Re Li

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Jin Li

2020 IIROC 28

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

Heard: June 4, 2020 in Toronto, Ontario via teleconference
Decision: June 4, 2020
Reasons for Decision: August 24, 2020

Hearing Panel:
John Lorn McDougall, QC, Chair, William Donegan and Stuart Livingston
Appearance:
Natalija Popovic, Senior Enforcement Counsel
Clarke Tedesco, for Jin Li
Jin Li (present)

DECISION ON ACCEPTANCE OF SETTLEMENT

I. INTRODUCTION

¶ 1 By Notice of Application for Settlement Hearing dated May 14, 2020, the Investment Industry Regulatory Organization of Canada ("IIROC") announced that a hearing would be held on June 4, 2020 by conference call to consider whether a hearing panel ("Hearing Panel") of IIROC should accept a Settlement Agreement dated April 24, 2020 ("Settlement Agreement") entered into by Enforcement Staff of IIROC ("Staff") and the Respondent Jin Li ("Respondent") pursuant to Section 8428 of the Consolidated Enforcement, Examination and Approval Rules ("Consolidated Rules") of IIROC.

¶ 2 IIROC had previously commenced a disciplinary proceeding in respect of the Respondent and alleged, and the Respondent has admitted for the purposes of the Settlement Agreement, that he committed the following contravention of the IIROC Rules:

> Between January and October 2018, the Respondent engaged in discretionary trading contrary to Dealer Member Rule 1300.4.

¶ 3 Dealer Member Rule 1300.4 is as follows:

> 1300.4 A Registered Representative may not exercise discretionary authority over a customer account

unless:

(a) the Dealer Member has designated a Supervisor or Supervisors to be responsible for discretionary accounts;

(b) the customer has given prior written authorization in compliance with Rule 1300.5;

(c) a Supervisor designated under subsection (a) has approved the account as a discretionary account and recorded that approval;

(d) The Registered Representative authorized to effect discretionary trades for the account has actively dealt in, advised on or performed analysis for a period of two years with respect to all types of products which are to be traded on a discretionary basis; and

(e) the account is maintained at the Dealer Member of the Registered Representative.

¶ 4 In the IIROC Staff Submissions ("Written Submissions") Staff stated, quoting from *Bereskin (Re)*, that the role of a hearing panel is to determine whether the agreed sanctions "strike a reasonable balance between fairness to the Respondent in the circumstances and the need to protect the investing public, the industry membership, the integrity of the discipline process, the integrity of the securities markets and prevention of a repetition of the offense."

Written Submissions at para 6

Bereskin (Re) 2010 IIROC 37 at para 5

¶ 5 The Respondent, in the Settlement Agreement at paragraph 17, agrees as follows:

The Respondent agrees to the following sanctions and costs:

a) Fine of $15,000 inclusive of disgorgement;

b) Six months of close supervision upon approval in any capacity with IIROC; and

c) Costs of $1,500.

¶ 6 The Hearing Panel agrees with the Written Submissions that the test to be applied in a settlement acceptance hearing is whether the settlement is proportional to the admitted offence and to the facts and falls within a reasonable range of appropriateness.

¶ 7 After considering the Settlement Agreement and the Written Submissions which, we were advised, were made jointly by counsel for both the parties, as well as full oral submissions made by Staff which were supported by counsel for the Respondent, and following deliberations, the Hearing Panel unanimously accepted the Settlement Agreement. The Hearing Panel made an order to that effect and indicated that Reasons for Decision would follow in due course. These are those Reasons.

II. FACTS

¶ 8 The portions of the Settlement Agreement which are relevant for these Reasons for Decision are:

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.

Overview

4. Between January and October 2018, the Respondent engaged in discretionary trading in that he entered orders for six clients' fee-based accounts ("the Accounts") without obtaining the clients' confirmation regarding price, quantity and time of trade when the accounts were not designated as discretionary accounts.

5. In the case of some of the discretionary trades, the Respondent entered orders for Principal at Risk ("PAR") notes, securities that required pre-trade disclosure of the risks associated with such trading.

Background

6. The Respondent was a Registered Representative with TD Waterhouse Canada Inc. ("TDW") from July 2014 until October 29, 2018 when he resigned as a result of the firm's investigation into the conduct detailed herein.

Respondent's Attestations to TDW

7. In accordance with TDW's policies and procedures, the Respondent signed annual attestations, including in 2018, confirming his acknowledgement of the policies and procedures, which read, in part:

> Discretionary Trading: regulations prohibit trades where the Representative exercises discretion with respect to any element of quantity, security, price, interest rate, or time. Representatives must obtain the specifics of price, quantity, security and timing of the order from the client.

Discretionary Trading

8. Notwithstanding the Respondent's annual attestations, between January and October 2018, he engaged in discretionary trading for the following Accounts:

Client Accounts	Account Opened	Total Discretionary Trades in 2018	Discretionary Trades Requiring Disclosure of PAR Risks
EW	December 2014	1	n/a
FJF O	May to November 2015	26	n/a
KS	November 2014	10	2 of 10
Z	June 2014	12	n/a
PR	June 2015	1	n/a
SWC	February 2015	2	2 of 2

9. Many of the clients listed above resided outside of Canada and in some cases the Respondent had difficulty communicating with them in a timely fashion. In some cases, they had family members that resided in Ontario with whom the Respondent would communicate about trading in the Accounts, however none of the family members had trading authority over the Accounts.

Requirement for Pre-Trade Disclosure for Trading of PAR Notes

10. TDW's policies and procedures required the Respondent to disclose the risks associated with

trading PAR notes prior to entering such orders, including that a client may lose substantially all of their initial investment when purchasing a PAR note and that they may be subject to redemption fees when selling a PAR note.

11. Notwithstanding the requirement for pre-trade disclosure, in the case of two of the Accounts (KS and SWC), the Respondent failed to make such disclosure and entered orders for PAR notes for these clients' accounts on a discretionary basis.

12. The redemption fees resulting from purchases and sales of the PAR notes for these two Accounts totaled approximately $14,790.00.

Consequences of Discretionary Trading

13. As a result of the Respondent's discretionary trading, the Account sustained approximate gains or losses as follows:

EW	$1,656.00 gain
FJF O	$1,280.00 loss
KS	$30,875.00 gain
LZ	$31,648.00 gain
PR	$30.00 loss
SWC	$12,000.00 loss (client was compensated by TDW for the full amount inclusive of redemption fee)

Commissions Earned

14. Between January and October 2018, the Respondent earned net commissions of approximately $1,506.00 for trading in PAR notes for the Accounts.

Additional Factors

15. The Respondent does not have a disciplinary history and has not been employed in the securities industry since October 2018.

PART V – TERMS OF SETTLEMENT

17. The Respondent agrees to the following sanctions and costs:

    a) Fine of $15,000 inclusive of disgorgement;

    b) Six months of close supervision upon approval in any capacity with IIROC; and

    c) Costs of $1,500.

18. 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.

III. ANALYSIS AND REASONS

¶ 9 The IIROC Sanction Guidelines ("Guidelines") provide guidance for hearing panels while they are deliberating as to the appropriate sanction. The Guidelines state that their purpose is as follows:

Purpose of Sanction Guidelines

IIROC is the national self-regulatory organization which oversees all investment dealers and trading

activity on debt and equity marketplaces in Canada.

IIROC sets high quality regulatory and investment industry standards, protects investors and strengthens market integrity while maintaining efficient and competitive capital markets. IIROC carries out its regulatory responsibilities through setting and enforcing rules regarding the proficiency, business and financial conduct of dealer firms and their registered employees and through setting and enforcing market integrity rules regarding trading activity on Canadian equity marketplaces.

The primary purpose of IIROC disciplinary proceedings is to maintain high standards of conduct in the securities industry and to protect market integrity.

The *Sanction Guidelines* are intended to promote consistency, fairness and transparency by providing a framework to guide the exercise of discretion in determining sanctions which meet the general sanctioning objectives.

The *Sanction Guidelines* are intended to assist:

- IIROC Enforcement Staff and respondents in the negotiation of settlement agreements;
- hearing panels in determining whether to accept settlement agreements; and
- hearing panels in the fair and efficient determination of appropriate sanctions after disciplinary hearings.

The determination of the appropriate sanction in any given case is discretionary and a fact specific process. The appropriate sanction depends on the facts of a particular case and the circumstances of the conduct. Hearing panels retain the discretion to impose the sanctions they consider appropriate.

The general principles and key factors set out in the *Sanction Guidelines* are not intended to fetter the discretion of a hearing panel in determining an appropriate sanction.

IIROC Sanction Guidelines, February 2, 2015, page 2

¶ 10 While the Guidelines are intended for hearing panels, and others, dealing with both contested matters and settlement hearings, they are applied in a different manner in each. In contested matters, the objective is to settle on the appropriate sanction. That is the task of the hearing panel which has an unfettered discretion to select the sanction that in its view is most appropriate for the case before it. The primary purpose is to select sanctions which, overall, best achieve the IIROC's regulatory objective to "maintain high standards of conduct in the securities industry and to protect market integrity".

IIROC Sanction Guidelines, *supra,* page 2

¶ 11 On the other hand, a hearing panel dealing with the question of whether to accept a settlement put before it by Staff and the settling parties must follow a different course. In addition to considering whether the terms of the negotiated settlement are appropriate in the sense that, overall, they meet the IIROC regulatory objective, it must also be mindful that its role is limited by the Rules governing settlement approvals.

IIROC Consolidated Rules, Rules 8215 and 8428

¶ 12 When the hearing panel is presented with a settlement the terms of which are ones which the panel objectively would not itself have chosen, it is now settled that the procedure first promulgated in *Re Milewski* should be employed. In that decision, the hearing panel, then a District Council, wrote the following which remains the procedure today:

…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.

Milewski (Re), [1999] IDACD No. 17

¶ 13 Staff in its Written Submissions, with which the Respondent agreed, made the following submission, with which the Hearing Panel is in agreement:

The role of a hearing panel in considering a settlement agreement is to determine whether the agreed sanctions "strike a reasonable balance between fairness to the Respondent in the circumstances and the need to protect the investing public, the industry membership, the integrity of the discipline process, the integrity of the securities markets and prevention of a repetition of the offense." The agreed sanctions in this settlement agreement strike this reasonable balance.

Bereskin (Re) 2010 IIROC 37

¶ 14 The well-known phrase "there is ample room for reasonable disagreement" may be usefully utilized by a hearing panel when it finds itself concerned by the sanctions agreed by Staff and Respondent in the settlement submitted for acceptance by it. Shortly put, if a hearing panel concludes that the proposed settlement is one that is subject to reasonable disagreement, then the settlement should be accepted, other factors being equal. This result is entirely in keeping with the public interest in facilitating settlement and deference to those involved in the settlement process.

¶ 15 The Hearing Panel considered the joint submission that we should be guided by the ruling in *Re Donnelly* which was as follows:

What is fair and reasonable will depend to a large degree on the particular facts and circumstances of a matter. Where both parties to a settlement agreement are represented by counsel, and have the means to undergo a contested hearing, but have reached a settlement, it is unlikely that a panel would ever conclude that the settlement was unfair and not reasonable.

Written Submissions at para 8

Donnelly (Re) 2016 IIROC 23 at para 29

¶ 16 The Hearing Panel is in agreement with most of what the Hearing Panel in *Re Donnelly* found but with one reservation. If it was intended to suggest that the Donnelly hearing panel's statement about the future disposition of similar cases was in any way dispositive, we are in respectful disagreement. Similar cases should be decided without influence of opinions from others as to their proper disposition. We therefore were not able to accept the joint submission of the parties to that effect on this point.

¶ 17 Staff and the Respondent, in paragraph 19 of the Written Submissions, submitted as follows:

It is submitted that the following key factors outlined in the Guidelines may be taken into account in determining whether the agreed sanctions are appropriate in this case:

- The number, size and character of the transactions at issue.
- Whether the respondent engaged in numerous acts and/or a pattern of misconduct.
- Whether the respondent engaged in the misconduct over an extended period of time.
- Extent of harm to clients or other market participants.
- Whether an individual was subject to internal discipline by the Dealer Member.

- The respondent's relevant disciplinary history.

¶ 18 The Hearing Panel considered each of the foregoing factors, as well as the written and oral submissions made in respect of them. In assessing the appropriateness of the agreed sanctions, we considered the following facts to be the most significant:

- The commissions earned were small; the activity appears not to be motivated by personal gain.
- The Respondent's activity involved a small number of clients and occurred over a relatively short period.
- There was client compensation by the employer and, if any, losses were minimal.
- The Respondent acknowledges his breach of the Rules and cooperated fully with Staff.
- The Respondent has been out of the industry since October 29, 2018, and we understood that he intends to return. There were no facts which suggested he would be likely to offend again.

¶ 19 The Respondent retained counsel to advise him and he clearly took the advice he was given. Needless to say, the presence of an experienced lawyer appearing for a respondent is a comfort to a hearing panel.

¶ 20 We were referred to several IIROC discretionary trading cases similar to the present one. Settlement cases involving as they do deference to the public interest in facilitating settlements as well as the limited factual matrix which is, in accordance with the Rules, before a hearing panel, provide limited guidance for subsequent panels.

¶ 21 However, one of the settlement cases relied on by the parties, *Dykeman (Re)*, which involved discretionary trading and agreed sanctions of a fine of $10,000 and costs of $1,500, provided helpful guidance with respect of the primary purpose of a penalty in cases similar to the present one.

¶ 22 The *Dykeman* hearing panel stated as follows:

> In my view, nothing inherent in the Commission's public interest jurisdiction, as it was considered by this Court in Asbestos, supra, prevents the Commission from considering general deterrence in making an order. To the contrary, it is reasonable to view general deterrence as an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventive. Ryan J.A. recognized this in her dissent: "The notion of general deterrence is neither punitive nor remedial. A penalty that is meant to generally deter is a penalty designed to discourage or hinder like behaviour in others" (para 125)
>
> …A penalty that is meant to deter generally is a penalty that is designed to keep an occurrence from happening; it discourages similar wrongdoing in others. In a word, a general deterrent is preventive. It is therefore reasonable to consider general deterrence as a factor, albeit not the only one, in imposing a sanction under s. 1162." [emphasis in original].
>
> *Dykeman (Re)* 2017 IIROC 49 at paras 4, 13, & 15-27

¶ 23 We are satisfied that the agreed sanctions are fair and appropriate. We also concluded that the penalties will provide a general deterrence for members of the investment industry.

¶ 24 While it is perhaps unnecessary to state what is obvious, there being no disparity between the settlement agreed sanctions and the Hearing Panel's view that the sanctions were appropriate, there is no reason for any further analysis regarding the zone of reasonable appropriateness.

IV. CONCLUSION

¶ 25 It was for the foregoing reasons that the Hearing Panel granted its acceptance of the Settlement Agreement shortly after the completion of submissions and issued an order to that effect on June 4, 2020.

DATED this 24 day of August 2020.

John Lorn McDougall

William Donegan

Stuart Livingston

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 Jin Li ("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.

Overview

4. Between January and October 2018, the Respondent engaged in discretionary trading in that he entered orders for six clients' fee-based accounts ("the Accounts") without obtaining the clients' confirmation regarding price, quantity and time of trade when the accounts were not designated as discretionary accounts.

5. In the case of some of the discretionary trades, the Respondent entered orders for Principal at Risk ("PAR") notes, securities that required pre-trade disclosure of the risks associated with such trading.

Background

6. The Respondent was a Registered Representative with TD Waterhouse Canada Inc. ("TDW") from July 2014 until October 29, 2018 when he resigned as a result of the firm's investigation into the conduct detailed herein.

Respondent's Attestations to TDW

7. In accordance with TDW's policies and procedures, the Respondent signed annual attestations, including in 2018, confirming his acknowledgement of the policies and procedures which read, in part:

> Discretionary Trading: regulations prohibit trades where the Representative exercises discretion with respect to any element of quantity, security, price, interest rate, or time. Representatives must obtain the specifics of price, quantity,

security and timing of the order from the client.

Discretionary Trading

8. Notwithstanding the Respondent's annual attestations, between January and October 2018, he engaged in discretionary trading for the following Accounts:

Client Accounts	Account Opened	Total Discretionary Trades in 2018	Discretionary Trades Requiring Disclosure of PAR Risks
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9. Many of the clients listed above resided outside of Canada and in some cases the Respondent had difficulty communicating with them in a timely fashion. In some cases, they had family members that resided in Ontario with whom the Respondent would communicate about trading in the Accounts, however none of the family members had trading authority over the Accounts.

Requirement for Pre-Trade Disclosure for Trading of PAR Notes

10. TDW's policies and procedures required the Respondent to disclose the risks associated with trading PAR notes prior to entering such orders, including that a client may lose substantially all of their initial investment when purchasing a PAR note and that they may be subject to redemption fees when selling a PAR note.

11. Notwithstanding the requirement for pre-trade disclosure, in the case of two of the Accounts (KS and SWC), the Respondent failed to make such disclosure and entered orders for PAR notes for these clients' accounts on a discretionary basis.

12. The redemption fees resulting from purchases and sales of the PAR notes for these two Accounts totaled approximately $14,790.00.

Consequences of Discretionary Trading

13. As a result of the Respondent's discretionary trading, the Accounts sustained approximate gains or losses as follows:

EW $1,656.00 gain

FJF O $ 1,280.00 loss

KS $30,875.00 gain

LZ $31,648.00 gain

PR $30.00 loss

SWC $12,000.00 loss (client was compensated by TDW for the full amount inclusive of redemption fee)

Commissions Earned

14. Between January and October 2018, the Respondent earned net commissions of approximately $1506.00 for trading in PAR notes for the Accounts.

Additional Factors

15. The Respondent does not have a disciplinary history and has not been employed in the securities industry since October 2018.

PART IV – CONTRAVENTIONS

16. By engaging in the conduct described above, the Respondent committed the following contravention of IIROC Rules:

    Between January and October 2018, the Respondent engaged in discretionary trading, contrary to Dealer Member Rule 1300.4.

PART V – TERMS OF SETTLEMENT

17. The Respondent agrees to the following sanctions and costs:

    a) Fine of $15,000 inclusive of disgorgement;

    b) Six months of close supervision upon approval in any capacity with IIROC; and

    c) Costs of $1500.

18. 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

19. 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.

20. 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

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

22. 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.

23. 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.

24. 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.

25. 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.

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

27. 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.

28. 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.

29. 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

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

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

DATED this "24th" day of "April", 2020.

_____	"Jin Li" _____
Witness	Jin Li
"Ben Fitzgerald" _____	"Natalija Popovic" _____
Ben Fitzgerald, Investigator	Natalija Popovic Enforcement Counsel on behalf of Enforcement Staff of the Investment Industry Regulatory Organization of Canada

The Settlement Agreement is hereby accepted this "4" day of "June", 2020 by the following Hearing Panel:

Per: "John Lorn McDougall"
Panel Chair

Per: "William Donegan"
Panel Member

Per: "Stuart Livingston"
Panel Member