm's supervisory failure in both the containment of confidential information and trading activity.

¶ 8 Staff pointed out that paragraph 12 of the Settlement Agreement provides that the information received by Walker "while confidential, was neither a material fact nor a material change as defined in the Ontario *Securities Act*". The purpose in making this submission was to assuage any concerns that there had been a breach of that Act.

¶ 9 The Hearing Panel was advised by Staff, in response to questions from the members of the panel with respect to why it was not a material fact or material change, that Staff had considered the matter extensively and that was Staff's conclusion, without elaborating further as to the reasoning. After a discussion and retiring to confer with Respondent Foster's counsel, Staff advised that one of the reasons for the decision was that the price of the securities was not affected when the transaction was announced. Staff declined to give any further information relating to their conclusion on the grounds that it was not material information for the Hearing Panel.

¶ 10 In the course of this discussion between Staff and the Hearing Panel, reference was made to the recent decision of the Supreme Court of Canada in *R v. Anthony-Cook*, 2016 SCC 43, [2016] 2 S.C.R. 204 in which the Court promulgated a new test for approval of settlement in criminal matters to the effect that the threshold for approval is significantly lowered but at the same time the obligation on counsel to make full disclosure of all relevant facts is heightened. Staff in this case submitted that this new principle did not apply to regulatory proceedings such as the present case.

¶ 11 The Hearing Panel was left in some doubt that Staff's submission in this regard is correct, but concluded that that issue did not have to be decided in the present case because the settlement proposed was so obviously in the public interest based only on the information before the Hearing Panel. Consequently, no further information was required.

¶ 12 On that basis, the Hearing Panel accepted Staff's submission that there were sufficient facts in the Settlement Agreement, with the addition of two further facts, to support the acceptance by the Hearing Panel of the Settlement Agreement. The first fact was that the Respondent Foster is not a large firm which is material to the penalty imposed. The second fact is that Foster conducted remedial internal training for its employees regarding private placements and confidential information as a result of this case.

¶ 13 It is almost trite that disciplinary sanctions are preventative in nature and should be designed to protect the investing public, strengthen market integrity and are directed at improving overall standards and practices. That said, it must also be borne in mind that other consequences could include potential loss of livelihood, fines in the hundreds of thousands of dollars, and importantly, the knowledge that the offence and the offender's name will be published on the internet where it will remain almost literally forever. These are serious sanctions with life altering consequences.

¶ 14 The penalties agreed to in this case conform to the principles of general and specific deterrence set out in the IIROC Sanction Guidelines which in relevant part is as follows:

When considering specific and general deterrence in the imposition of sanctions, consideration should be given to the size of the Dealer Member, including the firm's financial resources, nature of the firm's business, and the number of individuals associated with the firm, with a view

toward ensuring that the sanctions imposed are sufficient to achieve deterrence. Similarly, with respect to an individual respondent, consideration should be given to a *bona fide* inability to pay when imposing a fine.

¶ 15 The events that led to these proceedings occurred in a very short time period and perhaps as a result, there was no evidence of harm to any clients. The amounts involved were not large. Neither Respondent had any prior disciplinary history and both have expressed remorse and have cooperated with the IIROC investigation. As stated above, Foster has taken remedial action.

¶ 16 On the other hand, the failure to ascertain whether the trades occurred when the information was confidential is a serious one. At best it was careless, at worst it was intentional. Similarly, the failure of Foster to adequately supervise Walker is equally serious, for obvious reasons. Staff pointed out, and the Hearing Panel accepted, that misuse of confidential information, however slight, endangers the integrity of financial markets and must be regarded a most serious transgression. The penalties imposed reflect that consideration.

¶ 17 The Hearing Panel is aware of the jurisprudence to the effect that a hearing panel should accept a settlement agreement unless it clearly falls outside a reasonable range of appropriateness: *Re Johnson* (2012 IIROC 19). This is such a case; in the Hearing Panel's view the penalties are clearly within the appropriate range. It is for that reason the Hearing Panel granted its acceptance of the Settlement Agreement on the completion of argument and issued an order to that effect on March 21, 2017.

DATED at Toronto this 24th day of April, 2017.

John Lorn McDougall

Chair

Selwyn Kossuth

Panel Member

Ron Smith

Panel Member

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 Jeffrey Walker and Foster & Associates Inc. (“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. Walker is a Registered Representative with Foster in Toronto. In late 2012 Walker received and sent information, regarding a private placement involving Enpar Technologies Inc. (“ENP”), that was confidential to several clients. Walker did not seek his firm’s approval to share this information. Walker also traded in ENP shares in both his personal account at Foster and in certain client accounts before a press release was issued by ENP regarding the private placement.
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Participation in the Private Placement

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Firm supervision of Walker

26. Foster acted as Finder in a Non-Brokered Private Placement Agreement with ENP dated November 26, 2012 (the "Agreement"), which Agreement entitled Foster to receive certain fees in connection with introducing potential participants to the Private Placement, as detailed in the Agreement.
27. Foster's supervision of Walker was inadequate in that the firm:
 - (a) failed to have sufficient policies and procedures in place at the time regarding the containment of confidential information;
 - (b) did not place ENP on the firm's grey list;
 - (c) failed to adequately supervise the trading activity in ENP shares in Walker's own accounts or in his client accounts from November 26, 2012 until December 3, 2012;
 - (d) failed to adequately question Walker regarding the Private Placement; and,
 - (e) failed to adequately document any supervision taken regarding Walker's trading activity in ENP shares.

Other

28. The Respondents have expressed remorse for their actions.
29. Following these events Foster has improved its policies and procedures regarding private placement financing.

PART IV – CONTRAVENTIONS

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

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PART V – TERMS OF SETTLEMENT

31. The Respondent Jeffrey Walker agrees to the following sanctions and costs:
 - a) A fine in the amount of \$40,000;
 - b) Close supervision for twelve months;
 - c) Disgorgement of commission and fees in the amount of \$4,427; and,
 - d) Costs of \$2,000.
32. The Respondent Foster & Associates Inc. agrees to the following sanctions and costs:
 - (a) A fine in the amount of \$35,000; and,
 - (b) Costs of \$2,000.
33. 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

34. 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 following paragraph.
35. If the Hearing Panel accepts this Settlement Agreement and the Respondents fail 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

36. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
37. 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.
38. 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.
39. 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.
40. 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.
41. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
42. 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.

43. 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.
44. 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

45. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.
46. A fax or electronic copy of any signature will be treated as an original signature.

DATED this ____ day of March, 2017.

“Witness”

Witness

“Jeffrey Walker”

Respondent Jeffrey Walker

“Witness”

Witness

“Foster & Associates Inc.”

Respondent Foster & Associates Inc.

DATED this “15th” day of March, 2017

“Ricki Newmarch”

Witness

“Kathryn Andrews”

Kathryn Andrews

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

The Settlement Agreement is hereby accepted this “21” day of “March”, 2017 by the following Hearing Panel:

Per: “John L. McDougall”

Panel Chair

Per: “Selwyn Kossuth”

Panel Member

Per: “Ron Smith”

Panel Member

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