

Re Winer

IN THE MATTER OF:

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

and

Philip Winer

2019 IIROC 21

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

Heard: June 19, 2019 in the City of Toronto, in the Province of Ontario

Decision: June 19, 2019

Reasons: June 27, 2019

Hearing Panel:

Paul M. Moore, Q.C., Chair, Edward Jackson and Zahra Bhutani

Appearance:

Kathryn Andrews, Enforcement Counsel

Philip Winer, Respondent, by teleconference

REASONS FOR ACCEPTANCE OF SETTLEMENT AGREEMENT

Settlement Agreement

¶ 1 This was a settlement hearing commenced by a Notice of Application for Settlement Hearing, heard on June 19, 2019, at which the panel accepted the settlement agreement dated April 29, 2019 between Philip Winer as Respondent and Enforcement Staff of IIROC.

¶ 2 A copy of the settlement agreement is attached to these Reasons.

Contraventions

¶ 3 The settlement agreement sets out the agreed facts, including the particulars of (1) the “sandwich trading” and the “reversal trading”, (2) the discretionary trading, and (3) the alteration of client documents that were the bases of three misconduct allegations against the Respondent.

¶ 4 In the settlement agreement, the Respondent admitted in effect that: (1) the sandwich trading and reversal trading amounted to conduct not within the bounds of good business practice, contrary to IIROC Dealer Member Rule 1300.1(0); he did engage in the discretionary trading, contrary to IIROC’s Dealer Member Rule 1300.4; and he did alter client documents, contrary to IIROC’s Dealer Member Rule 29.1.

¶ 5 We concluded that the admitted misconduct did in fact contravene the cited Rules as alleged.

Agreed Penalty

¶ 6 The agreed penalties were:

- (1) a fine of \$15,000;
- (2) disgorgement of net commission of \$2,000;
- (3) a prohibition from applying for re-registration for 12 months;
- (4) a requirement to successfully re-write the Conduct and Practices Handbook examination within 12 months of any re-approval;
- (5) six months close supervision upon any re-approval; and
- (6) costs of \$1,000.

Considerations

¶ 7 The panel determined that it had to be satisfied regarding three considerations before it could accept the settlement agreement. First, the agreed penalties had to be within an acceptable range taking into account similar cases. Secondly, the agreed penalties had to be fair and reasonable (i.e. proportional to the seriousness of the contravention and taking into consideration other relevant circumstances) and should appear to be so to members of the public and industry. Thirdly, the agreed penalties should serve as a deterrent to the Respondent and to the industry.

¶ 8 To be satisfied on these three considerations required an understanding of the particular facts of the case, the circumstances of the Respondent, and the impact on him of the agreed penalties.

Matters Considered

¶ 9 We reviewed the precedent cases submitted by Staff and compared the agreed penalties in the settlement agreement before us with the range of penalties in the cases. In doing this, we also reviewed the unique facts and circumstances of each case and compared and contrasted them with the unique facts and circumstances of the settlement agreement before us.

¶ 10 We also reviewed the IIROC Sanction Guidelines.

¶ 11 While it was difficult for us to get a firm estimate of dollar loss that may have been suffered by the clients, Staff advised that in its view losses were not large. Only two clients had complained. There was no information whether the Dealer Member concerned had made any payments to the clients.

¶ 12 Regarding the alteration of client documents, it appears that no client suffered monetary loss and that clients were aware of the alterations.

¶ 13 We were advised that the \$2,000 amount for disgorgement was related to discretionary trading and was a negotiated amount.

¶ 14 We noted that the Respondent was 70 years old and that he was out of the business and had no intention of returning to the industry.

¶ 15 Staff advised us of the nature of its investigation of the Respondent's financial circumstances and its reasons for concluding that the Respondent had a limited ability to pay amounts in excess of the agreed penalty amounts. We also noted that the settlement agreement stated that if it were not for financial

evidence of inability to pay, the amount of the fine would have been greater.

¶ 16 The Respondent has expressed remorse for his misconduct.

¶ 17 He does not have a prior disciplinary history.

Conclusion

¶ 18 We concluded that the agreed penalties were within an acceptable range based on precedents, would serve as a specific and general deterrent, and were fair and reasonable. We concluded that the settlement agreement was in the public interest and, therefore, we accepted it.

Dated at the City of Toronto, in the Province of Ontario, this 27 day of June, 2019.

Paul M. Moore

Edward Jackson

Zahra Bhutani

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 Philip Winer (“Respondent”).

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff and the Respondent 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 Respondent agrees with the facts as set out in Part III of this Settlement Agreement.

Summary

4. Between January 2012 and January 2016 (the “Material Period”), the Respondent effected a number of trades in seven clients’ accounts that were not within the bounds of good business practice.
5. The Respondent sold certain DSC mutual funds for these clients and then used some or all of those proceeds to purchase and then sell securities within a short time period. The Respondent then used part or all of the proceeds from those transactions to purchase new DSC funds. This manner of trading is described below as “Sandwich Trading”.
6. In a number of instances, the Respondent also purchased or sold a DSC fund then sold or purchased the exact same DSC fund within client accounts on a short term basis. This manner of trading for the same seven clients was not within the bounds of good business practice given the long term nature of DSC

funds. This manner of trading is described below as “Reversal Trading.”

7. Furthermore, between January 2012 and September 2015, the Respondent effected discretionary trades in two clients’ accounts without discussing all of the particulars of the trades in advance with the clients.
8. In addition, on various dates between November 2012 and July 2016, the Respondent used previously signed client signatures in a “cut and paste” manner to falsely indicate that clients had also signed subsequent client documentation.

The Respondent

9. The Respondent had been an IIROC registrant since 1993. He was employed as a Registered Representative (“RR”) with Burgeonvest Bick Securities Limited (“BBSL”) in Toronto commencing in 2003. BBSL was acquired by Industrial Alliance Securities (“IAS”) in May 2016. The Respondent was employed by IAS until May 17, 2018. The Respondent is not currently an IIROC registrant.

The “Sandwich Trading”

10. During the Material Period, the Respondent effected a number of trades that were outside the bounds of good business practice for the seven clients indicated below. In effecting the Sandwich Trading, the Respondent sold DSC mutual funds in the clients’ accounts, then a short time later used some or all of those proceeds to buy and sell equities, within a short time frame, then used some or all of those proceeds to buy new DSC mutual funds.
11. The Sandwich Trading was not within the bounds of good business practice because:
 - (a) it set a new redemption schedule for the newly purchased DSC fund, which was detrimental or potentially detrimental to clients, particularly those facing retirement age;
 - (b) where the DSC fund was sold early on in its lifetime, on occasion it resulted in additional penalties to the client;
 - (c) on several occasions, the equities trades were not economically beneficial to the client; and
 - (d) on certain occasions, the client was charged with various fees/commission which could have been avoided if the mutual fund trading had been structured differently (i.e. had low load funds been purchased instead).

LM Example of Sandwich Trading

12. There were four instances of Sandwich Trading in client LM’s account between January 2012 and July 2013. In the below instance, DSC funds were sold, incurring redemption penalties. VISA was purchased and sold at a loss two weeks later. These proceeds were used to purchase one of the same DSC funds that had been sold a few weeks earlier:

Date	Type	Symbol	Description	Quantity	Price	Total	Commission	Gains/ Losses
4/10/2012	Sell	GGF97147	BMOG PREC MET /D/N	-69.006	\$28.983	1,927.79	0	198.44
4/10/2012	Sell	DYN2302	DYN STRAT GLD /D/N	-155	12.94	1,903.70	0	2.11
4/10/2012	Sell	AGF699	AGF DIV ICM /D/N	-168.634	11.86	1,878.58	21	-129.93
4/10/2012	Sell	MMF14441	MLI ADVTG II /D/N	-251.943	7.938	1,918.61	0	658.90
4/13/2012	Buy	V	VISA INC CLASS-A	60	123.06	-7,509.79	100.35	0
4/27/2012	Sell	V	VISA INC CLASS-A	-60	123.21	7,127.17	87.84	-382.62
4/27/2012	Buy	AGF699	AGF DIV INCM /D/N	607.553	12.18	-7,400.00	0	0

MW Example of Sandwich Trading

13. Client MW was born in 1937. There were three instances of Sandwich Trading in MW's accounts between October 2014 and September 2015. In the below instance, DSC funds were sold, incurring a redemption penalty. SAP was purchased with the proceeds and sold at a loss two weeks later solely as a result of commissions charged. These proceeds were used to purchase a DSC fund shortly thereafter:

Date	Type	Symbol	Description	Quantity	Price	Total	Commission	Gains/ Losses
10/6/2014	Sell	DYN1562	DYN STRAT YLD /D/N	-60.934	14.77	846	0	-50.34
10/6/2014	Sell	AGF933	AGF CDN BD /D/N	-328.152	5.79	1,900.00	0	26.14
10/9/2014	Buy	SAP	SAPUTO INC	100	32.33	-3,323.00	90	0
11/25/2014	Sell	SAP	SAPUTO INC	100	32.775	3,187.50	90	-135.5
11/26/2014	Buy	AGF4181	AGF US SEC CL-MF/D/N	271.318	12.9	-3,500.00	0	0

Sandwich Trading in other clients' accounts

14. Further instances of Sandwich Trading occurred in these clients' accounts as well:
- LB: five instances between April 2014 and October 2015
 - WM: two instances between February 2013 and June 2013
 - GM: four instances between February 2014 and May 2015
 - CF: four instances between March 2014 and June 2015
 - MF: five instances between February 2013 and June 2015

Avoidance of firm scrutiny

15. BBSL policies and procedures manual at the time provided that for any DSC to DSC transactions, a "DSC Reset" letter should be sent to the client. This policy was to help ensure that clients were aware of the extension of the DSC schedule for their funds. In addition, if redemption fees for DSC to DSC transactions were more than 2.5%, the policies contemplated that the client be reimbursed for the fees above 2.5%.
16. Conducting the Sandwich Trading with intervening equities transactions gave the appearance that the Respondent was attempting to avoid these transactions being seen as DSC to DSC transactions by BBSL's compliance department.

The "Reversal Trading"

17. The Respondent effected various other trades in the same seven clients' accounts which were also not within the bounds of good business practice. In effecting the Reversal Trading, the Respondent bought or sold a certain DSC fund then shortly thereafter sold or purchased the exact same DSC fund as set out in detail below, on various occasions between January 2013 and January 2016.
18. The Reversal Trading was detrimental or potentially detrimental to the client because DSC funds are not meant to be bought or sold on a short term basis. On many occasions it re-set the redemption schedule for the DSC fund.
19. Occasionally it resulted in an additional penalty to the client, depending on when the DSC fund was initially sold.
20. This manner of trading also resulted in additional fees/commission to the Respondent when DSC funds were purchased.

CF Example of Reversal Trading

21. Client CF was born in 1944. The Respondent effected two instances of Reversal Trading in CF's account between August 2013 and July 2014. As seen in the below example, the Respondent sold at a loss about a week after the purchase:

Acct. No.	Date	Type	Symbol	Description	Quantity	Price	Total	Commission	Gains/ Losses
4K-L003-S	8/28/2013	Buy	CIG847	SIG CDN BND /D/N	894.454	5.59	-5,000.00	0	0
4K-L003-S	9/6/2013	Sell	CIG847	SIG CDN BND /D/N	-996.377	5.52	5,484.00	16	-257.59

MF Example of Reversal Trading

22. Client MF was born in 1946 and is CF's spouse. There was one Reversal Trade in client MF's account in 2015. As set out below, the Respondent sold at a loss and the sale incurred redemption fees:

Acct. No.	Date	Type	Symbol	Description	Quantity	Price	Total	Commission	Gains/ Losses
4K-L002-R	8/27/2015	Sell	CIG847	SIG CDN BND /D/N	-287.162	5.92	1,619.64	0	-44.97
4K-L002-R	9/22/2015	Buy	CIG847	SIG CDN BND /D/N	203.39	5.9	-1,200.00	0	0

Reversal Trading in other clients' accounts

23. Further instances of Reversal Trading occurred in these clients' accounts as well:

- LB: nine instances between January 2013 and January 2016
- WM: four instances between December 2013 and February 2014
- GM: five instances between September 2013 and January 2016
- LM: eight instances between January 2013 and August 2015
- MW: one instance in September/October 2015

Discretionary trading

24. CF and MF are the same clients listed above regarding the Sandwich and Reversal Trading. Neither CF nor MF had a discretionary or managed account with the Respondent. The Respondent was not licensed as a portfolio manager.

25. Between January 2012 and September 2015, the Respondent effected trades in CF and MF's accounts without discussing all of the particulars of every trade with the clients in advance.

26. The Respondent effected numerous trades in CF and MF's accounts between January 2012 and September 2015.

The Altered Documents

27. Between November 2012 and July 2016, the Respondent altered various documents by adding or superimposing a previously signed client signature onto another document. This was done intentionally so that the other documents could be used as original signed documents.

28. The Respondent altered the following documents:

- (a) Two Registered Plan De-registration letters (clients LC March 6, 2014 and WM January 9, 2014);
- (b) A Letter of Authorization (client IV November 2012); and,
- (c) A Change of Address Form (client FB July 14, 2016)

29. IAS discovered the altered documents in the spring of 2018 during a compliance review.
30. Client WM indicated in paragraph 28(a) above is the same person as client WM indicated in the Sandwich Trading and Reversal Trading described above.
31. The Respondent advised Staff that the Registered Plan De-registration letter dated January 9, 2014 was prepared to indicate WM's instructions that a cheque in the amount of \$11,200 be withdrawn and paid to WM. WM's TFSA January 2014 account statement indicates that a withdrawal of this amount occurred. The Respondent has advised that to the best of his recollection, this cheque was picked up by WM at the Burlington branch office.
32. The Respondent advised Staff that the clients listed in paragraph 28 above were aware of the subsequent documentation and that the "cut and paste" signatures were effected for administrative convenience, for example, to transfer client funds to the client, based on the clients' instructions.

Other Factors

33. The Respondent was born in 1948. He is currently not a registrant and has advised Staff that he does not intend to return to the industry.
34. If it were not for financial evidence of inability to pay, which has been provided to Staff, the Respondent and Staff acknowledge that the amount of the fine set out in this Settlement Agreement would have been greater.
35. The Respondent has expressed remorse for the conduct described in this Settlement Agreement.
36. The Respondent does not have a prior disciplinary history.

PART IV – CONTRAVENTIONS

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

Contravention 1: Between January 2012 and January 2016, the Respondent failed to ensure that certain transactions effected in various clients' accounts were within the bounds of good business practice, contrary to Dealer Member Rule 1300.1(o).

Contravention 2: Between January 2012 and September 2015, the Respondent engaged in discretionary trading in two client accounts, without those accounts having been accepted or approved as managed accounts, contrary to Dealer Member Rule 1300.4.

Contravention 3: Between November 2012 and July 2016, the Respondent altered client documents, contrary to Dealer Member Rule 29.1.

PART V – TERMS OF SETTLEMENT

38. The Respondent agrees to the following sanctions and costs:
 - a) A fine in the amount of \$15,000;
 - b) Disgorgement of net commission in the amount of \$2,000;
 - c) A prohibition from applying for re-registration with IIROC for a period of twelve months;
 - d) To successfully re write the Conduct and Practices Handbook examination within twelve months of any re-approval;

- e) Six months close supervision upon any re-approval, and,
- f) Costs of \$1,000.

39. If this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees to pay the amounts referred to above within 30 days of such acceptance unless otherwise agreed between Staff and the Respondent.

PART VI – STAFF COMMITMENT

40. If the Hearing Panel accepts this Settlement Agreement, Staff will not initiate any further action against the Respondent 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 paragraph below.

41. If the Hearing Panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Rule 8200 against the Respondent. 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

42. This Settlement Agreement is conditional on acceptance by the Hearing Panel.

43. 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.

44. Staff and the Respondent 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 Respondent does not appear at the settlement hearing, Staff may disclose additional relevant facts, if requested by the Hearing Panel.

45. If the Hearing Panel accepts the Settlement Agreement, the Respondent agrees to waive all rights under the IIROC Rules and any applicable legislation to any further hearing, appeal and review.

46. 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 based on the same or related allegations.

47. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.

48. 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.

49. If this Settlement Agreement is accepted, the Respondent agrees that neither he nor anyone on his behalf, will make a public statement inconsistent with this Settlement Agreement.

50. The Settlement Agreement is effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

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

DATED this "29" day of April, 2019.

"Witness"

Witness

"Philip Winer"

Respondent Philip Winer

"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 "19th" day of "June", 2019 by the following Hearing Panel:

Per: "Paul Moore"

Panel Chair

Per: "Edward Jackson"

Panel Member

Per: "Zahra Bhutani"

Panel Member

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