Unofficial English Translation

Re Maurice

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Jacques Maurice

2019 IIROC 20

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

Hearing: July 16, 2019
Decision: July 16, 2019
Reasons: August 12, 2019

Hearing Panel
Michel Brunet, Chair, Élaine C. Phenix and François Demers
Appearances
Francis Larin, Enforcement Counsel
Julie-Martine Loranger, Counsel for Respondent

DECISION ON SETTLEMENT AGREEMENT

The Settlement Agreement

¶ 1 A Settlement Agreement was entered into on May 14, 2019 between IIROC staff and Jacques Maurice (the Settlement Agreement).

¶ 2 The settlement hearing held before the Hearing Panel was to consider whether, pursuant to Rule 8215 of IIROC's Enforcement, Examination and Approval Rules, it should accept the Settlement Agreement.

¶ 3 The question that arose essentially pertained to the appropriateness of the penalties provided under the Settlement Agreement.

¶ 4 After a brief deliberation, the Hearing Panel informed the parties that it was accepting the Settlement Agreement forthwith, and that the reasons for its acceptance would follow later.

¶ 5 It should be noted that Mr. Jacques Maurice did not personally attend the hearing. He appeared via his counsel, Julie-Martine Loranger.

The contraventions

¶ 6 The contraventions alleged in the Settlement Agreement are as follows:

- **Count 1** – Between February 2012 and March 2016, the Respondent [Jacques Maurice]

recommended the purchase and holding of securities that were not all suitable for his client given the latter's risk tolerance, thus contravening IIROC Dealer Member Rule 1300.1(q);

- **Count 2** – Between January and March 2016, the Respondent handled a written complaint filed by one of his clients, contrary to IIROC Dealer Member Rule 2500B.

The facts

¶ 7 The agreed facts are amply described in the Settlement Agreement appended to this decision. It is therefore unnecessary to repeat them here in full. Suffice it to say, in regard to Count 1, the Respondent admits having purchased, for one of the two companies represented by his client, securities that did not coincide with the risk tolerance factors stipulated in the latter's account, and also admits that a lower credit rating for certain of the securities held meant that these holdings no longer met these risk tolerance factors. The facts detailed in the Settlement Agreement shed useful light on the circumstances that led to the allegations brought against the Respondent, among others: the fact that simultaneous accounts were opened for two companies represented by the Respondent's client; the fact that the investment objectives and the risk factors were initially identical for both accounts; and finally, the fact that the Respondent failed to send an update for one of the companies at the same time as for the other.

¶ 8 As for Count 2, the reader will note upon reading the Settlement Agreement that, essentially, the Respondent is alleged to have met his client, in the company of the Respondent's assistant, to discuss an earlier complaint filed by the client. The Settlement Agreement specifies that the Respondent personally remitted updates to his client, which the latter refused to accept and which the Respondent's employer did not accept.

The penalties stipulated in the Settlement Agreement

¶ 9 The arguments presented by Enforcement Counsel at the Settlement Hearing pertained mainly to the sanctions accepted by Jacques Maurice in the Settlement Agreement, in respect of the contraventions admitted by him:

a. An aggregate fine in the amount of $20,000, as follows:
   - a $10,000 fine for Count 1;
   - a $10,000 fine for Count 2;

b. The obligation to pass the Conduct and Practices Handbook (CPH) exam within sixty (60) days following acceptance of this Settlement Agreement by the Hearing Panel;

c. Costs in the amount of $5,000 payable to IIROC.

¶ 10 The arguments made by Respondent's counsel pertained mainly to the Respondent's lack of a disciplinary record, to the fact that the client was compensated, and to adjustments in the Respondent's team's compliance.

The acceptance of the Settlement Agreement

¶ 11 The Hearing Panel may only accept or reject the Settlement Agreement. It is well established that the Hearing Panel should accept the agreement as long as the penalties it provides fall "within a reasonable range" (see for example, Re Zhang [2013] IIROC 35). The Hearing Panel endorses this principle and finds that, by virtue of the predominant case law, the penalties proposed in the Settlement Agreement are within the bounds of the acceptable. The Hearing Panel was also provided with numerous precedents to guide it in its decision.

¶ 12 Regarding the first Count, IIROC's Enforcement Counsel notably stressed the relevance of the decision in Re M Partners and Isenberg [2018] IIROC 25, which cites the criteria relied upon in Re Milewski [1999]

I.D.A.C.D. No. 17 to define the role of the Hearing Panel that must determine whether to accept or reject a settlement agreement.

¶ 13 In Re Milewski [1999] I.D.A.C.D. No. 17, a District Council considered whether to accept a settlement agreement between a registered representative and the Investment Dealers Association of Canada, the forerunner of IIROC. The allegations were that a registered representative had sold investments to clients that were inappropriate given the clients' stated investment objectives. The penalty proposed was a substantial fine plus disgorgement of commissions. The District Council approved the settlement. It stated that the test to be applied to determine whether it should accept a settlement agreement was the following:

> *Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. A 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.*
>
> *This understanding is reflected in paragraph 20.26 of the By-laws, which authorizes the District Council to "accept", rather than "approve", a settlement agreement. In each case, a District Council must determine appropriateness, but the standards applicable to its doing so on a settlement hearing differ from those in a contested hearing. Thus, the penalties imposed under settlement agreements, while relevant to a District Council exercising its discretion to penalize, provide only limited assistance in a hearing like this one. (p. 9-10)*

¶ 14 Regarding *Re Sawisky* [2017] IIROC 28, it was noted that the facts of the matter resemble those under consideration here, as do the facts in *Re Husebye* [2016] IIROC 21. The respondent in *Re Sawisky* admitted having failed in his duty to learn and remain informed of the essential facts relative to two clients, contrary to IIROC Dealer Member Rule 1300.1(e); in his duty to ensure that a security held in one client's account was suitable for that client, contrary to IIROC Dealer Member Rule 1300.1(r); and in his duty to ensure that his recommendations to two clients were suitable for them, contrary to IIROC Dealer Member Rule 1300.1(q). In that matter which involved only two clients, the respondent had been a registrant in the securities industry without interruption from 1988 to May 2016, and had been employed by the same firm until its merger in 2012.

¶ 15 IIROC counsel in this matter submitted that the assessment of the appropriate penalty in this case should be based upon the decision in *Re Husebye* [2016] IIROC 21. IIROC counsel reviewed the details of the *Husebye* matter, pointing out the similarities and differences between that matter and *Re Sawisky*. In the matter that concerns us, IIROC counsel has reviewed the criteria relied upon in *Re Sawisky*, also noting the similarities and differences, including the limited number of clients, the absence of any evidence of dishonesty or deceit by the Respondent, the Respondent's vast experience, the extent or lack of harm to clients, his lack of personal benefit from his misconduct and his lack of a prior disciplinary record.

¶ 16 In Re Sawisky, the Panel accepted the Settlement Agreement and imposed, among other things, a $10,000 fine and the successful rewrite of the Conduct and Practices Handbook (CPH) exam.

¶ 17 IIROC counsel also remarked that the case law cited by him, on the whole, concerned individuals who had left the industry unlike the case before us, the Respondent being still active within the industry.

¶ 18 Regarding the second Count, which concerns the processing of the complaint filed by the Respondent's client, Enforcement Counsel submitted five decisions to the Hearing Panel, with a particular focus on *Re Moon*

et al [2017] IIROC 42 and *Re Latta* [2014] IIROC 05. The Hearing Panel has retained elements of *Re Latta* mainly, namely the absence of any evidence of dishonesty or deceit, and the respondent's lack of personal benefit or gain from the misconduct. In *Re Latta*, the respondent was ordered to pay a $10,000 fine and costs to IIROC in the amount of $2,000.

¶ 19 Ms. Loranger, counsel for the Respondent Jacques Maurice, observed that the latter has been a registrant for many years, that since the start of his career, he has had but one employer, that Respondent's client had been fully compensated and that the adjustments described in paragraph 30 of the Settlement Agreement had been made to the Respondent's team's compliance to avoid any recurrence of the situation that led to the Settlement Agreement. Respondent's counsel also expressed agreement with the statements by IIROC Counsel regarding the similarity of the facts with those of Re Sawisky and Re Husebye.

¶ 20 The Hearing Panel also considered the general principles outlined in the Sanction Guidelines and the case law, as well as the public interest. It also took into account the necessity of addressing both specific and general deterrence, as well as the considerations outlined in the Guidelines, to determine whether the proposed sanctions are acceptable.

Conclusion

¶ 21 Considering the submissions by counsel for both parties, the precedents cited and the positive factors invoked regarding the conduct of the Respondent, the Hearing Panel concludes that the penalties proposed in the Settlement Agreement are within a reasonable range and accepts the Settlement Agreement.

Dated at Montréal, on August 12, 2019.

Michel Brunet

Élaine C. Phenix

François Demers

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Investment Industry Regulatory Organization of Canada (IIROC) will issue a notice of application to announce that a settlement hearing will be held before a Hearing Panel (the Hearing Panel) to consider whether, pursuant to Rule 8215 of IIROC's Enforcement, Examination and Approval Rules, it should accept a settlement agreement (the Settlement Agreement) between Staff of IIROC (Staff) and Jacques Maurice (the Respondent).

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement in accordance with the terms set forth below.

PART III – AGREED FACTS

3. For purposes of the Settlement Agreement, the Respondent agrees with the facts set out in Part III of this Settlement Agreement.

Registration History

4. The Respondent has been approved as a registered representative with IIROC, as well as its predecessor, the Investment Dealers Association of Canada (IDA), since 1975;

5. The Respondent has been employed with Scotia Capital Inc. throughout the period and his current title

is Senior Wealth Advisor, Director, Wealth Management;

6. The Respondent has no disciplinary history.

Particulars

7. In January 2012, client AG met with the Respondent to open two (2) accounts for two (2) companies that he was representing (Company A and Company B);

8. The investment objectives and risk tolerance factors for the two accounts were the same at the time, and were defined as follows:

	COMPANY A	COMPANY B
Type of supporting document	Account Opening KYCL (client signature required)	Account Opening KYCL (client signature required)
Assigned representative	J. Maurice	J. Maurice
Account Type	Cash Management firm	Cash Management firm
Net liquid assets	$3,000,000	$3,000,000
Fixed assets	0 $	0 $
Total assets	$3,000,000	$3,000,000
Annual income	$1,000,000	$1,000,000
Investment Objectives	100 % income	100 % income
Risk tolerance:	100 % low	100 % low
Date signed by supervisor	Jan. 17, 2012	Jan. 17, 2012
Date signed by representative	Jan. 17, 2012	Jan. 17, 2012
Date signed by clients	Jan. 18, 2012	Jan. 18, 2012

9. The Respondent's team spoke with client AG to obtain his instructions and confirm each trade beforehand, and AG was sent a prospectus after each purchase.

Company A

10. Around the end of November 2012, the account information was updated and approved by the client in regard to the risk tolerance factors for Company A, according to which these factors were henceforth "*50% low, 50% medium*."

Company B

11. Although the risk tolerance factors for both accounts had thus far been the same, the Respondent did not submit a similar change form for Company B at that time;

12. As at March 31, 2016, the account held by Company B with the Respondent consisted of the following securities:

SECURITIES	CREDIT RATING AT PURCHASE	CONTEMPORANEOUS CREDIT RATING	ACQUISITION COST ($)	%
Cash	N/A	N/A	6,396	2.43
BNS Investment savings account	N/A	N/A	18,394	7.00
Allbanc Split Corp. (bought Feb. 26, 2013)	DBRS Pfd-2 y	DBRS Pfd-2 (4mar16)	16,136	6.14
Brookfield Asset MGMT Inc. (March 6, 2012) 4,5 % CUM RT RST CL A PFD S32	DBRS Pfd-2 (low) S&P P-2	DBRS Pfd-2 (low) (May 3, 2016)	25,000	9.52
Manulife Financial Corp NON CUM RT RST Class 1 SR 7 (bought Feb. 14, 2012)	DBRS Pfd-2 (high) S&P P-2	DBRS Pfd-2 (Dec. 17, 2016)	25,000	9.52
Royal Bank of Canada 3,60 % NON CUM RT RST NVCC PFD SR BD (bought Jan. 27, 2015)	DBRS Pfd-2 S&P P-2	DBRS Pfd-2 (July 16, 2015)	10,000	3.81
Transcanada Corp. 4,00 % CUM RED 1ST PFD SHS SR7 (bought Feb. 25, 2013)	DBRS Pfd-2 (low) S&P P-2	DBRS Pfd-2 (low) (June 5, 2015)	25,000	9.52
Subtotal – Low-risk securities			**125,926**	**47.94**
Enbridge Inc. 4,00 % CUM RED RT RST PFD SER H (bought March 22, 2012)	DBRS Pfd-2 (low) S&P P-2	DBRS Pfd-3 (high) (Aug. 20, 2015)	61,760	23.51
Enbridge Inc. 4,00 % CUM RED PFD SHS SER 3 (Bought May 30, 2013)	DBRS Pfd-2 (low) S&P P-2	DBRS Pfd-3 (high) (Aug. 20, 2015)	25,000	9.52
Veresen Inc. 4,4 % CUM RED RT RST PFD SER-A (Bought Feb. 7, 2012)	DBRS Pfd-3 (high) S&P P-3 (high)	DBRS Pfd-3 (Nov. 18, 2015)	25,000	9.52
Northland Power Inc. 5 % CUM RT RST PRF SER-3 (Bought May 15, 2012)	S&P P-3	S&P P-3 (high) Rating increased Nov. 28, 2013 Effective Apr. 25, 2016	25,000	9.52
Subtotal – Medium-risk securities			**136,760**	**52.06**
Total			**262,685**	**100.00**

13. Thus, the purchases made in this account in February 2012 (Veresen Inc.) and in May 2012 (Northland

Power Inc.) did not coincide with the risk tolerance factors stipulated for the latter, as indicated in the account opening form;

14. The business activities of Veresen Inc. and Northland Power Inc. include, notably, the operation of pipelines and the distribution of electricity;

15. Furthermore, as the table in paragraph 12 shows, a lower credit rating in August 2015 for the Enbridge Inc. securities, purchased by the Respondent in March 2012 and May 2013 respectively, meant that these holdings no longer met the risk tolerance factors that were defined when the account was first opened;

16. On or around December 11, 2015, the Respondent sent to client AG an amended account information change form for the account of Company B, which stated that the risk tolerance factors for that account would henceforth be "*35% low, 45% medium and 20% high*";

17. Client AG refused to consent to this change and never signed the amended form.

Complaint Handling

18. On or around December 23, 2015, client AG faxed a letter of complaint to the Respondent, after receiving the change form mentioned above;

19. On or around December 29, 2015, an assistant of the Respondent sent the client AG an acknowledgment of receipt of his complaint and informed AG that he and the Respondent would like to handle it after the Holidays;

20. That same day, the Respondent's assistant emailed a copy of client AG's complaint letter to the Respondent's supervisor;

21. It appears that the supervisor did not see the email in time;

22. On January 22, 2016, the Respondent and his assistant met with the client AG alone, to discuss the complaint;

23. At the meeting, the Respondent affirmed to client AG that the recent account information changes proposed in November 2015, notably regarding the risk tolerance factors for Company B, were erroneous;

24. Consequently, at this meeting, the Respondent gave client AG two new account information change forms regarding Company A and Company B, already signed and filled out by the Respondent, and which showed a risk tolerance of "*100% low*" which, in his opinion, reflected the current composition of the portfolios of both companies.

25. The Respondent's employer did not approve these changes nor did it consider that the composition of the portfolios of companies A and B coincided with a "*100% low*" risk profile;

26. Client AG refused to sign the two change forms submitted by the Respondent and, on or around March 9, 2016, reminded the Respondent and his assistant by email that he still had not received a formal reply to the written complaint that he had filed in December 2015;

27. Between March 10 and 14, 2016, the Respondent replied to client AG by email, stating that the items raised in his complaint had all been addressed at the January 22, 2016 meeting;

28. The Respondent had no further exchanges with client AG after that, once the latter sent a new complaint letter directly to the Respondent's supervisor;

29. Client AG was subsequently duly compensated;

30. Since then, the Respondent has made adjustments to his team's compliance, which he estimates will

help him prevent similar situations from recurring, notably:

a) The Respondent's team is proactive in the application of Portfolio Aid 360 and establishes cross-references between the triggering report and the Portfolio Aid 360 report;

b) At a client meeting, the terms and conditions of the client accounts (MKYC-S) are reviewed to ensure their suitability and update the information;

c) Where circumstances warrant, a comprehensive evaluation is done using form MKYC-S rather than a simple update in the online account management tool.

Two (2) new members have been assigned to the Respondent's team, bringing it to a total of four (4) members, one of whom has been specifically assigned to support the team in compliance matters, working in tandem with the branch management team and the national supervision team.

PART IV – CONTRAVENTIONS

31. By reason of the above-described conduct, the Respondent has contravened Rule 1300.1 (q) and Rule 2500B :

Count 1: Between February 2012 and March 2016, the Respondent recommended the purchase and holding of securities that were not all suitable for his client given the latter's risk tolerance, thus contravening IIROC Dealer Member Rule 1300.1(q);

Count 2: Between January and March 2016, the Respondent handled a written complaint filed by one of his clients, contrary to IIROC Dealer Member Rule 2500B.

PART V – TERMS OF SETTLEMENT

32. The Respondent accepts the following penalties and costs:

a) An aggregate fine in the amount of $20,000, as follows:

- a $10,000 fine for Count 1;
- a $10,000 fine for Count 2;

b) The obligation to pass the Conduct and Practices Handbook Course exam within sixty (60) days following acceptance of this Settlement Agreement by the Hearing Panel.

c) Costs in the amount of $5,000 payable to IIROC.

33. If the Hearing Panel accepts this Settlement Agreement, 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

34. If the Hearing Panel accepts the 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.

35. 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 in Part III of this Settlement Agreement.

PART VII – SETTLEMENT ACCEPTANCE PROCEDURE

36. The Settlement Agreement is conditional on acceptance by the Hearing Panel.

37. The Settlement Agreement shall be presented to a Hearing Panel at a settlement hearing held 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.

38. 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.

39. 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.

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 same allegations or to related allegations.

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

42. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IIROC will post a full 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.

43. 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.

44. 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 – SIGNATURE OF THE SETTLEMENT AGREEMENT

45. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.

46. A fax or electronic copy of any signature will be treated as an original signature.

SIGNED this 8th day of May, 2019.

(s) Witness

Witness

(s) Jacques Maurice

Respondent

SIGNED this 14th day of May, 2019.

(s) Linda Vachet

Witness

(s) Francis Larin

Francis Larin

Senior Enforcement Counsel, on behalf of Enforcement Staff of IIROC