

## **Re Raby**

**IN THE MATTER OF:**

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

**and**

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

**and**

**Guylaine Raby**

2013 IIROC 30

Hearing Panel  
of the Investment Industry Regulatory Organization of Canada  
(Québec District)

Hearing held in Montréal, on May 15, 2013  
Decision rendered on May 30, 2013

### **Hearing Panel**

Me Claude Bisson - Chair, Mr. Jean André Élie and Mr. François Gervais

### **Appearances**

Me Martin Hovington, Counsel for IIROC

Me Yves Robillard (Miller Thomson), Counsel for the Respondent, Guylaine Raby

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## **DECISION ON SETTLEMENT AGREEMENT**

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¶ 1 This decision pertains to a Settlement Agreement signed and submitted by virtue of rules 14 and 15 of the Rules of Practice and Procedure;

¶ 2 The Settlement Agreement signed on April 17 and 19, 2013 is appended hereto in its original to form part of this decision as though herein cited at length;

¶ 3 The Respondent admits to the following contraventions of IIROC Rules:

“a) Between March 2003 and October 2011, Respondent:

- i. did not adequately and completely disclose all of her outside business activities to her employer;
- ii. held authorizations to trade and exercised a form of authority over the accounts of certain of her clients, off-book and without the knowledge of her employer;

thereby failing to observe high standards of ethics and professional conduct and engaging in business practice unbecoming in the conduct of her activities, contrary to IIROC Dealer

Member Rule 29.1 (IDA By-Law 29.1 prior to June 1, 2008);

b) Between March 2003 and October 2011, Respondent received a consideration paid through a financial institution other than her employer in regard to securities-related activities that she performed for the latter, contrary to IIROC Rule 18.15 (IDA By-Law 18.15 prior to June 1, 2008).

¶ 4 The parties have accepted the following terms of settlement :

a) a fine of \$20,000: \$10,000 for count a) and \$10,000 for count b);

b) disgorgement of \$14,000 representing the profits realized by reason of the violations;

¶ 5 The Respondent agrees to pay IIROC costs in the amount of \$5,000.

¶ 6 A professional in the securities industry since 1984, Respondent was employed as a Registered Representative of Desjardins Securities Inc. (DS) from 1991 until her dismissal on November 3, 2011;

¶ 7 Since December 2011, Respondent has been employed as a Registered Representative with Richardson GMP Ltd.;

¶ 8 On this subject, and with the consent given by the parties at the hearing pursuant to Rule 15.3 in Part A of the Rules of Practice and Procedure, an important detail was added on May 15, 2013 concerning the reapproval of the Respondent as a registered representative;

¶ 9 First, IIROC demanded that Respondent retake the Conduct and Practices Handbook Course. This was done and the exam was passed on January 9, 2012;

¶ 10 Secondly, IIROC imposed close supervision on the Respondent, to be carried out by her employer as of November 28, 2011, and this is still going on;

¶ 11 It should be said that these two elements are part of IIROC's Guidelines for violations of Rule 29.1 (page 35, s. 3.10);

¶ 12 It is therefore this set of disciplinary sanctions that the Hearing Panel must take into account as it analyzes the different components of the Settlement Agreement;

¶ 13 Since 1995, and up until March 2003, Respondent had handled the offshore trades for five clients, as paragraphs 20 to 28 of the Agreement relate, and all of this went according to regulation;

¶ 14 Paragraphs 29 to 35 of the Agreement describe the changes that occurred, beginning in March 2003, in the way the Respondent handled the offshore trades for these five clients, including the financial consideration that was paid to her, all without the knowledge of DS, thus contravening Rule 29.1 on the one hand, and Rule 18.15 on the other;

¶ 15 On this subject, the Settlement Agreement, in paragraph 36, describes the obligations of the Respondent:

“By virtue of the applicable legislation, Respondent was required to make full disclosure to DS of the extent of her outside business activities, and obtain written approval from DS in order to continue these activities;”

¶ 16 Observance of Rule 29, the contravention of which by the Respondent is what gave rise to count a), is essential in that in order for the employer to carry out adequate supervision as required by the applicable legislation and thus ensure the protection of the investing public, the registered representative must adequately and completely disclose all outside business activities;

¶ 17 To not do this completely or adequately constitutes, for the representative, a failure to observe high standards of professional conduct, which is all the more unacceptable in that the situation persisted for more than eight years;

¶ 18 As for the facts – which also occurred over more than eight (8) years – that gave rise to count b), Rule

18.15 is peremptory: no representative may accept any remuneration for securities-related activities from any person other than his/her employer.

¶ 19 To violate such rules can only bring about a breach in the relationship of trust between the employer and the representative;

¶ 20 Respondent's dismissal on November 3, 2011 ended a 20-year employment relationship, which was certainly a severe punishment for the Respondent;

¶ 21 It should be noted that even if the contraventions lasted more than eight years, the entire remuneration received by the Respondent was rather modest: \$14,000; as we saw in paragraph 4b) above, disgorgement of this amount is one of the elements of the agreed penalty;

¶ 22 Moreover, it was always the same five investors and Respondent apparently never sought to expand the circle to increase her unauthorized and undisclosed remuneration;

¶ 23 On the subject of aggravating factors, it should be noted that Respondent is an experienced representative who had to be aware of the rules of ethics and professional conduct;

¶ 24 Also, we are looking at contraventions that occurred over a long period;

¶ 25 As regards mitigating factors, it is appropriate to mention the absence of any prejudice to the five investors who, moreover, have made no complaint;

¶ 26 The absence of any disciplinary history must also be taken into account, along with Respondent's cooperation in the investigation;

¶ 27 It is therefore in light of the statements contained in the Settlement Agreement, as well as the above considerations, that the Hearing Panel must rule on the adequacy of the penalties agreed between the parties; our role is to either accept the Agreement or reject it;

¶ 28 In paragraphs 15 to 18, we highlighted the risks, to the investor and the employer, that are inherent in the contraventions to which Respondent has admitted;

¶ 29 More generally, the public's confidence and respect rely on the observance of the Rules of Conduct;

¶ 30 As for the exact role of the Hearing Panel, the case-law defines it quite clearly: it is not whether it would have imposed the same penalties as those agreed to by the parties; but, rather, whether what has been presented falls within a range of reasonable sanctions and is likely to maintain the integrity of the securities industry;

¶ 31 Only a departure from this range of reasonable penalties would entail a rejection of the Settlement Agreement;

¶ 32 That is not the case here.

**FOR THESE REASONS**, the Hearing Panel accepts the Settlement Agreement as appended and gives effect to it from this date.

Montréal, May 30, 2013

Claude Bisson, Chair

Jean André Élie

François Gervais

## SETTLEMENT AGREEMENT

### I. BACKGROUND

1. Enforcement Staff of the Investment Industry Regulatory Organization of Canada (Staff) and Guylaine Raby (the Respondent) consent and agree to the settlement of these matters by way of this settlement agreement (Settlement Agreement);
2. The Enforcement Department of the Investment Industry Regulatory Organization of Canada (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 (IDA) and Market Regulation Services Inc. Pursuant to the Administrative and Regulatory Services Agreement between the IDA and IIROC, which came into force June 1, 2008, the IDA has retained IIROC to provide the necessary services for the IDA to carry out its regulatory functions;
4. The Respondent consents and agrees to be subject to IIROC's jurisdiction;
5. The Investigation disclosed matters for which the Respondent may be disciplined by a Hearing Panel appointed pursuant to Part C of Schedule C.1 to Transition Rule No. 1 of IIROC (the Hearing Panel).

### II. JOINT SETTLEMENT RECOMMENDATION

6. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement;
7. The Respondent admits to the following contraventions of IIROC Rules and Guidance:
  - a) Between March 2003 and October 2011, Respondent:
    - i. did not adequately and completely disclose all of her outside business activities to her employer;
    - ii. held authorizations to trade and exercised a form of authority over the accounts of certain of her clients, off-book and without the knowledge of her employer;thereby failing to observe high standards of ethics and professional conduct and engaging in business practice unbecoming in the conduct of her activities, contrary to IIROC Dealer Member Rule 29.1 (IDA By-Law 29.1 prior to June 1, 2008);
  - b) Between March 2003 and October 2011, Respondent received a consideration paid through a financial institution other than her employer in regard to securities-related activities that she performed for the latter, contrary to IIROC Rule 18.15 (IDA By-Law 18.15 prior to June 1, 2008).

8. Staff and the Respondent have accepted the following terms of settlement:
  - a) A fine of \$20,000: \$10,000 for count a) and \$10,000 for count b);
  - b) disgorgement of \$14,000, representing the profits realized by reason of the violations;
9. The Respondent agrees to pay IIROC costs in the amount of \$5,000.

### **III. STATEMENT OF FACTS**

#### **(i) Acknowledgment**

10. Staff and the Respondent agree with the facts set out in this section and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts.

#### **(ii) Factual Background**

#### **SUMMARY**

11. It is alleged that the Respondent acted as advisor for five (5) of her clients in respect of accounts held by the latter with Crédit Agricole Suisse Bahamas (CASB) (formerly “National Bank International” or NBI), off-book and without the knowledge of her employer, Desjardins Securities Inc. (DS);
12. Respondent would forward her clients’ instructions to NBI/CASB for the purpose of executing trades in their offshore accounts pursuant to authorizations to trade granted her by her clients;
13. Since 2003, Respondent received from NBI/CASB sums totaling \$14,000 as consideration for trades effected by her clients in these offshore accounts, which amounts were paid to her via a personal account that she held with NBI/CASB without the knowledge of DS;

#### **THE RESPONDENT**

14. Respondent was employed with DS from 1991 to 2011;
15. Since December 2011, Respondent has been employed with Richardson GMP;
16. At all material times, Respondent was in the employ of DS;
17. On June 1, 2008, Respondent became a registrant of IIROC;

#### **BACKGROUND OF IIROC INVESTIGATION**

18. On November 3, 2011, DS dismissed the Respondent for cause, notably for non-disclosure of outside business activities involving offshore accounts held at CASB by some of her clients;

19. On November 8, 2011, IIROC initiated an investigation of this matter;

### **OFFSHORE TRADES PRIOR TO 2003**

20. In 1995, Mouvement Desjardins acquired the Laurentian Group, which held a subsidiary in the Bahamas, Laurentian Bank and Trust Co. Ltd. (LBT);
21. In the context of her activities at DS, the Respondent was assigned to serve five (5) clients who had funds with LBT;
22. Initially, the clients' trades were made through a general account opened with DS in the name of LBT;
23. The account in question was a trading account with the number 39-OKG, for which Respondent was the assigned representative;
24. It was through this account 39-OKG that transactions were effected between DS and the Respondent's clients who held accounts with LBT;
25. At that time, the trades were supervised by DS and DS paid the commissions to the Respondent;
26. In 1997, Mouvement Desjardins sold LBT to Banque BNP Paribas (BNP), but account 39-OKG, henceforth opened under the name BNP Private Bank and Trust Bahamas Ltd, continued to be actively used by the Respondent's five (5) clients for trading in their offshore accounts. The account remained in operation until February 2002;
27. It appears that in or around the month of March 2003, Private Bank and Trust Bahamas Ltd assigned a portfolio of accounts, including those of the Respondent's five (5) clients, to National Bank International (NBI) also based in the Bahamas;
28. It was following this assignment of accounts that Respondent ceased using account 39-OKG to execute trades for her DS clients with offshore accounts;

### **RESPONDENT'S OUTSIDE BUSINESS ACTIVITIES**

29. As of March 2003, Respondent began forwarding her clients' trading instructions directly to NBI, being under the impression that it was alright to continue to do so to serve clients from BNP, without realizing that she was in so doing engaging in outside business activities without the knowledge of DS;
30. Thus it was that in July 2003, Respondent applied to open an account with NBI for deposit of the commissions that she generated from the trades effected for her clients who had accounts with that institution;
31. Respondent's services were rendered in the same way as for the accounts held by her five (5) clients here in Québec, with the difference that the consideration was paid by NBI directly to the Respondent;
32. At the material time, the five (5) clients in question were all clients of DS;
33. Between 2003 and 2011, Respondent forwarded her five (5) clients' trading instructions for their accounts at NBI/CASB in accordance with trading authorizations that she held from her clients for NBI/CASB;

34. Respondent never formally informed the DS Compliance Department of these outside business activities and never obtained their specific approval;
35. Respondent's clients have not filed any complaints respecting her conduct.

**CONTRAVENTION 1: INCOMPLETE AND INADEQUATE DISCLOSURE OF OUTSIDE BUSINESS ACTIVITIES AND TRADING AUTHORIZATIONS**

36. By virtue of the applicable legislation, Respondent was required to make full disclosure to DS of the extent of her outside business activities, and obtain written approval from DS in order to continue these activities;
37. Moreover, Respondent could not hold trading authorizations for her clients for accounts held anywhere but at DS, meaning for the accounts that her clients held with NBI/CASB;
38. By not adequately disclosing the relevant information concerning the clients with offshore accounts, as related above, Respondent was preventing DS from performing the monitoring of client accounts required by the applicable legislation;

**CONTRAVENTION 2: CONSIDERATION NOT PROVIDED BY DS**

39. Between 2003 and 2011, Respondent's activities for her five (5) clients with offshore accounts generated \$14,000 in fees paid in accordance with the terms and conditions of the investment programs offered by NBI/CASB, without DS being specifically informed;

**IV. TERMS OF SETTLEMENT**

40. This settlement is agreed to in accordance with Dealer Member Rule 20.35 to 20.40 inclusive, and Rule 15 of the Dealer Member Rules of Practice and Procedure.
41. The Settlement Agreement is subject to acceptance by the Hearing Panel;
42. The Settlement Agreement shall become effective and binding upon the Respondent and Staff from the date of its acceptance by the Hearing Panel;
43. 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.
44. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives her right, under IIROC rules and any applicable legislation, to a disciplinary hearing, review or appeal.
45. 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.

46. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel;
47. 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.
48. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately on the effective date of the Settlement Agreement.
49. Unless otherwise stated, suspensions, prohibitions, expulsions, restrictions and other conditions or terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

**AGREED TO BY THE RESPONDENT, AT MONTRÉAL, QUÉBEC, THIS APRIL 17, 2013.**

	(s) Guylaine Raby
<b>WITNESS</b> (PLEASE PRINT)	<b>GUYLAINE RABY</b> <b>RESPONDENT</b>

**AGREED TO BY STAFF, AT MONTRÉAL, QUÉBEC, THIS APRIL 19, 2013.**

	(s) Martin Hovington
<b>WITNESS</b> (PLEASE PRINT)	<b>MARTIN HOVINGTON</b> <b>ENFORCEMENT COUNSEL</b> <b>FOR STAFF OF IIROC</b>

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