

Re Lang

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

John Winston Lang

2013 IIROC 37

Investment Industry Regulatory Organization of Canada
Hearing Panel (British Columbia District)

Heard: May 28, 2013

Decision: May 28, 2013

Hearing Panel:

Jean P. Whittow Q.C. (chair), James B. Harkness and Robert Travers (members)

Appearances:

Kathryn Andrews, Enforcement Counsel

George E. H. Cadman, Q.C., for the Respondent

DECISION AND REASONS

¶ 1 As a result of a Settlement Agreement entered into between IIROC and the Respondent, a Settlement Hearing was conducted on May 28, 2013 in Vancouver pursuant to the IROC Dealer Member Rules.

¶ 2 The Hearing Panel received and considered submissions from IIROC counsel and the Respondent's counsel and the IIROC Settlement Brief containing the Settlement Agreement, relevant IIROC Rules and Disciplinary Sanction Guidelines (the "Guidelines") and previous relevant decisions.

¶ 3 After the conclusion of counsels' submissions, the Panel retired to consider whether it would accept the Settlement Agreement. We subsequently advised the parties that we accepted the Settlement Agreement, with written reasons to follow. These are those reasons.

The Admissions

¶ 4 The contravention alleged by IIROC and admitted by the Respondent is set out in the Settlement Agreement as follows:

From March 2008 to March 2009, [the Respondent], as Branch manager, failed to adequately supervise Registered Representative Marco Myatovic, contrary to IIROC Dealer Member Rules 1300.2 and 2500 (IDA Regulation 1300.2 and Policy 2, prior to June 1, 2008).

¶ 5 The Sanctions agreed to in the Settlement Agreement are:

- a. payment of a fine by the Respondent in the amount of \$35,000; and

b. a suspension in any supervisory capacity for a period of two years.

¶ 6 The Respondent also agrees to pay costs in the amount of \$2,000.

¶ 7 The relevant facts are set out in the Settlement Agreement attached hereto. In summary, the Respondent was aware of connections between certain Myatovic accounts and was aware of problems ranging from debit and concentration issues to frequent and high volume trading. Despite these concerns, supervisory action was not taken, and Myatovic facilitated suspicious trading activities, for which he was disciplined by IIROC. The issues on these accounts were not sufficiently questioned or reviewed by the Respondent and where he did make inquiries he did not adequately pursue, document or follow up with a sufficient degree of diligence.

The Standard for Reviewing a Settlement Agreement

¶ 8 It is well established that in considering a Settlement Agreement, a panel may only accept or reject the agreement and should accept the agreement provided that it falls within a “reasonable range”. *Re Milewski*, [1999] I.D.A.C.D. No.17, cited in *Re Murdoch*, 2012 IIROC 23 para. 10:

... District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.

¶ 9 See also *Re Ast*, 2012 IIROC 38 para. 13 to 15, where the test is similarly described.

¶ 10 This Panel must determine whether the penalties proposed meet the objectives set out in the Guidelines, that is, protection of the investing public, the industry membership, the integrity of the discipline process, and the integrity of the securities markets; and the prevention of a repetition of the conduct.

Submissions of Counsel

¶ 11 In her submissions as to the appropriate penalty, IIROC counsel referenced the following aggravating factors:

- This was not an isolated incident, as the trading took place over a one year period;
- Only one registered representative was involved, but the trading occurred on multiple client accounts;
- The Respondent was previously aware of issues on the relevant accounts;
- There were a number of “red flags”, including connections between the issuers and the clients, the size and duration of debits, concentration issues, the high market volume and the fact that Myatovic earned a large portion of his commission during March to December 2008 on these trades.

¶ 12 IIROC counsel noted that the failure to adequately supervise allowed the Representative to engage in suspicious activity, but did not cause any loss to clients.

¶ 13 Both counsel specifically noted as mitigating factors that the Respondent had no prior discipline history and cooperated with the investigation and disciplinary process. They both also made reference to the Respondent’s age, but when asked about this by the Panel, indicated that age was not relevant to the matter of penalty but was simply before the Panel as part of the picture.

¶ 14 The Respondent’s counsel submitted that the penalty proposed was within the range and was the subject of full and vigorous negotiation between the parties.

¶ 15 Referring to the Guidelines, the Respondent’s counsel noted that there was no suggestion that the Respondent was complicit and that his conduct was low on the register of “blameworthiness” as it was not deceptive. He specifically noted that the Respondent ceased to be the branch manager in 2010 and does not intend to return.

¶ 16 IIROC counsel reviewed authorities in which a branch manager had admitted to a failure to supervise a representative. In all cases, the manager had taken some but insufficient steps to properly supervise. In each of these cases, there were “red flags” which ought to have alerted the manager to the representative’s conduct:

- a. In *Re Murdoch*, supra, the respondent overlooked obvious red flags and relied unduly upon the responses provided by the representative. The trading took place over a longer period than in the present case and there was in fact a loss to clients. The respondent was suspended from acting in any supervisory capacity for one year and was fined 50,000.
- b. In *Re MacDonald* (2012 IIROC 68), the respondent failed to adequately examine the suitability of holdings for 6 clients of one representative. Losses were suffered by the clients. The respondent was suspended from supervisory capacity for 5 years and fined 40,000. There is no discussion in the decision as to the reason for the long suspension.
- c. In *Re Bergh* (2011 IIROC 41), the failure to supervise took place in the context of the preparation of the new client account forms. Over 150 clients were involved, with total investments of over \$10 million. The Respondent was fined \$22,000 and suspended for 1 year.
- d. In *Re Morrison*, [2003] I.D.A.C.D. No. 13, the respondent failed to properly document his daily and monthly reviews in relation to the representative’s activities and relied upon the discussions with the representative rather than conducting proper reviews. He was fined \$35,000 and suspended 3 years.
- e. *Re Beaudoin* (2011 IIROC 66) was the only authority placed before the Panel in which a hearing on the merits had been conducted. The respondent was a broker as well as a manger, and the panel specifically noted that this did not permit him to “cut corners in his supervisory tasks”. The panel noted that the amount of the trades was “insubstantial” and that there was a “scarcity of inquiry tools” available to the respondent. The panel imposed a fine of \$10,000 and ordered no suspension. The case was described by that panel as “among the least serious cases”.

¶ 17 In answer to inquiry from the panel, IIROC counsel also referred to another hearing decision after hearing, the *Re Youden* case, in which a \$70,000 suspension was imposed.

¶ 18 In all, the penalties range widely, but most involve a fine of \$25,000 to 50,000 plus a suspension of a year or more.

Conclusion

¶ 19 Given the nature of the misconduct, and having considered the specific facts of the present case in the context of the other cases to which the Panel was referred, the Panel agreed that the terms of the Settlement Agreement were reasonable and meets the objectives of the discipline process as set out in the Guidelines. Therefore the Settlement Agreement was accepted by the Panel.

¶ 20 The Panel thanks both counsel for their thorough presentation.

Dated as of the 28th day of May, 2013.

Jean P. Whittow, Q.C., Chair

James B. Harkness, Member

Robert Travers, Member

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff and the Respondent John Winston Lang (“Lang” or “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 Lang.
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:

From March 2008 to March 2009, John Winston Lang, as Branch Manager, failed to adequately supervise Registered Representative Marco Myatovic, contrary to IIROC Dealer Member Rules 1300.2 and 2500 (IDA Regulation 1300.2 and Policy 2, prior to June 1, 2008).

8. Staff and the Respondent agree to the following terms of settlement:
 - a) Payment of a fine by the Respondent in the amount of \$35,000;
 - b) A suspension in any supervisory capacity for a period of two years;
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

Overview:

11. Between March 2008 and March 2009 (the “material time”), Lang, as Branch Manager, failed to take reasonable and adequate steps to supervise Registered Representative Marco Myatovic (“Myatovic”) and his handling of certain client accounts.
12. Lang had been Myatovic’s branch manager for many years. In the 2000’s, Lang was aware of connections between certain Myatovic client accounts, a Mr TSP and three issuers trading on the TSX Venture Exchange namely Great Pacific International (“GPI”), OSE Corp. (“OSE”) and SNL Enterprises Ltd. (“SNL”). Furthermore, Lang was aware of certain problems in these accounts (the “TSP Related Accounts”), ranging from debit and concentration issues to frequent and high volume trading. From time to time there had been some questioning and/or temporary restriction of Myatovic’s trading activity both by Lang and Canaccord in these accounts.
13. Myatovic’s trading activity continued, however, and during the material time, when faced with certain red flags including sizeable debits, concentration issues and a high volume of trading in the TSP Related Accounts, Lang failed to adequately supervise Myatovic, allowing him to facilitate suspicious trading activities in a manner that caused damage to the integrity of the capital markets and the securities

industry, all with insufficient scrutiny from Lang.

Lang's Registration:

14. Lang was registered with the Vancouver Stock Exchange as a Registered Representative in 1976 and as a Branch Manager in 1982. These registrations were subsequently transferred to the IDA in 2000. On June 1, 2008, Lang became a regulated person of IIROC.
15. Lang was employed by Canaccord Capital Corporation, its predecessor companies and its successor company Canaccord Genuity Corporation ("Canaccord") as a branch manager from 1982 onwards. He was also a Registered Representative with his own book of business at the material time. Lang and Myatovic were located at the Prince George, BC branch of Canaccord.
16. Lang left Canaccord in January 2013 and is currently employed with Wolverton Securities Ltd. He ceased to be the Canaccord Prince George branch manager in April 2010.

IIROC Decision regarding Myatovic:

17. In September 2008, IIROC Staff opened an investigation into Myatovic's conduct. The investigation focused on Myatovic's activities related to the trading in the TSP Related Accounts mainly involving GPI and OSE.
18. In 2011, IIROC Staff initiated disciplinary action against Myatovic and another Registered Representative at another firm, Doreen Lowe, for their trading of the aforementioned securities between April 2008 and March 2009. On July 31, 2012, a hearing panel concluded that Myatovic and Lowe failed in their roles as gatekeepers by facilitating manipulative or suspicious trading activity in several client accounts by pre-arranging trades and taking instructions from an individual who was not the account holder, contrary to IIROC Dealer Member Rule 29.1.

Red flags:

19. While Lang was branch manager for Myatovic during March 2008 to March 2009, certain red flags existed which should have prompted Lang to take action or to take further action. These red flags included:
 - connections between the three issuers and Mr. TSP and trading in these securities in the TSP Related Accounts;
 - debit issues in the TSP Related Accounts, including the size of the debits and the length of time that many of the accounts were consistently overdue;
 - concentration issues involving OSE and GPI in the TSP Related Accounts;
 - the fact that the trading in OSE and GPI in the TSP Accounts represented a large volume of the market during the material time, as set out in paragraph 24 below; and
 - the fact that a large portion of Myatovic's commission earned during March to December 2008 came from the TSP Related Accounts trading GPI and OSE, as indicated in paragraph 27 below.

Background and the TSP Related Accounts:

20. Myatovic opened the TSP Related Accounts under different names from the early 2000s onwards that were related to or connected with Mr. TSP, each other or one of the three issuers.

Problems known to Lang earlier:

21. From 2004 to 2008 there were some inquiries from time to time into Myatovic's trading activity by either Lang or head office. These inquiries generally involved buying and selling of shares of the three issuers by the TSP Related Accounts. Concerns were expressed with the number of debits, the concentration of securities, price fluctuations, the frequency of the trading and also the fact that certain of the TSP Related Accounts were responsible for a high volume of the trading at the time.

22. Although some temporary restrictions were placed earlier, Myatovic's trading activity in the TSP Related Accounts was allowed to continue without satisfactory resolution of the above issues until the spring of 2009, when the debits became so large in certain of the TSP Related Accounts that Canaccord finally restricted his trading in March 2009 as further explained in paragraph 33 below.

Issues in the TSP Related Accounts during the material time:

23. Generally the TSP Related Accounts consistently held large and ongoing debit balances. Another factor was the re-aging of debits in that often sales of OSE or GPI securities occurred, rather than bringing in cash to settle an outstanding debit. Some accounts would sell OSE and purchase GPI and others would do the opposite by selling GPI and buying OSE. Usually the next day, the accounts would buy either OSE or GPI and the same pattern of settlement occurred.
24. The TSP Related Accounts were also responsible for a large volume of the trading in GPI and OSE. For example, in 2008 certain of the TSP Related Accounts were responsible for 30.85% of the buying activity in GPI and for 14.09% of the GPI selling activity. In 2008, certain of the TSP Related Accounts were responsible for 22.87% of the buying activity for OSE and for 27.42% of the selling activity for OSE.
25. In terms of price, OSE shares were trading at \$2.04 as of the end of March 2008 but fell to 8 cents by the end of March 2009. Similarly for the shares of GPI, where the price decreased from \$1.53 as of the end of March 2008 to 8 cents during this same time period.
26. From time to time during 2008, while other Canaccord compliance personnel made written inquiries of Myatovic regarding these issues, Lang did not. Lang's inquiries of Myatovic were verbal. Lang did not properly document any of his inquiries or Myatovic's responses.
27. During 2008, more than 50% of Myatovic's gross commissions were derived from his trading in OSE and GPI alone.

Lang's efforts were insufficient:

28. The above issues in the TSP Related Accounts were not sufficiently questioned by Lang and they were not sufficiently documented by Lang during the material time. Lang told Staff that in the course of his daily and monthly reviews, he did make inquiries of Myatovic (mainly verbal) and that he did review the trading activity in the TSP Related Accounts. Lang's efforts were insufficient, however, and were below what is expected of a branch manager.
29. For example, two of the reports provided to Lang for his daily review identified a group of the TSP Related Accounts as having either large ongoing debits and/or a large concentration of OSE and GPI. On the Aged Cash Account reports these were often the only client accounts contained therein. Yet a review of the exception reports from early 2008 to early 2009 does not indicate any substantive notations or questions by Lang or that any follow up was done by Lang.
30. Lang's monthly trading reviews were also insufficient. Part of his monthly trading review was a random selection of accounts. This random review was inadequate as it was not based on account activity or what was required by Dealer Member Rule 2500 (IDA Policy 2 prior to June 1, 2008). In addition, Lang completed and initialed a monthly branch checklist but these checklists did not identify questionable trading nor did he make sufficient inquiries of Myatovic about the unusual trading. Furthermore, on occasion there were head office inquiries made in the absence of Lang making similar inquiries of his own.
31. Lastly, Lang failed to take sufficient steps to verify the accuracy of Myatovic's responses including contacting certain clients and/or Mr TSP to discuss the debits, concentration issues or high volume trading in the TSP Related Accounts. Lang ought to have been more diligent and followed up more thoroughly with his inquiries, even though others at Canaccord also had supervisory responsibilities and had made some inquiries of their own from time to time.

Lang knew Myatovic was under investigation by IIROC:

32. Canaccord was notified that Myatovic was under investigation by IIROC by letter dated September 15, 2008. At this time, Canaccord was also informed that the investigation would include a review of the supervision of Myatovic's activities. Lang, as Branch Manager, was made aware of the investigation sometime shortly thereafter. Despite this knowledge, Myatovic was allowed to continue with his trading activity until March 2009 when the TSP Related Accounts were finally restricted as set out below in paragraph 33.

Account restrictions:

33. In March 2009, other personnel at Canaccord restricted Myatovic's trading of GPI and OSE by not permitting additional purchases of OSE or GPI until various debits were covered.

Other:

34. Lang has no previous disciplinary history. He is currently in his early 70's.

35. Lang has co-operated with the investigation and prosecution of this matter.

IV. TERMS OF SETTLEMENT

36. 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.

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

38. 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.

39. 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.

40. 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.

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

42. 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.

43. 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 Prince George in the Province of British Columbia, this 8 day of March, 2013.

"Dan Seiter"

Witness

"John Winston Lang"

Respondent John Winston Lang

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this 19th day of April 2013.

"Witness"

"Kathryn Andrews"

Witness

Kathryn Andrews

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

ACCEPTED at the City of Vancouver in the Province of British Columbia, this 28 day of May, 2013, by the following Hearing Panel:

Per: “Jean Whittow”
Panel Chair

Per: “James Harkness”
Panel Member

Per: “Robert Travers”
Panel Member

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