Re Langlois and Brown

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Lyle Langlois and James Brown

2022 IIROC 16

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

Heard: April 25, 2022 at Vancouver, British Columbia
Decision: April 25, 2022
Reasons for Decision: June 30, 2022

Hearing Panel
Joseph A. Bernardo, Chair, Barbara Fraser, William Wright
Appearances
Stacey Robertson, Senior Enforcement Counsel
Michael Hewitt (for Lyle Langlois and James Brown)
Lyle Langlois (present)
James Brown (present)

REASONS FOR DECISION ON ACCEPTANCE OF SETTLEMENT

¶ 1 On April 25, 2022, the Hearing Panel was asked in a closed session to consider a settlement agreement (Settlement Agreement) made between the staff of the Investment Industry Regulatory Organization of Canada (IIROC) and the Respondents. It is attached in Appendix.

¶ 2 The Settlement Agreement concerned two registered representatives who accepted monies directly from an investment fund manager, contrary to IIROC Dealer Member Rule 18.15. The Hearing Panel accepted the Settlement Agreement for the following reasons.

Agreed Facts and Law

Facts

¶ 3 The pertinent facts are these:

(a) The Respondents Lyle Langlois (Langlois) and James Brown (Brown) have been employed in the securities industry since 1986 and 1997, respectively.

(b) From November 2013 to August 2017, Langlois and Brown were each registered with IIROC as representatives of Scotia Capital Inc. (Scotia). Since August 2017, they have been registered with another Dealer Member. At all material times, the Respondents jointly operated and carried on business as Langlois Brown Wealth Management (Langlois Brown).

(c) Vertex One Asset Management Inc. (Vertex) was an Investment Fund Manager, Portfolio Manager, and Exempt Market Dealer registered with the British Columbia Securities Commission and the securities regulators of most other provinces.

(d) In 2002, the Respondents started offering their clients a hedge fund managed by Vertex.

(e) In 2014, Vertex representatives told the Respondents that Vertex was able to provide them with marketing support that fell outside the traditional regulatory framework. By this time, approximately 10% of Langlois Brown's total client assets, representing a value of approximately $30 million, were invested in funds managed by Vertex.

(f) The Respondents accepted Vertex's offer.

(g) Between January 2014 and June 2016, the Respondents accepted a series of nine payments from Vertex totaling $65,571.44. The Respondents devoted these monies, together with approximately $70,000 of their own funds, to the sponsorship of an amateur cycling team and several charitable and amateur golf tournaments. None of the funds provided by Vertex were retained by the Respondents personally.

(h) The Respondents disclosed their sponsorship of the amateur cycling team to Scotia but did not disclose the payments they received from Vertex nor seek Scotia's approval of them as required by the firm's policies and procedures.

(i) In June 2016, Vertex' compliance officer advised the Respondents that Vertex would cease providing marketing support to Langlois Brown, which received its last payment at the end of that month.

(j) Neither the investment recommendations made by Langlois Brown, nor the suitability of Vertex funds for its clients, are issues in this case.

Law

¶ 4 Effective December 31, 2021 and further to a consolidation of IIROC's various rules and requirements, Dealer Member Rule 18.15 was replaced by IIROC Rule 2551(7). Rule 18.15 remains applicable to the Respondents' conduct, as all of the material events in this case occurred prior to the Rule consolidation.

¶ 5 Dealer Member Rule 18.15 provided as follows:

> No Registered Representative or Investment Representative may accept or permit any associate to accept, directly or indirectly, any remuneration, gratuity, benefit, or any other consideration from any person other than the Dealer Member or its affiliates or related companies, for the securities- related activities he or she conducts on behalf of the Dealer Member or its affiliates or its related companies.

¶ 6 The Respondents' acknowledgement that they contravened the Rule is plainly supported by the agreed upon facts.

Applicable Standard

¶ 7 The Settlement Agreement came before the Hearing Panel further to IIROC Rule 8200, the provision that grants hearing panels the authority to hold enforcement hearings, and IIROC Rule 8400, which sets out the rules of procedure for enforcement proceedings.

¶ 8 Further to Rule 8215(5), a settlement hearing panel's jurisdiction is defined narrowly: its discretion is limited to either accepting or rejecting a settlement agreement. A hearing panel has no authority to impose its own preferred outcome on the parties.

¶ 9 It follows that a hearing panel ought not to assess a settlement agreement against the outcome the panel might itself order if it were free to do so.

¶ 10 Instead, a panel's role is to take the agreed upon facts at their face value and weigh the proposed sanctions against IIROC's core objectives of protecting the investing public and the integrity of the securities industry. An outcome that clearly falls "outside a reasonable range of appropriateness" may properly be rejected. Otherwise, it is incumbent on the hearing panel to accept it.

Re Milewski, [1999] I.D.A.C.D. No. 17 at p. 12

Re Clark, [1999] I.D.A.C.D. No. 40 at p. 4

Re Deutsche Bank Securities Ltd. 2013 IIROC 7 at para. 9

¶ 11 The rationale for this deferential approach is the well-established policy that settlements are to be encouraged and supported because they enable the efficient allocation of limited enforcement resources, which, in turn, serves to advance IIROC's protective mission. Moreover, emerging as a negotiated compromise between the competing perspectives of the litigants, a settlement necessarily represents a pragmatic and nuanced resolution of the facts and issues arrived at by the persons best situated to assess them.

Re Clark, supra

B.C. Securities Commission v. Seifert, [2007] B.C.J. No. 2186 at paras. 26, 31 and 49

Re Edward Jones 2016 IIROC 42 at paras. 25 to 28

Re Heakes 2019 IIROC 09 at para. 18

Assessing Appropriateness

¶ 12 The appropriateness of a settlement outcome depends on whether it can reasonably be said to satisfy the overarching principles that inform sanctioning generally.

¶ 13 Penalties in securities regulatory proceedings are required to be forward looking and preventative in orientation, not retrospective or punitive. Regardless of whether the context is a contested disciplinary hearing or a settlement, the appropriateness of proposed sanctions turns on whether their deterrent effect is both necessary to protect the investing public from future harm and proportional to the misconduct. As the Supreme Court of Canada stated in *Re Cartaway Resources Corp.*, the importance of deterrence when "imposing a sanction… will vary according to the breach… and the circumstances of the person charged".

Pezim v. British Columbia (Superintendent of Brokers), [1994] 2 S.C.R. 557 at paras. 59 and 68

Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65 at paras. 14 and 85

Cartaway Resources Corp. (Re), [2004] 1 S.C.R. 672 at para. 61

¶ 14 This requires a case specific assessment of the objective risk a person's misconduct presents to the investing public.

¶ 15 In this regard, the key factors to be considered are to be found in the Sanction Guidelines issued by IIROC on February 2, 2015 (Guidelines). These factors, as well as the sanctioning principles identified in the Guidelines, are derived from the reasoning of previous sanction decisions and general administrative law principles. The Guidelines are not in any sense binding. They are summary guidance that provides hearing panels with a helpful framework for exercising their sanctioning discretion.

¶ 16 The relative importance to be placed on any given factor will depend on the nature and scope of the misconduct. Based on the contents of the Settlement Agreement, in this particular case the most relevant factors for sanctioning purposes are:

(a) The Respondents received nine improper payments over a period of two and a half years. The repeated violation of a rule over an extended period is an aggravating factor.

(b) Neither Scotia nor its clients sustained any financial harm from the misconduct. Nonetheless, it directly conferred on the Respondents a clear and substantial financial benefit in the form of cash subsidies that enabled Langlois Brown to increase the scope of its marketing efforts.

(c) Whether the Respondents recognize the significance of their misconduct.

(d) The continuing risk, if any, the Respondents present to the investing public.

(e) Whether the proposed sanctions meet the need for both specific and general deterrence.

Proposed Sanctions

¶ 17 The Settlement Agreement proposed an aggregate of $90,571.11 in financial sanctions comprised of:

(a) a fine of $10,000 fine payable by each Respondent;

(b) disgorgement of $65,571.44; and

(c) costs of $2,500 payable by each Respondent.

¶ 18 In support of this position, counsel in their respective submissions referred to prior settlement decisions involving breaches of Dealer Member Rule 18.15 or similar misconduct:

Re Arapis 2011 IIROC 37

Re Raby 2013 IIROC 30

Re Matthews and Francis 2018 IIROC 16

Re Panzures 2018 IIROC 37

¶ 19 In both *Arapis, supra,* and *Matthews, supra*, the respondents accepted undisclosed finder's fees from issuers for facilitating off book sales of securities that their employing Dealer Members had previously declined to approve. In *Raby, supra*, after her employing Dealer Member had divested itself of an offshore financial institution, the respondent continued to effect trades in its client accounts and accept payments for them from the institution. In all three of these cases, the agreed upon fine was notionally comprised of two amounts: one representing disgorgement of the improperly received remuneration and another representing penalty. In *Matthews, supra*, each respondent agreed to a penalty portion of $7,500 and costs of $2,500. In each of *Arapis, supra,* and *Raby, supra*, the penalty for contravening Dealer Member Rule 18.15 was $10,000 and costs were set at $5,000.

¶ 20 A distinguishing feature of the above cases is that the respondents in each instance accepted and retained the outside money as personal income. This is in contrast to the present case, where the Respondents streamed all of the Vertex monies into marketing. In *Panzures, supra*, the respondent similarly accepted promotional support from mutual fund management entities, but in the form of concert and sporting event tickets. This might have been permissible if the tickets had been of minimal or reasonable value and used for normal course business promotion. However, the aggregate value of the tickets, which were extravagantly expensive, exceeded $30,000 and the respondent used them personally rather than for business promotion. This contravened Dealer Member Rule 29.12 (as it then was), which prohibited the acceptance of non-cash sales incentives in connection with the distribution of mutual funds. The respondent agreed to a fine that, net of disgorgement, totaled approximately $56,000 and costs of $5,000.

Decision

¶ 21 The Settlement Agreement states that the misconduct was unintentional, and that this is a mitigating factor. It is not.

¶ 22 A registered representative's obligation to follow IIROC's Rules entails a parallel obligation to be aware of them. Under the strict liability regime of securities regulation, ignorance is not a mitigating factor but rather

indicates a lack of diligence. As such it is a species of negligence, which in IIROC enforcement proceedings is a ground for finding fault, not a defence against it. Evidence or an agreement that establishes a contravention was committed unintentionally is not mitigating. At best, it merely confirms that an otherwise serious aggravating factor, namely, that something wrong was done on purpose, is not present.

¶ 23 The Respondents are highly experienced representatives and business partners who, by the time they accepted their last payment from Vertex, collectively had close to fifty years of experience in the securities industry. It is troubling that neither of them was aware of either Dealer Member Rule 18.15, or of the policies and procedures that required them to report and obtain Scotia's approval for the Vertex arrangement. Far from being a mitigating factor, the continuing failure of the Respondents to inform themselves of their obligations aggravated their misconduct, because it was their persistent obliviousness that allowed it to be repeated time and again over a period of two and a half years and enabled their business to accrue the benefit of over $65,000 in improper financial subsidies.

¶ 24 Having said that, it is important to observe that the purpose of Dealer Member Rule 18.15 and its successor IIROC Rule 2551(7) is to ensure that the recommendations of registered representatives are not influenced by financial incentives that are beyond the reach of their employing Dealer Member's supervision. In this regard, there is nothing in the evidence to suggest that Langlois Brown's investment recommendations were problematic. Moreover, the Respondents did not retain any of the Vertex funds as personal income and instead used them only for general business development. In other words, there is nothing to indicate that the Respondents going forward might be particularly or unusually susceptible to improper motives when making investment recommendations. If anything, a comparison of the facts of this case to those discussed in the settlement precedents suggests that the Respondents' misconduct, while by definition serious, presents a risk profile somewhat lower than that of the respondents in the precedents.

¶ 25 As with all settlements, the fact the Respondents have elected to enter into the Settlement Agreement is by itself a factor that deserves to be given weight. Their unqualified admission of fault and agreement to the proposed sanctions not only saves IIROC the resources that would otherwise be required to conduct a contested hearing, but objectively confirms that they recognize the significant gravity of their lapse.

¶ 26 Although the Settlement Agreement does not specify the amount of disgorgement payable by each Respondent, in their submissions counsel indicated that each Respondent accepts responsibility for half of the total liability. As for the $10,000 penalty and $2,500 in costs contemplated for each Respondent, they can be fairly characterized as squarely within the sanction range for similar misconduct.

¶ 27 The Hearing Panel accepted the Settlement Agreement because the outcome it contemplates is a reasonable and proportionate response to the need for specific and general deterrence in this case.

Dated at Vancouver, British Columbia this 30 day of June 2022.

Joseph A. Bernardo

Barbara Fraser

William Wright

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 staff of IIROC

("Staff") and the Respondents, Lyle Langlois ("Langlois") and James Brown ("Brown").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff and the Respondents 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 Respondents agree with the facts as set out in Part III of this Settlement Agreement.

Overview

4. From 2014 to 2016, the Respondents Lyle Langlois and James Brown operating as Langlois Brown Wealth Management (the "Respondents"), accepted monies directly from Vertex One Asset Management Inc. ("Vertex"), a mutual fund dealer, totaling $65,571.44, and not through the Respondents' Dealer Member. These funds were combined with the Respondents' funds (approximately $70,000) and used to fund approximately $135,000 in support of an amateur cycling team and several charitable and amateur golf tournaments sponsored by the Respondents and were not retained by the Respondents.

Background

5. The Respondent Lyle Langlois ("Langlois") has been employed in the securities industry since 1986.

6. Langlois is registered with IIROC as a registered representative with the Vancouver sub-branch of iA Private Wealth Inc. located at 109-1008 Beach Avenue, Vancouver, BC. and operating as Langlois Brown Wealth Management. Langlois was registered with Scotia Capital Inc. from November 2013 to August 2017 and with iA Private Wealth Inc. from August 2017 to the present.

7. The Respondent James Brown ("Brown") has been employed in the securities industry since 1997.

8. Brown is registered with IIROC as a registered representative with the Vancouver sub-branch of iA Private Wealth Inc. located at 109-1008 Beach Avenue, Vancouver, BC. and operating as Langlois Brown Wealth Management. Brown was registered with Scotia Capital Inc. from November 2013 to August 2017 and with iA Private Wealth Inc. from August 2017 to the present.

9. Langlois Brown Wealth Management is operated as a joint enterprise by Langlois and Brown.

10. During the relevant period from 2014 to 2017, Vertex One Asset Management Inc. ("Vertex") was registered with the B.C. Securities Commission as an Investment Fund Manager, Portfolio Manager and Exempt Market Dealer with a head office located in Vancouver, B.C. It is also registered as such in most other provinces in Canada. As of July 2021, Vertex has applied to surrender its registrations with the B.C. Securities Commission.

The Respondent's Relationship with Vertex

11. The Respondents' relationship with Vertex started in 2002 when the Respondents started offering Vertex's hedge fund to its clients. The fund was initially offered through the offering memorandum process.

12. Over time the Respondents developed a relationship with Vertex and its representatives, ND, JT, and MW. In or around 2014, the Respondents had approximately 10% of its total client assets invested in Vertex funds totaling approximately $30 million.

13. The Vertex funds represented only a small portion of each clients' holdings. There are no issues regarding the suitability of the Vertex holdings in the Respondents' clients' accounts.

14. In 2014, ND, JT, and MW, representatives of Vertex, including its compliance officer, approached the

Respondents and indicated that they could provide various forms of marketing support that fell outside the traditional regulatory framework. The Respondents accepted the offer of marketing support (i.e. the payments towards the sponsorship of the amateur cycling team and charitable and amateur golf tournaments) and between January 2014 and June 2016 the Respondents received $65,571.44 from Vertex. These funds were added to the Respondents' funds (approximate $70,000) for a total sponsorship of approximately $135,000 in support of an amateur cycling team and several charitable and amateur golf tournaments sponsored by the Respondents, and were not retained by the Respondents.

15. In June 2016, Vertex's compliance officer advised the Respondents that the marketing support would no longer be available and the marketing support from Vertex ceased after the June 2016 payment.

The Payments from Vertex

16. The chart below shows the dates that the Respondents received amounts from Vertex and the specific amounts received.

Date	Amount Received from Vertex	Totals
January 15, 2014	$10,000	
April 16, 2014	$10,000	
August 15, 2014	$10,000	
2014 Totals		$30,000
February 5, 2015	$7,142.86	
April 23, 2015	$7,142.86	
August 28, 2015	$7,142.86	
November 2, 2015	$7,142.86	
2015 Totals		$28,571.44
March 31, 2016	$3,500	
June 30, 2016	$3,500	
2016 Totals		$7,000
2014-2016 Totals		$65,571.44

17. The Respondents deposited the monies received from Vertex in Langlois Brown Wealth Management bank accounts and used the monies to pay for sponsorship of the Langlois Brown amateur cycling team and other fees and sponsorships related to several charitable and amateur golf tournaments.

18. The sum paid by the Respondents towards Langlois Brown Wealth Management's sponsorship of the amateur cycling team was greater than Vertex's contribution to the same.

19. The Respondents disclosed to their firm their sponsorship of the amateur cycling team but did not disclose the payments from Vertex or seek the approval of their firm for the receipt of the payments from Vertex, which was required by their firm's policies and procedures.

20. Staff acknowledge the presence of the following mitigating factors:

    a) All of the funds received from Vertex were paid toward sponsoring charitable golf tournaments and the amateur cycling team, and none of the funds were retained by the Respondents.

b) Staff does not allege that the receipt of the payments from Vertex had any impact on the recommendations made to clients with respect to their investments in Vertex.

c) Staff accepts that the Respondents did not set out to intentionally breach Dealer Member Rule 18.15 by accepting the marketing support from Vertex;

d) No attempt was made by the Respondents to conceal from Staff or their Dealer Member the fact that they had received the payments from Vertex in this way.

PART IV – CONTRAVENTIONS

21. Between 2014 and 2016, The Respondents Lyle Langlois and James Brown registered representatives at Scotia Capital operating as Langlois Brown Wealth Management accepted money payments from a Mutual Fund Dealer, contrary to Dealer Member Rule 18.15.

PART V – TERMS OF SETTLEMENT

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

Fine of $10,000 for each Respondent;

Disgorgement of $65,571.44; and

Costs of $5,000 for both Respondents.

PART VI – STAFF COMMITTEMENT

23. If the Hearing Panel accepts this Settlement Agreement, Staff will not initiate any further action against the Respondents 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.

24. If the Hearing Panel accepts this Settlement Agreement and the Respondents fail to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Rule 8200 against the Respondents. 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

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

26. 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.

27. Staff and the Respondents 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 Respondents do not appear at the settlement hearing, Staff may disclose additional relevant facts, if requested by the Hearing Panel.

28. If the Hearing Panel accepts the Settlement Agreement, the Respondents agree to waive all rights under the IIROC Rules and any applicable legislation to any further hearing, appeal and review.

29. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondents may enter into another settlement agreement or Staff may proceed to a disciplinary hearing based on the same or related allegations.

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

31. 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.

32. If this Settlement Agreement is accepted, the Respondents agree that neither they nor anyone on their behalf, will make a public statement inconsistent with this Settlement Agreement.

33. The Settlement Agreement is effective and binding upon the Respondents and Staff as of the date of its acceptance by the Hearing Panel.

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 2 day of March, 2022.

"Witness"	"Lyle Langlois"
Witness	Lyle Langlois (Respondent)
"Witness"	"James Brown"
Witness	James Brown (Respondent)
"Witness"	"Stacy Robertson"
Witness	Stacy Robertson Enforcement Counsel on behalf of Enforcement Staff of IIROC

The Settlement Agreement is hereby accepted this 25 day of April, 2022 by the following Hearing Panel:

Per: "Joseph Bernardo"
Panel Chair

Per: "Barbara Fraser"
Panel Member

Per: "William Wright"
Panel Member