Re MacEachern

IN THE MATTER OF:

The Dealer Member Rules of the Investment Industry Regulatory Organization of Canada

and

The By-Laws of the Investment Dealers Association of Canada

and

John Shane MacEachern

2014 IIROC 37

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

Heard: April 7, 2014, in Charlottetown, PEI
Decision: July 18, 2014

Hearing Panel:
Edward W. Keyes (Chair), Mr. Bruce Walker and Mr. Roland Coffill
Appearances:
Robert DelFrate, Enforcement Counsel
John Shane MacEachern, appeared in person
The Respondent was represented by Brian Awad, although not in attendance at the hearing

DECISION

¶ 1 As a result of a settlement agreement entered into between Investment Industry Regulatory Organization of Canada ("IIROC") and John Shane MacEachern (the "Respondent"), a Settlement Hearing was held on April 7, 2014 in Charlottetown, Prince Edward Island.

¶ 2 The Hearing Panel was constituted, pursuant to IIROC Dealer Member Rules 20.35 to 20.40 inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedures, to consider whether to accept the settlement agreement negotiated between IIROC's Enforcement Department and the Respondent.

¶ 3 At the conclusion of the Settlement Hearing and after considering submissions of counsel for IIROC, hearing from the Respondent and the terms of the settlement agreement, the settlement agreement was accepted by the Hearing Panel. These are our reasons for doing so.

THE SETTLEMENT AGREEMENT

¶ 4 The settlement agreement is annexed to this Decision. Pursuant to the settlement agreement, the Respondent admits that between July 2010 and June 2011, he recommended and facilitated an investment in securities without the consent or knowledge of his dealer member, contrary to IIROC Dealer Member Rule 29.1.

¶ 5 The Respondent has agreed to the following sanctions, as set out in paragraphs 6 and 7 of the settlement agreement:

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

b. to be subject to a six-month period of strict supervision;

c. to rewrite and successfully complete the Conduct and Practice Handbook Course within twelve months from acceptance of this settlement agreement; and

d. to pay costs to IIROC in the amount of $5,000.

GENERAL CONSIDERATIONS

¶ 6 In considering the terms of the settlement agreement, the Hearing Panel must decide whether the sanctions strike a reasonable balance between fairness to the Respondent in the circumstances while considering the need to protect the investing public, the industry membership, the integrity of the discipline process, the integrity of the securities markets and the prevention of a repetition of the offense.

¶ 7 It is our duty to reject the penalties set out in the settlement agreement, if the Hearing Panel determines that they clearly fall outside the range of appropriateness, given the conduct of the Respondent. This principle was succinctly stated in the Decision of *Milewski (Re),* [1999] IDACD No 17 Aug 5, 1999 at p 11; See also *Clark (Re)*, [1999] IDACD No 40, Bulletin No 2674, Dec 14, 1999*:*

> "A District Counsel considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject the settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness."

¶ 8 The Hearing Panel must also give serious consideration to the fact that the parties made a joint submission with respect to the appropriateness of the sanctions. This principle as it applies to administrative tribunals was cited with approval in the Saskatchewan Court of Appeal decision of *Rault v Law Society of Saskatchewan*, 2009 SKCA 81 (CanLII) that considered and followed the decision of the Alberta Court of Appeal in *R v GWC*, 2000 ABCA 333(CanLII) where it held that there is an obligation on the tribunal to give serious consideration to a joint submission on sentencing agreed upon by counsel unless the sentence is unfit or unreasonable; or contrary to public interest and that it should not be departed from unless there are good reasons for doing so.

¶ 9 In our view, the sanctions proposed in the settlement agreement are in the public interest, and fall within the reasonable range of appropriateness.

¶ 10 In considering the terms of the settlement agreement, the Hearing Panel also considered the IIROC Dealer Member Disciplinary Sanction Guidelines (the "Guidelines"), which identify a number of key considerations to be considered when determining the appropriate disciplinary sanction. These key considerations are:

a. magnitude (in size and value) of the outside business activity;

b. number of clients affected;

c. magnitude of client losses;

d. suitability of outside business activity if involving securities;

e. compensation received by registrant;

f. any personal interest of the registrant in outside business activity;

g. existence of client complaints;

h. whether registrant had honest but mistaken belief that proper approval obtained; and

i. legality of outside activity.

¶ 11 Not all of the key considerations are relevant in the present circumstances, and those that are must, of course, be considered in the light of the principles set out in *Milewski (Re)*, *supra*.

¶ 12 The material facts in the present matter are summarized as follows:

a. In or around 2010, the Respondent was introduced to an individual named Paul Maines ("Maines"), a representative of Capital Market Technologies ("CMT"), a financial technology company, with whom he had prior unrelated dealings.

b. Maines advised the Respondent that CMT was considering establishing operations in Charlottetown, PEI and, if successful in securing a listing on a recognized exchange, the Respondent would potentially be involved as the "Broker of Record".

c. The Respondent approached his supervisor in his compliance department about the opportunity and was given instructions as to how to proceed.

d. Both the supervisor in the compliance department and representatives at RBC Dominion Securities ("RBCDS") advised the Respondent that when CMT obtained a listing, the Respondent and his employer could revisit his involvement as the "Broker of Record" at that time.

e. On various occasions thereafter, the Respondent communicated with a number of potential investors regarding the prospects of CMT and did so prior to CMT being publicly listed.

f. At no time did the Respondent advise his employer that he would be recommending CMT to potential investors prior to CMT obtaining a public listing, which is exactly what he did.

g. Seventeen potential investors with whom the Respondent had communicated invested approximately $178,000 in securities of CMT. Twelve of those investors were clients of RBCDS, but none of the investments had been recorded on the books of RBCDS. While some of the investors qualified as accredited investors, other did not.

h. The Respondent did not conduct any due diligence with regard to CMT or Maines, and simply relied on representations that Maines had made.

i. At the time of the Respondent's recommendations to his clients regarding CMT, the common stock of CMT was on OTC Link, but had failed to file periodic financial reports since 2008 and had been subject to an administrative dissolution order in Florida, of which the Respondent was unaware.

j. In October of 2004, the New York Stock Exchange censored and barred Maines' membership with it for failing to appear and testify and to submit a written statement in connection with an investigation it was carrying out into his conduct. If the Respondent had conducted any due diligence or advised RBCDS prior to recommending CMT to potential investors, he might have learned of these issues.

k. In June of 2013, Maines and CMT entered into a settlement agreement with the Superintendent of Securities in PEI for contravening section 94 of the *Securities Act* and was assessed a number of sanctions.

l. In November of 2013, CMT sent a letter to clients offering the option of rescission along with accrued interest of 12 percent, in accordance with that settlement agreement

¶ 13 It goes without saying that registered representatives such as the Respondent hold privileged positions in the securities industry. Pursuant to the Dealer Member Rules, they are required to observe high standards of ethics and conduct and not engage in business conduct or practice which is unbecoming or detrimental to the public. They have a responsibility to protect clients from inappropriate investment policies, which the Respondent clearly breached by allowing CMT access to his clients' capital, resulting in potential harm not only to them but to his employer, the dealer member firm, and the securities market as a whole.

¶ 14 The other key considerations that are relevant to the Hearing Panel's decision in this case are the following:

a. there is no evidence of any actual harm to any of the clients;

b. the Respondent's conduct was not manipulative or fraudulent and he appears to have been acting in what he believed to be the best interests of his clients;

c. the Respondent has no prior disciplinary record;

d. the Respondent has admitted that his conduct violated the IIROC Dealer Member Rules; and

e. the Respondent co-operated fully with IIROC thereby avoiding the necessity of a protracted investigation and a lengthy hearing.

¶ 15 We agree with IIROC's position that recommending an off-the-book investment in a company into which the Respondent conducted no due diligence is negligent conduct on his part and constitute actions deserving sanction.

¶ 16 We have considered the proposed sanctions in light of the key considerations discussed above, the sanctions set out in the Guidelines as well as those imposed by previous IIROC and Investment Dealer Association Panels for similar types of misconduct as referred to by IIROC Enforcement Counsel.[1] In our opinion, we do not think it is necessary to analyze those cases here in detail. On this basis, we find the sanctions proposed are consistent with those imposed in prior decisions and the Guidelines.

CONCLUSION

¶ 17 Overall, taking into account the considerations to which we referred, the provisions of the settlement agreement with respect to sanctions fall within a reasonable range and we find it is in the public interest to accept this settlement agreement as negotiated and entered into by the parties.

Dated this 18th day of July, 2014.

Edward W. Keyes, Chair

Roland Cofill, Industry Member

Bruce Walker, Industry Member

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff and John Shane MacEachern (the "Respondent"), consent and agree to the settlement of this matter by way of this settlement agreement (the "Settlement Agreement").

2. The Enforcement Department of IIROC has conducted an investigation (the "Investigation") into the conduct of the Respondent.

3. The Investigation discloses matters for which the Respondent 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. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.

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

Between July 2010 and June 2011, he recommended and facilitated an investment in securities

[1] *Higgs (Re)*, [2010] IIROC No 3; *Georgakopoulos (Re)*, 2009 IIROC 25, 2009 LNIIROC 25; *Schiesser (Re)*, 2011 IIROC 78, 2011 LNIIROC 78; *Laroche (Re)*, 2012 IIROC 26, 2012 LNIIROC 26; *Re Pariak-Lukic*, 2014 IIROC 11; and *Re Pariak-Lukic*, 2014 IIROC 01.

without the consent or knowledge of his Dealer Member, contrary to IIROC Dealer Member Rule 29.1.

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

   a) A fine in the amount of $25,000;

   b) A 6 month period of strict supervision; and

   c) The Respondent shall re-write and successfully complete the Conduct and Practices Handbook Course within 12 months of acceptance of this Settlement Agreement.

7. The Respondent agrees to pay costs to IIROC in the sum of $5,000.

III. STATEMENT OF FACTS

(i) Acknowledgment

8. Staff and the Respondent 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) Factual Background

A. Overview

9. Between July 2010 and June 2011, the Respondent recommended and facilitated an investment in securities offered by Capital Market Technologies Inc. ("CMT"). The Respondent did not conduct any due diligence on CMT or its principal, Paul Maines. Nonetheless, the Respondent proceeded to recommend an investment in CMT to potential investors.

10. None of the transactions took place through the facilities of RBC Dominion Securities Inc. ("RBC DS"), the Respondent's Dealer Member employer. The Respondent did not advise anyone at RBC DS that he was recommending an investment in CMT.

11. In total, 17 investors purchased securities offered by CMT totaling $178,000.

B. Registration History

12. From January 2010 to December 2012, the Respondent was registered as a Registered Representative with a Charlottetown, PEI branch of RBC DS, a Dealer Member of IIROC. Prior to that, the Respondent had been registered as a Mutual Fund Representative with Royal Mutual Funds Inc. since November 2000.

13. Since February 2013, the Respondent has been registered as a Registered Representative with a Charlottetown, PEI branch of TD Waterhouse Canada Inc. ("TD Waterhouse").

C. Capital Market Technologies Inc. and Paul Maines

14. In or around 2010, the Respondent was introduced to Paul Maines, a representative of CMT. CMT was a financial technology company with offices in Chicago, Toronto and London (UK). The Respondent had previously known Maines approximately 20 years prior, but had not had any dealings with him since that time.

15. Maines advised the Respondent that CMT was considering establishing operations in or around Charlottetown, PEI. Maines further advised that CMT would be looking to ultimately secure a listing on a recognized exchange. Maines advised the Respondent that, if successful, CMT would like the Respondent to potentially be involved as the "Broker of Record".

16. The Respondent approached his supervisor at RBC DS and both spoke to representatives of RBC DS' compliance department about this potential opportunity. Specifically, the Respondent inquired as to whether he could act as a "Broker of Record" for CMT. The Respondent was advised that, once CMT obtained a listing he could be "Broker of Record" for CMT, and he could recommend CMT to clients; but if he recommended CMT to clients, he could no invest personally. Likewise, if he wished to invest

personally in the company, he could not recommend the purchase of shares to clients.

17. Both the supervisor and compliance department representatives advised the Respondent that if or when CMT obtained a listing, the Respondent and RBC DS could revisit his involvement as "Broker of Record" at that time.

18. At no time did the Respondent advise his supervisor or the compliance department that he would be recommending CMT to potential investors prior to CMT obtaining a public listing.

D. Recommendation to Invest

19. Shortly thereafter, and on various occasions, the Respondent communicated with a number of potential investors regarding the prospects of CMT and did so prior to CMT being publicly listed.

20. The Respondent advised the potential investors that CMT was a high risk investment and that they could potentially lose the full amount of any investment.

21. If potential investors were interested in securities of CMT, the Respondent forwarded a copy of a subscription agreement that had been sent to him by CMT. The Respondent also advised the potential investors to send the completed subscription agreement, along with payment, directly to CMT.

22. In total, 17 potential investors who were communicated with by the Respondent invested approximately $178,000 in securities of CMT. Twelve of these investors were clients of RBC DS. None of the investments were recorded on the books of RBC DS. Although some of the investors qualified as "accredited investors" pursuant to NI 45-106, several did not. The Respondent did not receive any compensation as a result of these investments.

23. The Respondent did not conduct any due diligence on CMT or on Maines. He simply relied on representations made to him by Maines and others.

24. At the time of the Respondent's recommendations to his clients regarding CMT, the common stock of CMT was on OTC Link. However, the company had failed to file periodic reports since September 2008 and had also been subject to an administrative dissolution order in Florida. The Respondent understood that CMT had been restructured and put new management in place in 2010, but he was not aware of CMT's delinquency in regard to financial reporting or the administrative order in Florida.

25. In October 2004, the New York Stock Exchange (the "NYSE") censured and barred Maines from membership with the NYSE for failing to appear and testify and to submit a written statement to the NYSE in connection with an investigation into his conduct. The Respondent was unaware of this.

26. Had the Respondent conducted due diligence or advised RBC DS prior to recommending CMT to potential investors, the Respondent might have learned of these potentially relevant facts regarding CMT and Maines set out in paragraphs 24 and 25.

D. CMT and Maines Settlement

27. At no time had CMT filed, sought to file or obtained a receipt for a prospectus with the Superintendent of Securities in PEI (the "Superintendent").

28. In June 2013, CMT and Maines, among others, entered into a settlement agreement with the Superintendent.

29. CMT admitted that it had contravened s. 94 of the Securities Act by distributing a security without having obtained a receipt for a prospectus with respect thereto or, having, in all instances, properly relied on the accredited investor exemption from the prospectus requirement as set out in National Instrument 45-101 and that it contravened s. 6.1 of National Instrument 45-106 by failing to file a Report of Exempt Distribution on or before the 10th day after the distribution.

30. Pursuant to the settlement agreement, CMT agreed to the following penalties:

    a) a five year prohibition from relying on the exemptions set out in NI 45-106 in PEI;

b) an administrative penalty in the amount of $10,000;

c) To offer a right of rescission and refund to investors who did not qualify as "accredited investors" as defined in NI 45-106;

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

e) to engage an independent accountant to prepare audited financial statements for the years 2010, 2011 and 2012.

31. In or around November 2013, CMT sent a letter to clients offering the option of full rescission along with accrued interest of 12%.

IV. TERMS OF SETTLEMENT

32. 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.
The Settlement Agreement is subject to acceptance by the Hearing Panel.

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

34. 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.

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

36. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement; or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.

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

38. Staff and the Respondent agree that if the Hearing Panel accepts the Settlement Agreement, they, or anyone on their behalf, will not make any public statements inconsistent with the Settlement Agreement.

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

40. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

AGREED TO by the Respondent at the City of Charlottetown, in the Province of PEI, this 7 day of April, 2014.

"Tamara Perry" "John Shane MacEachern"

WITNESS **JOHN SHANE MACEACHERN**

NAME: TAMARA PERRY

AGREED TO by Staff at the City of Charlottetown, in the Province of PEI, this 7 day of April, 2014.

"Tamara Perry" "Rob DelFrate"

WITNESS **ROB DELFRATE**

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

ACCEPTED at the City of Charlottetown, in the Province of Prince Edward Island, this 7 day of April, 2014, by the following Hearing Panel:

Per: "Edward W. Keyes"

Panel Chair

Per: "Roland Coffill"

Panel Member

Per: "Bruce Walker"

Panel Member

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