

# Re Richardson

IN THE MATTER OF:

**The By-Laws of the Investment Dealers Association of Canada**

**and**

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

**and**

**Paul Frederick Richardson**

2013 IIROC 50

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

Heard: June 26, 2013

Decision: June 26, 2013

**Hearing Panel:**

Julia Dublin, Chair; Richard Austin and Daniel Iggers

**Appearances:**

Mr. Robert Del Frate, Counsel for IIROC

Mr. Frank Fabello (Torys) Counsel for the Respondent, Paul Frederick Richardson

---

## REASONS FOR DECISION ON SETTLEMENT AGREEMENT

---

### SUMMARY

¶ 1 At a hearing on June 26, 2013 Staff of the Investment Industry Regulatory Organization of Canada (“IIROC”) and the Respondent, Paul Frederick Richardson (“the Respondent”) jointly recommended that the Hearing Panel approve the attached Settlement Agreement. The settlement was in accordance with IIROC Dealer Member Rules 20.35 to 20.40, inclusive, and Rule 15 of the IIROC Dealer Member Rules of Practice and Procedure.

¶ 2 The Respondent admitted to the following contraventions of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:

Between December 2007 and July 2009 (the “Relevant Period”), the Respondent, a Branch Manager, failed to fully and properly supervise Stephen Robert Peirson (“Mr. Peirson”), a Registered Representative at his branch, and his client account activities contrary to IIROC Dealer Member Rules 1300.2 and 2500 (IDA Regulation 1300.2 and Policy No. 2 prior to June 1, 2008).

¶ 3 Staff and the Respondent agreed to the following terms of settlement:

- i. A fine in the amount of \$15,000;
- ii. A suspension from registration approval as a Supervisor for a period of 1 month; and

- iii. Respondent shall re-write and successfully complete the Branch Managers Course within 12 months of the acceptance of this Settlement Agreement.

¶ 4 The Respondent agreed to pay costs to IIROC in the sum of \$2,000.

¶ 5 At the conclusion of the hearing, having heard from counsel for both parties, the Panel accepted the Settlement Agreement for the reasons stated below.

## **FACTS**

¶ 6 Staff and the Respondent agreed to the facts contained in the Settlement Agreement and their agreement is based upon those specific facts. The parties agreed that the clarifications requested by the Panel did not constitute additional facts for purposes of the Settlement Agreement.

¶ 7 During the Relevant Period, the Respondent failed in certain of his supervision obligations over the activities of Mr. Peirson, as explained herein. Mr. Peirson recommended margin borrowing to some of his elderly clients. More specifically, he recommended the use or increase of margin borrowing to two clients (the “Two Clients”) for whom this was not suitable based on their age, income, net worth, and/or risk tolerance as recorded on their respective NAAFs.

¶ 8 Although the Respondent identified the increasing margin borrowing in the client accounts and spoke to some of Mr. Peirson’s clients to confirm they were comfortable with the investment strategy, he did not speak to all of Mr. Peirson’s clients and specifically to the Two Clients directly to ensure that this strategy was appropriate for them.

### **Registration History**

¶ 9 The Respondent has been registered as a Registered Representative (Options) and a Supervisor (formerly Branch Manager) with a Kingston, Ontario branch of Raymond James Ltd. (“Raymond James”), a Dealer Member of IIROC, since October 1999.

¶ 10 Prior to joining Raymond James, the Respondent had been registered in the securities industry in various capacities since 1980.

¶ 11 On June 1, 2008, the Respondent became a regulated person of IIROC.

¶ 12 The Respondent has no prior disciplinary history.

### **Stephen Robert Peirson**

¶ 13 Between February 2001 and July 2009, Mr. Peirson was registered as a Registered Representative with the Kingston, Ontario Branch of Raymond James.

¶ 14 In June 2009, Mr. Peirson suffered a serious medical event. He has not been employed in the securities industry (or at all) since that time.

¶ 15 At all material times, the Respondent was the Supervisor responsible for the branch supervision of Mr. Peirson.

### **The Clients**

¶ 16 The Two Clients were both clients of Mr. Peirson. During the Relevant Period, Mr. Peirson recommended the use of margin for both of these clients. This was not suitable for them based on their age, income, net worth, and/or risk tolerance as recorded on their respective New Account Application Forms (“NAAF”).

¶ 17 At times, Mr. Peirson advised them to switch portions of their mutual fund holdings into money market funds, thus increasing the margin loan value in the accounts. He then advised them to purchase additional DSC mutual funds with the newly available margin funds.

¶ 18 In the case one of the Two Clients:

- i. In December 2007, she was 72 years old;
- ii. Her investment knowledge was “Limited”, her risk tolerance level was 80% “Medium” and 20% “High” and her investment objectives were 20% “Income” and
- iii. 80% “Growth” as listed on her December 2007 New Account Application Form (“NAAF”);
- iv. During the Relevant Period, she purchased \$335,000 of new DSC mutual funds, generating commissions of \$16,645;
- v. A significant portion of these purchases was financed by margin borrowing;
- vi. The margin debt in her account increased from \$79,979 to approximately \$339,000 by June 2009, which represented:
  1. over 33 times her annual income as reflected on her December 2007 NAAF;
  2. over 56% of her liquid assets as listed on her December 2007 NAAF; and
  3. over 72% of her total account holdings at June 2009; and
- vii. By June 2009, she held approximately \$262,000 of money market funds in her account, which represented approximately 56% of the total account holdings.

¶ 19 In addition to the Two Clients, Mr. Peirson also employed a similar investment strategy with a number of other clients who had similar characteristics as recorded on their respective NAAFs.

#### **Supervision by the Respondent**

¶ 20 During the Relevant Period, Mr. Peirson made investment recommendations to the Two Clients. In his role as Supervisor (formerly Branch Manager), the Respondent reviewed all of these transactions as part of his daily supervision review.

¶ 21 In addition, on at least four occasions, the Respondent would have reviewed the Two Clients’ account activity as part of his monthly supervision review.

¶ 22 The Respondent was aware that Mr. Peirson was recommending that the Two Clients, as well as other clients, use margin to purchase mutual funds.

¶ 23 Apart from the use of margin borrowing, there were no other concerns as to the suitability of the investments in the accounts. The holdings consisted primarily of low to medium risk equity mutual funds, as well as money market funds.

¶ 24 On several occasions, the Respondent discussed the increasing margin levels and the appropriateness of the margin borrowing with Mr. Peirson. The Respondent’s supervision notes indicate that he identified and had concerns about the margin borrowing on a number of occasions.

¶ 25 In response to his queries, Mr. Peirson advised the Respondent that all of his clients understood the investment strategy and were comfortable with the margin borrowing in their accounts.

¶ 26 In late 2008 and early 2009, the Respondent spoke to three of Mr. Peirson’s clients who had some margin borrowing in their accounts. The Respondent was comfortable that these clients understood the risks associated with margin borrowing in their accounts.

¶ 27 Although the Respondent discussed his concerns with Mr. Peirson and spoke to some of Mr. Peirson’s clients, he failed to take adequate steps to limit or stop the increasing margin use with respect to the Two Clients. Specifically, the Respondent failed to:

- i. contact either of the Two Clients to ensure that they fully understood the risks associated with the borrowing to invest strategy;
- ii. advise anyone at head office that he had concerns with Mr. Peirson’s use of leverage to finance the investment purchases in these accounts; and

- iii. cancel any trades as a result of the trades being unsuitable for the Two Clients based on the age, income, net worth, and/or risk tolerance as recorded on their respective NAAFs.

¶ 28 The amount of money Mr. Peirson recommended the Two Clients borrow to invest was not suitable for them based on their age, income, net worth, and risk tolerance as recorded on their respective NAAFs.

¶ 29 During the Relevant Period, the net equity in the Two Clients' accounts decreased. The margin borrowing in the accounts contributed to this decrease.

#### **Actions Taken by the Respondent since June 2009**

¶ 30 Following Mr. Peirson's medical event, the Respondent took carriage of all of Mr. Peirson's accounts, including those of the Two Clients. Since that time, the Respondent has recommended and implemented an investment strategy with these clients to deleverage the accounts. He has also recommended and implemented a similar strategy with other clients who had margin borrowing.

¶ 31 In October 2010, one of the Two Clients' daughters filed a complaint with Raymond James regarding the handling of her mother's account by Mr. Peirson, which complaint was resolved.

¶ 32 None of Mr. Peirson's other clients have raised any concerns with regard to the handling of their accounts. Some of the other clients have also since confirmed that they understood and agreed with the strategy that was implemented by Mr. Peirson.

¶ 33 The allegations of fault underlying the settlement related to whether the Respondent had failed to supervise Mr. Peirson's recommendations that his clients use a leveraging strategy to purchase mutual funds.

¶ 34 The panel noted that the precedents cited regarding branch managers' failures to supervise did not fit the Respondent's circumstances as they involved supervisors who failed to detect or inquire about obvious red flags in client transactions. The facts presented here indicate that was an ongoing dialogue between the Respondent and Mr. Peirson such that the Respondent was not only alert to the leverage issue but he spoke directly to several of the 12 who were clients using Mr. Peirson's leveraging strategy (which he had inherited with Mr. Peirson) and to Mr. Peirson himself. The alleged infraction related to the Respondent's failure to interview the Two Clients regarding the strategy.

#### **DISCUSSION AND CONCLUSION**

¶ 35 The Panel asked Counsel to amplify the facts set out in the settlement agreement by addressing in their submissions (i) the IIROC standard practices applicable to leverage advice to clients in 2009, (ii) how calls to the two clients, if added to the steps the Respondent did take, would have discharged his supervisory obligations and (iii) whether the Respondent benefitted personally from the distribution within the firm of sales compensation due from mutual fund management companies, i.e. "the grid", where sales were increased by the use of borrowed funds.

¶ 36 The panel was advised that as the Respondent did not talk to the Two Clients, he was unable to ascertain that Mr. Peirson's portfolio approach was unsuitable for them, and accordingly he did not cancel the trades or advise head office.

¶ 37 The panel was advised that the Respondent did not benefit personally from the increased sales compensation and DSC payments resulting from the Two Clients' use of leverage. All compensation was disclosed to the Two Clients.

¶ 38 The Panel noted that at the material time leverage was addressed by IIROC Rule 3200 which required only that a risk disclosure statement about leverage to be delivered to the client.

¶ 39 The Panel considered staff's submission and various precedents regarding sanctions for failure to supervise and the considerations to be brought to bear in approving a settlement agreement. The Panel also considered IIROC staff's guidelines as to suitable penalties for regulatory infractions. While none of these are binding on the panel, the Panel gave serious consideration to the agreement that had been reached between the parties and concluded that the agreed sanctions were reasonable given the conduct of the respondent, the

mitigating factors including the fact that the investors had been compensated, and the types of sanctions imposed in other cases of failure to supervise.

¶ 40 Accordingly, the Panel accepted the settlement agreement on the terms agreed to between the parties.

DATED the 26<sup>th</sup> day of August, 2013.

Julia Dublin, Chair

Richard Austin, Member

Daniel Iggers, Member

## SETTLEMENT AGREEMENT

### I. INTRODUCTION

1. IIROC Enforcement Staff and Paul Frederick Richardson (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. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada and Market Regulation Services Inc. Pursuant to the *Administrative and Regulatory Services Agreement* between IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions.
4. The Respondent consents to be subject to the jurisdiction of IIROC.
5. 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

6. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
7. The Respondent admits to the following contraventions of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:

Between December 2007 and July 2009 (the “Relevant Period”), the Respondent, a Branch Manager, failed to fully and properly supervise Stephen Robert Peirson (“Peirson”), a Registered Representative at his branch, and his client account activities contrary to IIROC Dealer Member Rules 1300.2 and 2500 (IDA Regulation 1300.2 and Policy No. 2 prior to June 1, 2008).

8. Staff and the Respondent agree to the following terms of settlement:
  - i. A fine in the amount of \$15,000;
  - ii. A suspension from registration approval as a Supervisor for a period of 1 month; and
  - iii. Respondent shall re-write and successfully complete the Branch Managers Course within 12 months of the acceptance of this Settlement Agreement.
9. The Respondent agrees to pay costs to IIROC in the sum of \$2,000.

### III. STATEMENT OF FACTS

#### (i) Acknowledgment

10. 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**

11. During the Relevant Period, the Respondent failed in certain of his supervision obligations over the activities of Peirson, as explained herein. Peirson recommended margin borrowing to some of his elderly clients. More specifically, he recommended the use or increase of margin borrowing to two clients (the “Two Clients”) for whom this was not suitable based on their age, income, net worth, and/or risk tolerance as recorded on their respective NAAFs.
12. Although the Respondent identified the increasing margin borrowing in the client accounts and spoke to some of Peirson’s clients to confirm they were comfortable with the investment strategy, he did not speak to all of Peirson’s clients and specifically to the Two Clients directly to ensure that this strategy was appropriate for them.

### **Registration History**

13. The Respondent has been registered as a Registered Representative (Options) and a Supervisor (formerly Branch Manager) with a Kingston, Ontario branch of Raymond James Ltd. (“Raymond James”), a Dealer Member of IIROC, since October 1999.
14. Prior to joining Raymond James, the Respondent had been registered in the securities industry in various capacities since 1980.
15. On June 1, 2008, the Respondent became a regulated person of IIROC.
16. The Respondent has no prior disciplinary history.

### **Stephen Robert Peirson**

17. Between February 2001 and July 2009, Peirson was registered as a Registered Representative with the Kingston, Ontario Branch of Raymond James.
18. In June 2009, Peirson suffered a serious medical event. He has not been employed in the securities industry (or at all) since that time.
19. At all material times, the Respondent was the Supervisor responsible for the branch supervision of Peirson.

### **The Clients**

20. The Two Clients were both clients of Peirson. During the Relevant Period, Peirson recommended the use of margin for both of these clients. This was not suitable for them based on their age, income, net worth, and/or risk tolerance as recorded on their respective New Account Application Forms (“NAAF”).
21. At times, Peirson advised them to switch portions of their mutual fund holdings into money market funds, thus increasing the margin loan value in the accounts. He then advised them to purchase additional DSC mutual funds with the newly available margin funds.
22. In the case one of the Two Clients:
  - i. In December 2007, she was 72 years old;
  - ii. Her investment knowledge was “Limited”, her risk tolerance level was 80% “Medium” and 20% “High” and her investment objectives were 20% “Income” and 80% “Growth” as listed on her December 2007 New Account Application Form (“NAAF”);
  - iii. During the Relevant Period, she purchased \$335,000 of new DSC mutual funds, generating commissions of \$16,645;
  - iv. A significant portion of these purchases was financed by margin borrowing;
  - v. The margin debt in her account increased from \$79,979 to approximately \$339,000 by June 2009, which represented:

- i. over 33 times her annual income as reflected on her December 2007 NAAF;
    - ii. over 56% of her liquid assets as listed on her December 2007 NAAF; and
    - iii. over 72% of her total account holdings at June 2009; and
  - vi. By June 2009, she held approximately \$262,000 of money market funds in her account, which represented approximately 56% of the total account holdings.
23. In the case of the other of the Two Clients:
- i. She was 76 years old;
  - ii. Her investment knowledge was “Good”, her risk tolerance level was 100% “Medium” and her investment objective was 100% “Moderate Growth” as listed on her October 2001 NAAF;
  - iii. During the Relevant Period, she purchased \$70,000 of new DSC mutual funds, generating commissions of \$3,430;
  - iv. A significant portion of these purchases was financed by margin borrowing;
  - v. The margin debt in her account decreased from \$280,373 in January 2008 to approximately \$269,000 by June 2009, which represented:
    - i. over 8 times her annual income as listed on her October 2001 NAAF;
    - ii. over 44% of her liquid assets as listed on her October 2001 NAAF; and
    - iii. over 68% of her total account holdings; and
  - vi. By June 2009, she held approximately \$377,000 of money market funds in her account, which represented approximately 95% of the total account holdings.
24. In addition to the Two Clients, Peirson also employed a similar investment strategy with a number of other clients who had similar characteristics as recorded on their respective NAAFs.

### **Supervision by the Respondent**

- 25. During the Relevant Period, Peirson made investment recommendations to the Two Clients. In his role as Supervisor (formerly Branch Manager), the Respondent reviewed all of these transactions as part of his daily supervision review.
- 26. In addition, on at least 4 occasions, the Respondent would have reviewed the Two Clients’ account activity as part of his monthly supervision review.
- 27. The Respondent was aware that Peirson was recommending that the Two Clients, as well as other clients, use margin to purchase mutual funds.
- 28. Apart from the use of margin borrowing, there were no other concerns as to the suitability of the investments in the accounts. The holdings consisted primarily of low to medium risk equity mutual funds, as well as money market funds.
- 29. On several occasions, the Respondent discussed the increasing margin levels and the appropriateness of the margin borrowing with Peirson. The Respondent’s supervision notes indicate that he identified and had concerns about the margin borrowing on a number of occasions.
- 30. In response to his queries, Peirson advised the Respondent that all of his clients understood the investment strategy and were comfortable with the margin borrowing in their accounts.
- 31. In late 2008 and early 2009, the Respondent spoke to three of Peirson’s clients who had some margin borrowing in their accounts. The Respondent was comfortable that these clients understood the risks associated with margin borrowing in their accounts.
- 32. Although the Respondent discussed his concerns with Peirson and spoke to some of Peirson’s clients, he

failed to take adequate steps to limit or stop the increasing margin use with respect to the Two Clients. Specifically, the Respondent failed to:

- i. Contact either of the Two Clients to ensure that they fully understood the risks associated with the borrowing to invest strategy;
  - ii. Advise anyone at head office that he had concerns with Peirson's use of leverage to finance the investment purchases in these accounts; and
  - iii. Cancel any trades as a result of the trades being unsuitable for the Two Clients based on the age, income, net worth, and/or risk tolerance as recorded on their respective NAAFs.
33. The amount of money Peirson recommended the Two Clients borrow to invest was not suitable for them based their age, income, net worth, and risk tolerance as recorded on their respective NAAFs.
34. During the Relevant Period, the net equity in the Two Clients' accounts decreased. The margin borrowing in the accounts contributed to this decrease.

#### **Actions Taken by the Respondent since June 2009**

35. Following Peirson's medical event, the Respondent took carriage of all of Pierson's accounts, including those of the Two Clients. Since that time, the Respondent has recommended and implemented an investment strategy with these clients to deleverage the accounts. He has also recommended and implemented a similar strategy with other clients who had margin borrowing.
36. In October 2010, one of the Two Clients' daughter filed a complaint with Raymond James regarding the handling of her mother's account by Peirson, which complaint was resolved.
37. None of Peirson's other clients have raised any concerns with regard to the handling of their accounts. Some of the other clients have also since confirmed that they understood and agreed with the strategy that was implemented by Peirson.

#### **IV. TERMS OF SETTLEMENT**

38. 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.
39. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
40. 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.
41. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
42. 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.
43. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
44. 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.
45. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
46. 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 Toronto, in the Province of Ontario, this 26th day of June, 2013.

“John A. Fabello”

“P. Richardson”

**WITNESS**

**RESPONDENT**

**NAME:**

**AGREED TO** by Staff at the City of Toronto in the Province of Ontario, this 26th day of June, 2013.

“John A. Fabello”

“Rob DelFrate”

**WITNESS**

**ROB DELFRATE**

Name

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

**ACCEPTED** at the City of Toronto, in the Province of Ontario, this 26<sup>th</sup> day of June, 2013 by the following  
Hearing Panel:

Per: “Julia Dublin”

Panel Chair

Per: “Richard Austin”

Panel Member

Per: “Daniel Iggers”

Panel Member

*Copyright © 2013 Investment Industry Regulatory Organization of Canada. All Rights Reserved.*