

Unofficial English Translation

Re Milot

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

and

Paul Milot

2014 IIROC 55

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

Hearing held in Montréal, on October 31, 2014
Decision rendered on November 13, 2014

Hearing Panel

Me Claude Bisson, Chair, Mr. Michel Duchesne and Mr. Jean W. Jeannot

Appearances

Me Martin Hovington, Enforcement Counsel

Mr. Paul Milot

DECISION ON SETTLEMENT AGREEMENT

¶ 1 This decision concerns a Settlement Agreement signed and submitted pursuant to Rule 14 and Rule 15 of the Rules of Practice and Procedure;

¶ 2 This Settlement Agreement signed on September 29 and October 7, 2014 is appended hereto in its original to form part of this decision as though herein cited at length;

¶ 3 Mr. Milot, age 45, has worked in the financial services industry for nearly 20 years, the last eight years as a registered representative under the authority of the Petitioner, first for PEAK securities Inc., and then, for the past seven years, for Industrial Alliance Securities Inc.;

¶ 4 In 2003, while he was under the jurisdiction of the Chambre de la sécurité financière, Mr. Milot was disciplined by the latter for falsifying the signature of two clients in order to liquidate their portfolio. Mr. Milot was under strict supervision from early 2007 until March 2008;

¶ 5 The period covered by this complaint runs from September 2007 to December 2008. Until May 31, 2008, the Investment Dealers Association of Canada had jurisdiction, after which, the present Petitioner took over on June 1, 2008. The regulatory provisions have remained the same;

¶ 6 This complaint concerns the portfolio of CJ, a physician in limited practice, around 48 years of age, who

was the Respondent's client from November 2006 to November 2009;

¶ 7 As appears from paragraph 5 of the Settlement Agreement, the contraventions to which Respondent admits are:

- 1) Between September 2007 and December 2009, Respondent failed to use due diligence to obtain sufficient knowledge of the features and risks inherent in leveraged Exchange-Traded Funds (ETFs) before recommending their purchase to his client, contrary to IIROC Dealer Member Rule 1300.1(a) (Regulation 1300.1(a) of the IDA prior to June 1, 2008);
- 2) Between September 2007 and December 2009, Respondent failed to use due diligence to ensure that his recommendations to buy, sell and/or hold securities were suitable for his client, contrary to IIROC Dealer Member Rule 1300.1(q) (Regulation 1300.1(q) of the IDA prior to June 1, 2008);

¶ 8 The agreed sanction is stated in paragraphs 6 and 7 of the Settlement Agreement:

"6. Staff and the Respondent have accepted the following terms of settlement:

- a) an aggregate fine in the amount of \$20,000;
- b) six (6) months of close supervision;
- c) successful completion of the Conduct and Practices Handbook Course within one (1) year following the decision to be rendered in the matter of this settlement agreement;

7. The Respondent agrees to pay IIROC costs in the amount of \$2,500. "

¶ 9 For the period covered by this complaint, CJ's client file contained both investment objectives and risk tolerance;

¶ 10 First, the investment objectives were 30% to 50% income and 50% to 70% growth; then, in August 2008, they went to 10% to 40% and 60% to 90% respectively;

¶ 11 As for the risk tolerance, it ranged from 70% medium risk and 30% high risk, whereas when the account was opened, the risk tolerance was 80% and 20% respectively;

¶ 12 The adventure ended in the manner described in paragraph 27 of the Settlement Agreement:

"27. CJ was a client of the Respondent until November 2009, on which date she transferred her holdings to another dealer member, namely National Bank Financial Inc., after her portfolio incurred a loss of \$92,526, notably due to the purchase and holding of leveraged ETF's and a decline in the market price of the Prometic security;"

¶ 13 Paragraphs 30 to 36 of the Settlement Agreement reveal the Respondent's lack of knowledge of the high risk inherent in leveraged ETFs as well as their obvious unsuitability for CJ;

¶ 14 As for the Prometic Life Sciences Inc. security, it eventually constituted 20% of CJ's portfolio, while the ETFs constituted approximately 30%;

¶ 15 In consideration of Mr. Milot's dealings, which led to a \$92,526 loss for CJ, \$75,000 was reimbursed by the insurer of Respondent's employer, and \$5,000 by the employer, to cover the deductible;

¶ 16 M^c Hovington represented that Respondent's cooperation had been "unparalleled", emphasizing that the latter had fully realized his misconduct;

¶ 17 Moreover, at the hearing on October 31, Mr. Milot spoke to express his regret and to say that, had he been better informed, he would never have advised his client to make these investments which proved to be so disastrous;

¶ 18 Regarding the sanction, M^c Hovington submitted close to a dozen hearing panel decisions;

¶ 19 Some of these include a prohibition from practicing the profession for various periods of time. At the root of such prohibitions, we see cases in which the respondent showed no remorse, others where the misconduct itself was challenged, cases of considerable financial loss and cases of high risk investments making up a very large percentage of the portfolio;

¶ 20 We are of the opinion that the overall penalty is within the bounds of reasonableness;

¶ 21 In closing, it is appropriate to add that Mr. Milot has shown concrete signs of his commitment to having a professional conduct that is irreproachable. On this subject, we read in paragraphs 47 to 49 of the Settlement Agreement:

“47. Since 2012, Respondent has been providing his branch manager with a signed letter from his client for every unsolicited purchase of the Prometic security and is willing to commit to continuing in this manner for the six-month period of supervision;

48. In addition, the Respondent records every conversation with his clients when discussing a trade with them;

49. Since 2009, the Respondent no longer trades in leveraged ETFs.”

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

Montréal, November 13, 2014

Michel Duchesne

Jean W. Jeannot

Claude Bisson, Chair

SETTLEMENT AGREEMENT

I. BACKGROUND

1. The Enforcement Staff of IIROC and the Respondent, Paul Milot, consent and agree to the settlement of these matters 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 Paul Milot.
3. 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

4. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.
5. The Respondent admits to the following contraventions of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:
 - 1) Between September 2007 and December 2009, Respondent failed to use due diligence to obtain sufficient knowledge of the features and risks inherent in leveraged Exchange-Traded Funds (ETFs) before recommending their purchase to his client, contrary to IIROC Dealer Member Rule 1300.1(a) (Regulation 1300.1(a) of the IDA prior to June 1, 2008);
 - 2) Between September 2007 and December 2009, Respondent failed to use due diligence to ensure that his recommendations to buy, sell and/or hold securities were suitable for his client, contrary to IIROC Dealer Member Rule 1300.1(q) (Regulation 1300.1(q) of the IDA prior to June 1, 2008);

6. Staff and the Respondent have accepted the following terms of settlement:
 - a) an aggregate fine in the amount of \$20,000;
 - b) six (6) months of close supervision;
 - c) successful completion of the Conduct and Practices Handbook Course within one (1) year following the decision to be rendered in the matter of this settlement agreement;
7. The Respondent agrees to pay IIROC costs in the amount of \$2,500.

III. STATEMENT OF FACTS

(i) Acknowledgment

8. 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

9. The Respondent was the investment advisor of the client CJ from November 2006 to November 2009;
10. During this period, Respondent recommended the purchase of high-risk speculative securities to his client CJ, without sufficient knowledge of the features and risks inherent in leveraged Exchange-Traded Funds (ETF) and without taking into account this client's investor profile, notably as regards leveraged Exchange-Traded Funds and volatile securities;
11. During this same period, Respondent recommended that the client CJ continue to hold these speculative securities, contrary to said client's investor profile.

THE REPRESENTATIVE PAUL MILOT

12. From November 1995 to May 2006, Respondent was approved as a group savings plan representative; in this capacity, he worked in turn for CIBC, Laurentian Financial Services Inc. and PEAK Investment Services Inc.
13. During his employment at PEAK Investment Services Inc. from November 2002 to May 2006, Respondent was the subject of a disciplinary complaint under the terms of which he was found guilty in July 2003, by the disciplinary committee of the Chambre de la sécurité financière, of having falsified the signature of two of his clients in order to liquidate their portfolio;
14. In June 2006, the Respondent submitted to the IDA an Application for Registration/Approval as a mutual funds representative with PEAK Securities Inc. (PEAK), which application was approved with a condition of six (6) months of strict supervision in consideration of his disciplinary history;
15. In November 2006, Respondent submitted to the IDA an Application for Registration/Approval as a representative with unrestricted practice with PEAK; the IDA approved the application while maintaining the condition of strict supervision for a minimum of six months;
16. In June 2007, Respondent joined Industrial Alliance Securities Inc. (IAS) as an investment advisor, still under strict supervision; the condition of strict supervision was finally lifted in March 2008.

THE CLIENT CJ

17. The client was a physician, approximately 48 years old, and practicing part-time at a medical clinic;
18. CJ became a client of the Respondent in the early 2000s, when the latter acquired a clientele of physicians; at the time, CJ only held mutual funds;
19. Her income was approximately \$85,000 a year and her net holdings totaled around \$220,000;
20. The RRSP account that CJ opened with PEAK in November 2006 was her first investment account, as she had never done any trading on equity markets before;

21. Her investor profile, as recorded in her client file, indicated an 80% medium risk tolerance and a 20% high risk tolerance;
22. As part of Respondent's transfer to IAS, CJ signed a new client application form in July 2007, in which the risk tolerance proportions remained 80%-20%;
23. Her stated investment objectives were 30% to 50% income, and 50% to 70% long-term growth;
24. In August 2008, the client CJ's investment objectives and risk tolerance were updated in her account; henceforth, her investment objectives would be oriented towards a portfolio ranging between 10% to 40% income securities and 60% to 90% long-term growth securities;
25. As for her risk tolerance, it was modified to show a 70% medium risk tolerance and a 30% high risk tolerance;
26. On the updated application, the client CJ's annual income was now in the order of \$65,000;
27. CJ was a client of the Respondent until November 2009, on which date she transferred her holdings to another dealer member, namely National Bank Financial Inc., after her portfolio incurred a loss of \$92,526, notably due to the purchase and holding of leveraged ETF's and a decline in the market price of the Prometic security;
28. In May 2012, CJ forwarded a complaint to IAS, expressing doubts about the suitability of some of the investments recommended by the Respondent while the latter was her investment advisor.

RECOMMENDATIONS TO PURCHASE LEVERAGED ETFs

29. Respondent began recommending the purchase of leveraged Exchange-Traded Funds to his client CJ in October 2007;
30. At the time, Respondent mistakenly believed that leveraged ETFs worked similarly to mutual funds and that, accordingly, the risk was similar if not less;
31. On the contrary, leveraged ETFs are high risk and highly speculative financial products and are not for investors whose main objective is a regular income or the preservation of capital; investors must be prepared to lose a large portion or even all of the money that they invest in an ETF;
32. ETFs are subject to increased volatility as they seek to achieve the multiple or inverse (opposite) multiple of the daily performance of an underlying index;
33. In the course of his interview with IIROC, Respondent moreover admitted to not understanding how leveraging affects an ETF, and that he did not know at the time that this financial product was high risk;
34. It was in this context that the Respondent began trading leveraged ETFs on behalf of his client CJ;
35. From October 2007 to January 2009, Respondent allocated a substantial portion of the client CJ's portfolio to these leveraged ETFs, in a proportion approaching a third of the portfolio in May and June 2008;
36. Given the client CJ's lack of investment knowledge, combined with the Respondent's lack of knowledge of this financial product, the purchase of leveraged ETFs could not have been suitable for this client.

PROMETIC LIFE SCIENCE INC.

37. As part of his investment strategy, Respondent recommended to his client CJ, in November 2007, the purchase of the speculative security Prometic Life Science Inc. (Prometic), a company that developed and marketed a filter that purifies the blood;
38. At the material time, the Prometic security was trading at around \$0.60;
39. From November 2007 to August 2008, Respondent executed several purchases of the Prometic security for his client CJ;

40. Between April 2008 and August 2008, Prometic shares represented nearly 20% of the client CJ's portfolio;
41. In September 2008, the value of the Prometic security tumbled to below \$0.20 which caused a loss of more than \$20,000 for the client CJ;
42. The purchase of Prometic shares constituted a high risk transaction.

SUITABILITY ANALYSIS OF THE PORTFOLIO

43. Moreover, the suitability analysis below shows the unsuitability of these placements given the client's profile:

Portfolio Analysis Account 3EG577T (CJ) September 2007 to November 2009										
		Sep 07	Oct 07	Nov 07	Dec 07	Jan 08	Feb 08	Mar 08	Apr 08	May 08
RRSP 3EG577T										
Cash		\$204,893	\$163,668	\$111,777	\$130,007	\$91,359	\$47,295	\$116,544	\$44,607	\$21,430
Shares										
POWER CORP CDN	POW		\$10,117	\$10,117	\$10,020	\$8,875	\$8,602	\$8,497	\$8,825	\$8,400
YELLOW MEDIA	YLO.UN	\$9,913	\$10,474	\$10,302	\$10,320	\$8,968	\$8,034	\$7,934	\$8,403	\$7,743
ULTRASHORT DOW30 PROSHRS	DXD		11 071 \$							
PROMETIC LIFE SCIINC	PLI			\$24,400	\$22,400	\$17,200	\$40,000	\$32,800	\$53,950	\$53,300
PRSHARES UNLTRASHORT BASC	SMN								\$25,094	\$21,264
PRSHARES UNLTRASHORT REAL	SRS								\$25,976	
PRSHARES ULTRA FTSEIXINH	FXP			\$35,242						
PRSHARES TR UNLTRA	UYG				\$20,515	\$41,033	\$32,968			\$44,118
PRSHARES UNLTRA SHORT O&G	DUG						\$29,968			
HB NYMEX NATL GAS BULL+A	HNU									
Other Securities										
CI OBL CDN SIN	CIG847					\$19,900	\$20,078	\$20,301	\$20,172	\$20,027
FID OBL CDN SIN	FID533					\$19,149	\$19,366	\$19,487	\$19,354	\$19,315
FIO EQUIL CDN/S/N/FRAC	FID 582		\$20,228	\$19,720	\$19,920					
		\$214,806	\$215,558	\$211,558	\$213,182	\$206,484	\$206,311	\$205,563	\$206,381	\$19,617
High risk KYC Actual Variance		20% 0% 0%	20% 5% 0%	20% 28% 8%	20% 20% 0%	20% 28% 8%	20% 50% 30%	20% 16% <1%	20% 5% 3%	20% 61% 4%
		Jun 8	Jul 8	Aug 8	Sep 8	Oct 8	Nov 8	Dec 8	Jun 9	Nov 9
RRSP 3EG577T										
Cash		\$21,584	\$21,607	\$50,480	\$63,874	\$16,651	\$6,764	\$7,033	\$7,639	\$22,280
Shares										
POWER CORP CON	POW	\$7,797	\$7,802	\$8,162	\$7,790	\$6,550	\$6,017	\$5,552	\$6,710	
YELLOW MEDIA	YLO.UN	\$6,894	\$7,106	\$7,947	\$7,939	\$7,031	\$6,181	\$5,536	\$4,886	
ULTRASHORT DOW30 PROSHRS	DXD									
PROMETIC LIFE SCI INC	PLI	\$48,750	\$40,950	\$44,200	\$24,700	\$14,300	\$14,300	\$16,900	\$16,900	
PRSHARES UNLTRASHORT BASC	SMN	\$22,048	\$25,300							
PRSHARES UNLTRASHORT REAL	SRS									
PRSHARES ULTRA FTSEIXINH	FXP									
PRSHARES TR UNLTRA	UYG	\$30,783	\$33,453	\$33,500		\$29,238	\$18,830	\$17,485	\$10,881	
PRSHARES UNLTRA SHORT O&G	DUG									
HB NYMEX NATL GAS BULL+A	HNU				\$11,940	\$8,350	\$6,880	\$4,880	\$1,402	
Other Securities										
CI OBL CDN SIN	CIG847	\$20,071	\$20,194	\$20,231	\$29,716	\$29,117	\$29,607	\$30,152	\$30,152	
FID OBL CDN SIN	FID533	\$19,292	\$19,416	\$19,546	\$19,018	\$18,875	\$19,280	\$19,808	\$20,361	
FID EQUIL CON/SIN/FRAC	FID 582									
		\$177,219	\$175,828	\$184,066	\$164,977	\$130,112	\$117,859	\$117,346	\$108,931	\$122,280
High risk KYC Actual Variance		20% 57% 37%	20% 57% 37%	30% 42% 12%	30% 22% -8%	30% 40% 10%	30% 34% 4%	30% 33% 3%	30% 27% -3%	30% 0% 0%

44. Given the client CJ's profile recorded in the client file, which showed a 20% high risk tolerance until August 2008 and a 30% high risk tolerance thereafter, it is clear that the concentration of speculative Prometic shares and the substantial purchase of leveraged ETF's could not have been suitable for her;
45. The Respondent consequently failed to use due diligence to ensure that his recommendations to buy and sell securities were suitable for his client CJ, and consistent with her investor profile.

OTHER CONSIDERATIONS

46. In November 2012, CJ received an amount of \$75,000 from IAS in settlement of her claim;
47. Since 2012, Respondent has been providing his branch manager with a signed letter from his client for every unsolicited purchase of the Prometic security and is willing to commit to continuing in this manner for the six-month period of supervision;
48. In addition, the Respondent records every conversation with his clients when discussing a trade with them;
49. Since 2009, the Respondent no longer trades in leveraged ETFs.

IV. TERMS OF SETTLEMENT

50. 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.
51. The Settlement Agreement is subject to acceptance by the Hearing Panel.
52. The Settlement Agreement shall become effective and binding upon the Respondent and Staff from the date of its acceptance by the Hearing Panel.
53. 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.
54. 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.
55. 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.
56. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
57. 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.
58. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately on the effective date of the Settlement Agreement.
59. 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 Varenne (Québec), on September 29, 2014.

_____ «Witness»

WITNESS

_____ «Paul Milot

PAUL MILOT

RESPONDENT

AGREED TO by Staff, at Montréal, Québec, this October 7, 2014.

_____ «Linda Vachet»

LINDA VACHET

WITNESS

_____ «Martin Hovington»

MARTIN HOVINGTON

Enforcement Counsel,
for Staff of IIROC