

Re Trudel

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Sylvain Trudel

2021 IIROC 27

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

Electronic Hearing: September 22, 2021 in Montréal, Québec
Decision: November 17, 2021

Hearing Panel

Stéphane Rousseau Ad. E., Chair, Yves Julien and Isabelle Primeau

Appearances

Fanie Dubuc, Enforcement Counsel

Yves Robillard, for Sylvain Trudel

Sylvain Trudel (present)

DECISION ON SETTLEMENT AGREEMENT

INTRODUCTION

¶ 1 A settlement agreement was signed between IIROC and the Respondent on July 5, 2021.

¶ 2 Pursuant to Rule 8200 and Rule 8400 of IIROC's Consolidated Enforcement, Examination and Approval Rules [hereinafter the Consolidated Rules], the Settlement Agreement was presented to the Hearing Panel at a hearing held on September 22, 2021. In addition to the legal counsel for both parties, the Respondent was present at the hearing.

¶ 3 Due to the pandemic that was raging at the time, the Hearing Panel ordered an electronic hearing, in this instance by videoconference via the Webex platform. An electronic hearing is permitted pursuant to Rule 8409 the Consolidated Rules.

¶ 4 At the hearing, counsel for both parties jointly recommended acceptance of the Settlement Agreement. The Settlement Agreement, which is appended to this decision and forms an integral part hereof, is consistent with the provisions of Rule 8215 of the Consolidated Rules.

¶ 5 After hearing the submissions of the legal counsel for both parties, the Hearing Panel deliberated. Subsequently, the Hearing Panel handed down its decision to accept the proposed Settlement Agreement. The Hearing Panel ruled that it would publish its reasons at a later date.

¶ 6 This decision states the reasons for accepting the Settlement Agreement.

CONTRAVENTION

¶ 7 The Respondent admits that, in March 2019, he executed discretionary trades, contrary to Rule 1300.4 of IIROC's Dealer Member Rules.

PENALTIES

¶ 8 The Settlement Agreement proposes the following penalties:

- a) A fine in the amount of \$10,000;
- b) An additional \$1,000 in costs, payable to IIROC;

If the settlement is accepted, the Respondent undertakes to pay the above-mentioned sums, a total of \$11,000, within 30 days following its acceptance.

ROLE OF THE HEARING PANEL

¶ 9 A hearing panel has the authority to accept or reject a settlement agreement. In exercising its authority, the hearing panel has a duty to ensure that the settlement agreement and the proposed penalties fall within a reasonable range of appropriateness.¹ This analysis is performed in consideration of the primary purpose of IIROC disciplinary proceedings, which is to "maintain high standards of conduct in the securities industry and to protect market integrity and improve overall business standards and practices."²

¶ 10 In the analysis of this Settlement Agreement, the Hearing Panel intends to abide by the principle stated in *Re Maurice* and *Re M Partners and Isenberg*, submitted by counsel for IIROC, which says that a hearing panel may not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.³ On this score, the Hearing Panel echoes the observations expressed in *Re M Partners and Isenberg* concerning the threshold of seriousness that must be reached in order to reject a settlement agreement: "a joint submission in the regulatory context would be rejected only where the proposal, if accepted, would lead to the conclusion that the regulatory scheme had broken down or was otherwise not in the public interest."⁴

¶ 11 With this in mind, to assess whether the settlement and penalties fall within a reasonable range of appropriateness, the Hearing Panel must consider the nature and the seriousness of the contravention, as well as the circumstances. This assessment is done in light of the dual role of disciplinary sanctions: they constitute "not only a specific sanction against a contravention to the Rules but also a means that should serve as deterrence."⁵ The hearing panel also considers the principles and key factors stated in *IIROC Sanction Guidelines* [hereinafter the Guidelines]. Finally, it examines the penalties ordered in decisions handed down in similar cases.

¶ 12 Before proceeding with its analysis of the proposed penalty in accordance with these criteria, the Hearing Panel wishes to summarize the agreed-upon facts outlined in the settlement agreement.

¹ *Maurice (Re)*, 2019 IIROC 20, par. 13, citing *Milewski (Re)*, [1999] I.D.A.C.D. No. 17.

² *Kloda (Re)*, 2016 IIROC 50, par. 13.

³ *M Partners and Isenberg (Re)*, 2018 IIROC 25; *Maurice (Re)*, 2019 IIROC 20.

⁴ *M Partners and Isenberg (Re)*, 2018 IIROC 25, par. 23, citing *Jacob (Re)*, 2017 IIROC 17.

⁵ *Kloda (Re)*, 2016 IIROC 50, par. 14.

FACTS

¶ 13 From November 2010 to May 2019, the Respondent was a registered representative employed with BMO Nesbitt Burns Inc. (BMO), an IIROC-regulated firm.

¶ 14 On or around March 15, 2019, the Respondent placed 47 Good Till Date buy orders (hereinafter, the buy orders) for Shock Wave Medical Inc. (SWAV) stock, with a limit price of \$31.00. On or around March 19, 2019, the Respondent placed one (1) buy order for SWAV stock, with a limit price of \$31.00. The Respondent therefore placed a total of 48 buy orders in the accounts of 48 clients.

¶ 15 At the time the orders were entered, the SWAV security was trading at a higher price than the limit price of \$31.00 set by the Respondent.

¶ 16 All of the buy orders were executed between March 28 and April 3, 2019.

¶ 17 The Respondent admits that when he placed the buy orders in question, he had not agreed on a specific price within the limit price, or an exact trading date, with his clients beforehand. At the time the orders were entered, he was anticipating that the SWAV security would dip temporarily and then trade at a higher price in the medium term. With this scenario in mind, he placed the buy orders to give himself time to communicate with his clients after the orders were entered and agree with them on the final price and date.

¶ 18 The Respondent never had approval to manage “discretionary” accounts, and the client accounts were never approved and accepted as such beforehand.

¶ 19 The clients concerned suffered no losses and no complaint was lodged regarding the Respondent’s conduct.

¶ 20 The Respondent did not generate commissions on the trades in question since the client accounts concerned were fee-based accounts.

¶ 21 Following these events, in spring 2019, BMO launched an internal investigation concerning the trades in question. On May 7, 2019, pursuant to the internal investigation, the Respondent was dismissed from his position at BMO.

¶ 22 The Respondent admits having executed discretionary trades in March 2019, contrary to IIROC Dealer Member Rule 1300.4.

¶ 23 On May 21, 2019, the Respondent was hired by another IIROC-regulated firm, with whom he is still employed. The Respondent agreed, as a condition of his employment, to retake the Conduct and Practices Handbook (CPH) Course and to submit to strict supervision of his activities.

¶ 24 Accordingly, in January 2020, the Respondent retook the Conduct and Practices Handbook (CPH) Course. From June 2019 to April 2020, the Respondent was under strict supervision of his activities.

¶ 25 Thereafter, the Respondent was under close supervision from May 2020 until June 2021. After an internal evaluation of the Respondent’s performance, the close supervision was ended with IIROC’s approval.

ANALYSIS

¶ 26 The purpose of IIROC Sanction Guidelines is 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.”⁶ Specifically, the Sanction Guidelines are intended to assist hearing panels in the fair and efficient determination of appropriate sanctions. However, it should be noted that the Sanction Guidelines are

⁶ *Sanction Guidelines*, February 2, 2015, p. 2.

not binding on the hearing panels.

¶ 27 The Sanction Guidelines are divided into two parts. Part I lays out the sanction principles (the Principles). Part II identifies the key factors in determining sanctions. The Hearing Panel intends to refer to these principles and key factors, as well as to the case law, in the exercise of its discretionary authority.

¶ 28 In the matter before us, counsel for IIROC invited the Hearing Panel to consider the facts of the matter in light of the Principles of the Sanction Guidelines when analyzing the fairness of a penalty. Having considered the submissions of counsel for both parties, the Hearing Panel makes the following observations.

¶ 29 First, disciplinary sanctions are preventative in nature. Their end purpose is to protect the investing public, strengthen market integrity, and improve overall business standards and practices. From this perspective, sanctions must target specific deterrence as well as general deterrence. In short, sanctions must prevent and discourage future misconduct by the respondent and deter others from engaging in similar misconduct.

¶ 30 Secondly, disciplinary sanctions should be more severe for respondents with prior disciplinary records. In the matter before us, the Respondent, who has been a registered representative since 2010, has no such disciplinary record.

¶ 31 Thirdly, the Principles state that for multiple violations, the total or cumulative sanction should appropriately reflect the totality of the misconduct. In the present matter, the Hearing Panel finds that the Respondent placed buy orders for one security in the accounts of 48 clients. While the number of orders is high, the event is isolated in time, extending over a period of four days, which does not reflect a pattern of misconduct.

¶ 32 Fourthly, the Hearing Panel notes that the Principles mention that sanctions should ensure that a respondent does not financially benefit as a result of the misconduct. In this matter, the facts presented indicate that the Respondent derived no such benefit.

¶ 33 Finally, the Principles point out that sanctions should be tailored to the misconduct at issue in each case. As a corollary, this implies a review of the nature of the misconduct, as well as both the aggravating and mitigating factors and the degree of responsibility by the respondent.

¶ 34 In this respect, while recognizing that facts that are not contained in the settlement agreement must not be disclosed to the hearing panel without the consent of all parties⁷, the Hearing Panel finds that the matter presented was somewhat succinct, being notably concerned with the interaction between the Respondent and his clients in connection with the placed orders. Therefore, in light of the submissions, the Hearing Panel can find only one aggravating factor in this matter, namely the number of trades executed.

¶ 35 Additionally, the mitigating factors include the absence of losses to the clients, the absence of any complaints filed by them, and the absence of any financial benefit to the Respondent.

¶ 36 Similarly, in its examination of the penalties provided in the Settlement Agreement, the Hearing Panel considers relevant the Respondent's dismissal⁸, followed by the conditions imposed by the firm that hired the Respondent after these events, namely retaking the CPH course, the strict supervision, and then the close supervision, which was in fact lifted with IIROC's approval.

¶ 37 Counsel for IIROC also referred the Hearing Panel to the case law concerning the contravention of IIROC Rule 1300.4 and Rule 1300.5, in order to emphasize the guidelines relating to the reasonable range of

⁷ Rule 8428 of the Consolidated Rules.

⁸ *Re Reid & Reid*, 2020 IIROC 4.

appropriateness of the penalty proposed in this Settlement Agreement.

¶ 38 Regarding the Principles and the case law submitted, taking into account the Respondent's cooperation, which was emphasized by counsel for both parties, the Hearing panel is of the opinion that the penalty of a fine of \$10,000, with costs in the amount of \$1000, falls within a reasonable range of appropriateness given the circumstances of the matter.

CONCLUSION

¶ 39 In conclusion, the Hearing Panel is of the opinion that the Settlement Agreement and the penalty it decrees fall within a reasonable range of appropriateness given the circumstances of the matter.

¶ 40 Consequently, and as was decided at the hearing, the Hearing Panel accepts and confirms the Settlement Agreement, the text of which is appended hereto.

Dated at Montréal, Québec this 17th day of November 2021.

Stéphane Rousseau

Yves Julien

Isabelle Primeau

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 the IIROC Enforcement, Examination and Approval Rules, the Hearing Panel should accept a settlement agreement (the Settlement Agreement) between IIROC Staff (Staff) and Sylvain Trudel (the 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.

Registration History

4. From November 2010 to May 2019, the Respondent was a registered representative employed by BMO Nesbitt Burns Inc. (BMO), an IIROC-regulated firm.
5. In spring 2019, BMO undertook an internal investigation concerning the trades in question in the matter before us.
6. On May 7, 2019, pursuant to said internal investigation, the Respondent was dismissed from his position at BMO.
7. On May 21, 2019, the Respondent was hired by National Bank Financial Inc. (NBF), an IIROC-regulated firm.

8. The Respondent has been employed as a registered representative with NBF since that date.
9. As a condition of his employment with NBF, the Respondent agreed to retake the Conduct and Practices Handbook Course (CPH) and to submit to strict supervision of his activities.
10. Accordingly, the Respondent retook the Conduct and Practices Handbook Course (CPH) in January 2020.
11. From June 2019 to April 2020, the Respondent was under strict supervision with respect to his activities at NBF. The Respondent is now under close supervision and has been since May 2020.

Particulars

Good Till Date orders for SWAV security

12. On or around March 15, 2019, the Respondent placed 47 Good Till Date (GTD) buy orders (hereinafter, the buy order(s)) for Shock Wave Medical Inc. (SWAV) stock, with a limit price of \$31.00.
13. On or around March 19, 2019, the Respondent placed one (1) buy order for SWAV stock, with a limit price of \$31.00.
14. The Respondent therefore placed 48 buy orders in the accounts of 48 clients.
15. Between March 15 and March 19, 2019, at the time the orders were entered, the SWAV security was trading at a higher price than the limit price of \$31.00 set by the Respondent.
16. According to the Respondent, at the time the orders were entered, he was anticipating that the SWAV security would dip temporarily and then trade at a higher price in the medium term.
17. All of the buy orders were executed between March 28 and April 3, 2019.

Discretionary trades

18. The Respondent admits that when he placed the buy orders in question, he had not agreed on a specific price within the limit price or an exact trading date with his clients beforehand.
19. According to the Respondent, he placed these buy orders to give himself time to communicate with his clients after the orders were entered and agree with them on the final price and date.
20. The Respondent was never approved by IIROC to handle “discretionary” accounts, and the client accounts were never approved and accepted as such beforehand.
21. The clients concerned suffered no losses and no complaint was lodged regarding the Respondent’s conduct.
22. The Respondent did not generate commissions on the trades in question since the client accounts concerned were fee-based accounts.

PART IV – CONTRAVENTION

23. By engaging in the above-described conduct, the Respondent admits to having committed the following contravention of IIROC’s Rules:

In March 2019, the Respondent executed discretionary trades, contrary to IIROC Dealer Member Rule 1300.4.

PART V - TERMS OF SETTLEMENT

24. The Respondent agrees to the following sanctions and costs:
 - a) a fine of \$10,000;
 - b) costs in the amount of \$1,000.
25. If the Hearing Panel accepts the Settlement Agreement, the Respondent undertakes to pay the above-mentioned amounts, namely the sum of \$11,000, within 30 days of such acceptance, unless Staff and the Respondent agree otherwise.

PART VI – STAFF COMMITMENT

26. 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.
27. 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 – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT

28. The Settlement Agreement is subject to acceptance by the Hearing Panel.
29. 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.
30. 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.
31. 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.
32. 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.
33. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
34. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IIROC will post the full text of this Settlement Agreement on its website. IIROC will also publish a summary of the facts, contraventions, and the sanctions agreed upon in this Settlement Agreement.
35. 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.
36. The Settlement Agreement shall become 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

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

SIGNED on July 5, 2021.

(s) Sylvain Trudel

Sylvain Trudel

Respondent

SIGNED on July 5, 2021.

(s) Fanie Dubuc

Fanie Dubuc

Senior Enforcement Counsel

on behalf of IIROC Enforcement Staff

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