

Re Matte

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Charles-Philippe Matte

2022 IIROC 07

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

Hearing: March 23, 2022 (by videoconference)

Decision: March 23, 2022

Reasons for Decision: April 13, 2022

Hearing Panel

Michel Brunet, Chair, François Gervais and Normand Durette

Appearances

Francis Larin, Enforcement Counsel

Pascal Jolicoeur, for Charles-Philippe Matte

Charles-Philippe Matte (present)

DECISION AND REASONS FOR ACCEPTANCE OF SETTLEMENT AGREEMENT

The settlement agreement

¶ 1 IIROC Staff and Charles-Philippe Matte entered into a settlement agreement on January 25, 2022 (the “Settlement Agreement”).

¶ 2 The settlement hearing held electronically before a hearing panel (the “Hearing Panel”) was to consider whether, pursuant to Rule 8215 of the IIROC Enforcement, Examination and Approval Rules, the Hearing Panel should accept the Settlement Agreement jointly recommended to it by IIROC Staff (“Staff”) and Charles-Philippe Matte (the “Respondent”).

¶ 3 The submissions of the parties were essentially concerned with the appropriateness of the penalties provided in the Settlement Agreement.

¶ 4 After hearing from counsel for both parties and deliberating, the Hearing Panel informed the parties that it was accepting the Settlement Agreement and that the reasons would follow later.

The contravention

¶ 5 In the Settlement Agreement, the Respondent admits to having committed the following contravention of IIROC’s Rules:

Between March 23 and April 1, 2020, the Respondent engaged in discretionary trading in the accounts of a client, without these accounts having been previously approved and accepted as “discretionary accounts”, contrary to IIROC Dealer Member Rule 1300.4 and Rule 1300.5.

The facts

¶ 6 The Settlement Agreement, appended to this decision, relates the material facts. Readers are invited to refer to it to acquaint themselves with these facts. In it they will learn, among other things, that during the period mentioned in paragraph 5 above, the Respondent effected 49 discretionary trades in two accounts held by one of his clients; that he never specifically discussed these trades with his client beforehand; and that neither account had been previously approved and accepted as “discretionary accounts”.

¶ 7 The Respondent did not benefit financially from these trades. The trades were made over a short period of time. The misconduct was therefore an isolated occurrence and of limited duration. Furthermore, it was admitted at the hearing that the Respondent voluntarily cooperated in IIROC’s investigation.

¶ 8 It is also notable that the parties at the hearing agreed to disclose to the Hearing Panel that the Respondent’s client suffered no financial harm as a result of the trades in question.

The sanctions provided in the settlement agreement

¶ 9 As mentioned previously, the submissions by counsel for both parties pertained essentially to the sanctions provided in the Settlement Agreement, namely:

- a) A \$10,000 fine;
- b) Rewrite of the Conduct and Practices Handbook (CPH) course exam, in the event of re-registration;
- c) Costs to IIROC in the amount of \$2,500.

The mitigating factors

¶ 10 Counsel for the parties also emphasized the mitigating factors, many of which have already been mentioned, namely the Respondent’s lack of a disciplinary record, his cooperation in the investigation, the short duration of the misconduct, the absence of harm to the client and the absence of financial benefit to the Respondent.

The acceptance of the settlement agreement

¶ 11 Before proceeding with its analysis of the case law submitted in support of accepting the Settlement Agreement, the Hearing Panel wishes to underscore the initial concern that it experienced when it was first acquainted with this matter, since the sanctions contained in the Settlement Agreement seemed to it to be rather lenient. The Hearing Panel considers the Respondent’s alleged misconduct to be serious and egregious. The Respondent’s client had a right to expect his dealer to adhere scrupulously to a rule as fundamental as the one to which he has admitted violating. In the Hearing Panel’s eyes, conduct of this nature should be chastised in a manner that clearly discourages it. The Hearing Panel was therefore highly interested in the arguments that were to be presented at the hearing.

¶ 12 The role of the Hearing Panel is to accept or reject the Settlement Agreement. It may not amend it. It is widely established that a settlement agreement should be accepted inasmuch as the sanctions provided therein fall within “a reasonable range of appropriateness”.

¶ 13 The arguments presented by counsel for the parties, along with the case law submitted, both in terms of the principles that should guide the Hearing Panel in its analysis, as well as the precedents concerned with cases similar to the matter under consideration, have convinced this Hearing Panel to accept the Settlement Agreement.

¶ 14 IIROC’s Enforcement Counsel cited five (5) decisions rendered by previous hearing panels to guide us in determining the acceptability of the sanctions agreed upon in the Settlement Agreement.

¶ 15 The first of these decisions is *Re Maurice* 2019 IIROC 20. In this matter, the hearing panel focuses its analysis on the decisions *Re M Partners & Isenberg* 2018 IIROC 25 and *Re Milewski*, (1999) I.D.A.C.D. No. 17 – both of which have also been submitted to this Hearing Panel – to define the role of a hearing panel that must determine whether or not to accept a settlement agreement.

¶ 16 Briefly, the major principles to be retained from the above decisions – together with the other decisions submitted to us in respect of these principles, namely *Re Jacob* 2017 IIROC 17 and *Poulin c. R.* 2010 QCCA 1854 – can be summarized as follows, the citations being drawn from *Milewski*:

“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 in 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. (pp. 9-10).”

and *Re Jacob* :

“Few Settlement Agreements are, in fact, rejected by IIROC or MFDA Panels, but the possibility of doing so tends to put some pressure on the parties to come up with reasonable settlements in the eyes of the members of the Panel and, in particular, in the eyes of the two experienced industry members on each Panel. Industry expectations are important for a self-regulatory body and are, in fact, specifically mentioned in the recently revised IIROC Sanction Guidelines (February 2, 2015), which state, citing the well-known case of *Re Mills* [2001] I.D.A.C.D No. 7 at page 3:

“General deterrence can be achieved if a sanction strikes an appropriate balance by addressing a Regulated Person’s specific misconduct but is also in line with industry expectations. Any sanction imposed must be proportionate to the conduct at issue and should be similar to sanctions imposed on respondents for similar contraventions in similar circumstances.”

¶ 17 In addition to the decisions that encourage us to adhere to the major principles stated above, six decisions were also submitted to us concerning cases of misconduct similar to the allegations made against the Respondent.¹

¹ *Re Trudel* 2021 IIROC 27, *Re Brum* 2020 IIROC 39, *Re Black* 2020 IIROC 33, *Re Li* 2020 IIROC 28, *Re Lemire* 2018 IIROC 24 and *Re Dykeman* 2017 IIROC 49.

¶ 18 These decisions all concern discretionary trading that contravenes the rules governing IIROC's dealer members. An analysis of the sanctions ordered in these decisions demonstrates essentially that they resemble or are compatible with the sanctions provided in the Settlement Agreement.

¶ 19 The Hearing Panel has therefore become convinced, despite its initial hesitation, that the sanctions provided in the Settlement Agreement are at the low end of a reasonable range of appropriateness. The Hearing Panel reached this conclusion after studying the *IIROC Sanction Guidelines*, in particular the definition of the Sanction Principles for IIROC Disciplinary Proceedings provided in Part 1 of the Guidelines, as discussed in *Re Jacob*, while recognizing the non-binding nature of these guidelines:

Disciplinary sanctions are preventative in nature and should be designed to protect the investing public, strengthen market integrity, and improve overall business standards and practices.

The purpose of sanctions in a regulatory proceeding is to protect the public interest by restraining future conduct that may harm the capital markets. In order to achieve this, sanctions should be significant enough to prevent and discourage future misconduct by the respondent (specific deterrence), and to deter others from engaging in similar misconduct (general deterrence).

...

General deterrence can be achieved if a sanction strikes an appropriate balance by addressing a Regulated Person's specific misconduct but is also in line with industry expectations. Any sanction imposed must be proportionate to the conduct at issue and should be similar to sanctions imposed on respondents for similar contraventions in similar circumstances. The sanction should be reduced or increased depending on the relevant mitigating and aggravating factors.

(our emphasis)

¶ 20 Our initial hesitation was based on our doubts that the sanctions provided in the Settlement Agreement could satisfy the goal of general deterrence. These doubts do not, in our opinion, justify deviating in a case like this from the goal of striking an appropriate balance that takes industry expectations into account. The mitigating factors emphasized above will also have tipped the scales in favour of accepting the Settlement Agreement.

THE CONCLUSION

¶ 21 In light of the foregoing, the Hearing Panel accepts the Settlement Agreement.

Dated at Montréal, this April 13, 2022.

Michel Brunet

François Gervais

Normand Durette

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 (Hearing Panel) to consider whether, pursuant to Rule 8215 of the IIROC Enforcement, Examination and Approval Rules, the Hearing Panel should accept the settlement agreement (Settlement Agreement) between IIROC Staff (Staff) and Charles-Philippe Matte (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. The Respondent was a registered representative with IIROC from April 23, 2018, to August 9, 2020.
5. During this same period, the Respondent was employed and registered with Desjardins Securities Inc. (DS).
6. The Respondent has not been an IIROC registrant since August 9, 2020.
7. The Respondent has no disciplinary history with IIROC.

Particulars

8. On or around December 23, 2018, the client RR opened an RRSP account and a LIRA account with the Respondent.
9. The client RR, born in 1963, had indicated the following information and characteristics in the NAAF:
- Total net worth: \$1,250,000
 - Annual income: \$150,000
 - Risk tolerance: 100% moderate to high
 - Investment objective: 100% income and growth
10. On or around May 9, 2019, the client RR's investment objectives for both accounts were revised as follows: 70% income and growth, 30% speculative.
11. From March 23 to April 1, 2020, the Respondent made the following 49 trades on a discretionary basis in the two accounts of his client RR:

Account type	Trade date	Buy/ Sell	Quantity	Description	Price (\$)	Rate Of conversion	Total (\$)
LIRA	03/23/2020	Sale	128	BNP Paribas Spon Adr	14.01	1.4552	2,609.95
LIRA	03/23/2020	Sale	255	Cameco Corp	9.11	1	2,323.05
LIRA	03/23/2020	Sale	91	Enbridge Inc.	35.74	1	3,252.34
LIRA	03/23/2020	Sale	377	General Electric Company	6.42	1.4552	3,519.34
LIRA	03/23/2020	Sale	246	GRP Intertape Polymer Inc.	8.00	1	1,968.00
LIRA	03/23/2020	Purchase	500	Scorpio Tankers Inc-New	14.79	1.4552	10,761.20

Account type	Trade date	Buy/ Sell	Quantity	Description	Price (\$)	Rate Of conversion	Total (\$)
LIRA	03/23/2020	Sale	55	WPP PLC-Spon/Adr New	28.33	1.4552	2,267.42
LIRA	03/23/2020	Sale	168	Westpac Banking SPND-ADR	8.25	1.4552	2,016.91
LIRA	03/25/2020	Purchase	3,500	Alaris Royalty Corp-New	7.81	1	27,335.00
LIRA	03/25/2020	Sale	286	Bombardier 6.25% S4 CM PF	6.65	1	1,901.90
LIRA	03/25/2020	Sale	45	SPDR S&P 500 ETF	246.09	1.4145	15,664.35
LIRA	03/30/2020	Sale	3,500	Alaris Royalty Corp-New	7.17	1	25,095.00
LIRA	03/30/2020	Sale	16	Apple Inc.	252.61	1.4255	5,761.53
LIRA	03/30/2020	Purchase	500	Scorpio Tankers Inc-New	20.85	1.4255	14,857.27
LIRA	03/30/2020	Purchase	800	Teekay Tankers Ltd-A New	23.96	1.4255	27,323.98
LIRA	03/30/2020	Sale	1,300	Teva Pharmateucical Adr	7.75	1.4255	14,352.65
RRSP	03/23/2020	Purchase	1,100	DHT Holdings Inc-New	5.80	1.4552	9,284.02
RRSP	03/23/2020	Purchase	900	Dorian LPG Ltd	7.98	1.4552	10,447.32
RRSP	03/23/2020	Purchase	800	Euronav NV	8.69	1.4552	10,116.55
RRSP	03/23/2020	Purchase	400	Teekay Tankers Ltd-A New	17.31	1.4552	10,078.02
RRSP	03/25/2020	Sale	3,000	Absolute Software Corp	8.30	1	24,900.00
RRSP	03/25/2020	Purchase	10,000	American Hotel Incm LPU	1.89	1	18,926.00
RRSP	03/26/2020	Purchase	1,100	DHT Holdings Inc-New	6.23	1.4279	9,777.55
RRSP	03/26/2020	Sale	401	Enbridge Inc.	41.81	1	16,765.81
RRSP	03/26/2020	Purchase	800	Euronav NV	9.63	1.4279	11,000.54
RRSP	03/26/2020	Purchase	400	Scorpio Tankers Inc-New	17.88	1.414	10,110.67
RRSP	03/26/2020	Purchase	400	Teekay Tankers Ltd-A New	20.28	1.414	11,471.50
RRSP	03/26/2020	Sale	3,000	Pages Jaune Lte.	7.71	1	23,130.00

Account type	Trade date	Buy/ Sell	Quantity	Description	Price (\$)	Rate Of conversion	Total (\$)
RRSP	03/27/2020	Sale	10,000	American Hotel Incm LPU	2.01	1	20,088.00
RRSP	03/27/2021	Sale	72	Apple Inc.	251.35	1.4283	25,848.33
RRSP	03/27/2022	Purchase	2,000	DHT Holdings Inc-New	7.04	1.4245	20,043.00
RRSP	03/27/2023	Purchase	1,800	DHT Holdings Inc-New	6.92	1.4283	17,790.65
RRSP	03/27/2023	Purchase	2,000	Euronav NV	10.79	1.4283	30,822.71
RRSP	03/27/2024	Purchase	2,900	Frontline Ltd-New	8.83	1.4283	36,581.93
RRSP	03/27/2025	Sale	3,000	General Electric Company	7.58	1.4283	32,481.68
RRSP	03/27/2026	Sale	1,000	Newell Brands Inc.	13.88	1.4283	19,817.66
RRSP	03/27/2027	Sale	1,100	Le GRPE SNC Lavalin	20.13	1	22,142.01
RRSP	03/30/2020	Purchase	1,200	INTL Seaways Inc.	23.80	1.4255	40,720.15
RRSP	03/30/2020	Purchase	4,000	Navios Maritime ACQ-NEW	5.00	1.4255	28,510.00
RRSP	03/30/2020	Sale	900	Snap Inc. CL-A	11.84	1.4255	15,194.87
RRSP	03/30/2020	Purchase	5,000	Tsakos Energy Navigation	3.55	1.4255	25,336.84
RRSP	03/30/2020	Purchase	40,000	Top Ships Inc. New	0.58	1.4255	32,957.56
RRSP	03/30/2020	Sale	600	Twitter Inc.	24.87	1.4255	21,271.31
RRSP	03/31/2020	Sale	550	Capri Holding Ltd	11.34	1.415	8,824.34
RRSP	03/31/2020	Sale	40	Costar Group Inc.	586.02	1.415	33,168.62
RRSP	03/31/2020	Sale	2,400	Maxar Technologies Inc.	15.45	1	37,081.92
RRSP	04/01/2020	Purchase	1,500	Diamond Shipping Inc.	11.49	1.4403	24,827.89
RRSP	04/01/2020	Sale	900	Dorian LPG Ltd	8.49	1.4433	11,029.55
RRSP	04/01/2020	Sale	40,000	Top Ships Inc. New	0.21	1.4013	11,939.08

12. The Respondent never specifically discussed these trades beforehand with his client RR.
13. These two accounts had not been approved and accepted as “discretionary” accounts beforehand.
14. The Respondent admitted, to staff of IIROC, having made the aforementioned trades on a discretionary basis.
15. The Respondent did not derive any financial advantage as a result of the trades in question.

PART IV – CONTRAVENTION

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

Between March 23 and April 1, 2020, the Respondent engaged in discretionary trading in the accounts of a client, without these accounts having been previously approved and accepted as "discretionary" accounts, contrary to IIROC Dealer Member Rule 1300.4 and 1300.5.

PART V – TERMS OF SETTLEMENT

17. The Respondent agrees to the following sanctions and costs:
- a) \$10,000 fine;
 - b) The rewrite of the Conduct and Practices Handbook (CPH) course exam, in the event of re-registration;
 - c) Costs to IIROC in the amount of \$2,500.
18. If the Hearing Panel accepts the Settlement Agreement, the Respondent undertakes to pay the above-mentioned amounts, namely the sum of \$12,500, within 30 days of such acceptance, unless Staff and the Respondent agree otherwise.

PART VI – STAFF COMMITMENT

19. 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.
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 in Part III of this Settlement Agreement.

PART VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT

21. The Settlement Agreement is subject to acceptance by the Hearing Panel;
22. 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.
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 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 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.

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

DATED this 12th day of January, 2022.

(s) Charles-Philippe Matte

Charles-Philippe Matte

Respondent

DATED this 25th day of January, 2022.

(s) Francis Larin

Francis Larin

Senior Enforcement Counsel,

On behalf of IIROC Enforcement Staff

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