

Re Desprès

IN THE MATTER OF:

The Investment Dealer and Partially Consolidated Rules

and

Louis Desprès

2023 CIRO 14

Hearing Panel of the Canadian Investment Regulatory Organization
(Québec District)

Heard: September 12, 2023, in Montréal (Québec) (by videoconference)

Decision: September 12, 2023

Reasons for decision: October 6, 2023

Hearing Panel

Me Jacques R. Fournier, Chair, Me Jacques Lemay and Mr. Jean Morin

Appearances

Sylvie Poirier, Enforcement Counsel

Sean Griffin, for Louis Desprès

Louis Desprès (absent)

DECISION ON ACCEPTANCE OF SETTLEMENT

INTRODUCTION

¶ 1 The parties have entered into a settlement agreement, a copy of which is attached as Appendix A, and have made a joint submission in support of this settlement.

¶ 2 Out of a concern for accuracy and to avoid repetition, the Hearing Panel has used passages of the settlement agreement as drafted by the parties.

¶ 3 After a deliberation that followed the hearing, the Hearing Panel announced to the parties that it was accepting the settlement for these reasons:

OVERVIEW

¶ 4 Between June 2017 and April 2019, the Respondent recommended and purchased securities in the energy and mines sector for the accounts of client LB; among these securities were shares in Crescent Point Energy (CPG) that were unsuitable for this client considering the circumstances described in this Settlement Agreement.

¶ 5 The CPG securities were unsuitable for client LB at the time of their purchase, as they presented too high a risk level for client LB due to their overweight in this client's portfolio.

¶ 6 Moreover, the concentration of client LB's portfolio in the energy and mines sector further increased her risk exposure.

¶ 7 Notwithstanding the foregoing, client LB did not suffer any capital loss in connection with her stock investments.

GENERAL CONTEXT

¶ 8 From January 1990 until October 2016, the Respondent was a registered representative employed with

National Bank Financial Inc. (NBF), at the time a dealer member of the Investment Industry Regulatory Organization of Canada (IIROC), a predecessor of the Canadian Investment Regulatory Organization (CIRO)¹

¶ 9 Since October 2016, the Respondent has been a registered representative at the Québec City branch of Raymond James Ltd (Raymond James), an IIROC Dealer Member.

¶ 10 The Respondent has no disciplinary history with IIROC or its predecessor, the Investment Dealers Association of Canada (IDA).

CLIENT LB

¶ 11 Client LB began her business relationship with the Respondent in 2007 while he was a representative of NBF.

¶ 12 The Respondent's services were recommended to her by someone close to her, since she had just come into a large sum of money as part of her divorce.

¶ 13 She had no previous experience in the investment field.

¶ 14 She had a high school diploma and was not employed.

¶ 15 Throughout her relationship with the Respondent, the transactions executed in client LB's accounts were recommended to her by the Respondent, with his explanations, and she followed all of his recommendations.

¶ 16 She had full confidence in the Respondent and signed all of the account application forms and updates, which were filled out by the Respondent with his explanations.

¶ 17 Client LB had active accounts at NBF and was advised by the Respondent from 2007 until fall 2016.

¶ 18 In 2010, client LB reunited with her ex-husband.

¶ 19 Until August 13, 2015, the documents for client LB's accounts at NBF stated that she was not employed, with the exception of 2008, that her knowledge of investing was minimal, that her investment objectives tended toward an income portfolio and that her risk tolerance was very low or low.

¶ 20 From 2012 to 2015, client LB's assets at NBF had increased by \$200,000, principally due to an inheritance that she received around 2013.

¶ 21 At NBF, effective August 13, 2015, due to the increased value of the client's assets, the Respondent proceeded to update the client's investor profile, changing it to "Conservative"; however, according to NBF's models, this profile henceforth allowed an asset allocation ranging between 20% and 45% stocks.

¶ 22 Client LB had three accounts at the time: a CAD cash account, an RRSP and a LIRA account.

PURCHASES OF CRE STOCK AT NBF

¶ 23 On September 18, 2014, on the recommendation of the Respondent, client LB made an initial purchase of Critical Elements Corporation (CRE) shares, which were valued at \$0.33.

¶ 24 CRE was a junior mining exploration company operating in Québec and listed on the TSX Venture Exchange.

¶ 25 Between September 2014 and June 2015, client LB acquired a total of 341,200 shares in CRE at an average unit cost of \$0.245, for a total investment of \$83,442.

¶ 26 In June 2016, a volume of 50,000 CRE shares were sold in client LB's accounts at a unit value of \$0.64, for a total of approximately \$31,360.

¶ 27 In October 2016, CRE shares were trading at approximately \$0.50. Client LB held 291,200 shares in CRE, which were valued at \$145,600.

CLIENT MOVES TO RAYMOND JAMES

¹ On January 1, 2023, IIROC and the MFDA were consolidated into a single self-regulatory organization recognized under applicable securities legislation.

¶ 28 In October 2016, the Respondent joined the Raymond James investment firm.

¶ 29 On October 19, 2016, the client transferred all of her assets to Raymond James in order to continue her business relationship with the Respondent, since she was satisfied with his services.

¶ 30 The client's assets were not liquidated at that time, rather her portfolio was transferred in full to Raymond James.

¶ 31 Consequently, the composition of her portfolio at Raymond James in October 2016 was identical to the portfolio that she held with NBF in September 2016.

¶ 32 In December 2016, after the client opened accounts with Raymond James, her portfolio allocation was 70.73% income funds and 29.37% stocks, 23.94% of which was in CRE shares.

NEW ACCOUNTS OPENED WITH RAYMOND JAMES, APPRECIATION OF CRE STOCK VALUE AND SUBSEQUENT UPDATES OF THE CLIENT'S INVESTOR PROFILE

¶ 33 At the time of the account transfers to Raymond James, client LB was 63 years of age and henceforth retired.

¶ 34 On October 19, 2016, the Respondent filled out an initial client account agreement for client LB, in her presence (the October 2016 Agreement).

¶ 35 In the section of the agreement pertaining to the client profile, the Respondent indicated that client LB's investment knowledge was generally good and that her investment experience with stocks, mutual funds and bonds was excellent.

¶ 36 At this meeting, the Respondent also added a note to the October 2016 Agreement, stating that client LB is a [translation] "long-standing client and has good experience with stocks and bonds, and does not need a lot of money from her investments."

¶ 37 Four separate accounts were therefore opened: a CAD cash account, a US cash account, an RRSP and a LIRA account (later converted to a LIF account in 2017) with time horizons ranging from 8 to 10 years (namely from 2024 to 2026)

¶ 38 For each of these accounts, the Respondent entered an investment objective ranging from 60% to 78% income and a risk tolerance of 70% to 80%.

¶ 39 The assets that client LB held and transferred to Raymond James are categorized and evaluated according to the Raymond James chart, which is different from the NBF chart, particularly as regards the risk assessment assigned to the various stocks held by client LB. Raymond James applies an assessment chart to each individual stock, whereas the risk assessment at NBF follows standard profiles.

¶ 40 Thus, the client's investor profile at Raymond James is different than it was at NBF, due to a different way of categorizing risks and securities.

¶ 41 So, the Respondent filled out the client's October Agreement with the investment objectives and risk tolerance that he had originally determined for the portfolio that was transferred from NBF.

¶ 42 On January 30, 2017, the Respondent had to revise the risk assessment of the assets that client LB had in mutual funds, having misunderstood the Raymond James chart of risk levels for bond funds.

¶ 43 Having made the required adjustments to the categorization of the bond funds assets held by the client, based on their risk level according to the Raymond James chart, the Respondent updated the client's investor profile, adjusting the profile to match the higher risk level of client LB's portfolio, henceforth representing her as having an "average" and "high" risk tolerance (First Update of Client LB's Investor Profile).

¶ 44 At the same time, the Respondent also raised client LB's risk tolerance on the form to reflect the appreciation in value of the CRE shares held in the portfolio. As at January 31, 2017, CRE shares were trading at \$0.65.

¶ 45 In February 2017, the client decided to make a withdrawal from her accounts, because she needed liquidity (cash). So, 10,000 shares of CRE were sold at a unit price of \$0.79.

¶ 46 As of March 2017, on the Respondent's recommendation, certain bond funds were liquidated from client LB's accounts in order to invest more in energy market shares, thus increasing the percentage of venture capital in client LB's portfolio.

¶ 47 Between March 2017 and November 2019, approximately \$173,804 of the amounts used to purchase shares in this market sector came from the liquidation of bond funds in client LB's accounts.

¶ 48 In March 2017, the client's asset allocation was 63.27% income funds, while the stock portion was 36.73%, 32.05% of which was in CRE shares. In December 2019, her asset allocation was 45.67% income funds and 54.33% stocks, of which 41.75% was in CRE and CPG shares.

¶ 49 The investments were mostly in oil stocks, which at the time paid higher dividends than the interest rates paid by the bond funds.

¶ 50 Between March 2017 and December 2019, the weighting of the energy sector went from 2.63% to 27.51%.

¶ 51 On March 29, 2018, CRE's share value having appreciated yet again, the risk level of the client's portfolio no longer coincided with the last profile update the Respondent had made in January 2017; indeed, this new appreciation in value had raised the risk level beyond the stated risk tolerance.

¶ 52 The Respondent therefore met with the client to discuss the situation and to change her investor profile, increasing her risk tolerance to reflect the higher risk level that had resulted, notably from the appreciation in value of the CRE shares in her portfolio, and which he recommended that she keep, given her time horizons; to which she agreed (Second Update to Client LB's Investor Profile).

¶ 53 The Respondent then explained to client LB that this update was necessary in order to keep the CRE shares in her portfolio, as long as she was agreeable to this. Client LB then initialed the update form, which bore the following mention at the bottom of the page: [translation] "My advisor has informed me that my portfolio is exposed to a higher risk than I am prepared to assume according to my risk tolerance and objectives and has recommended that I make adjustments to my assets. I agree to expose myself to a higher risk by keeping my assets as they are and prefer to modify my aforementioned risk tolerance and objectives rather than reduce the risk associated with my portfolio (sic)."

¶ 54 On this same date, the Respondent also had client LB sign a document, cosigned by the Respondent, which stipulated that she [translation] "is a long-standing client who is used to investing in natural resources and small-cap securities. Her net value is high in comparison to her financial needs. She has always kept a healthy proportion of her assets in bonds, which provide her with income that she needs in order to live."

¶ 55 Between the opening of the new accounts at Raymond James in October 2016 and the month of September 2020, the CRE shares represented between 24% and 51% of the total portfolio value.

¶ 56 The client did not purchase any additional CRE shares between the opening of her accounts at Raymond James in October 2016 and the unsolicited liquidation of the CRE shares in December 2020. She had simply kept the shares acquired in 2014 and 2015 while she was a client of NBF.

¶ 57 Between March 2018 and September 2019, the value of the CRE shares having gone from \$1.02 to \$0.39, the weighting of this security in the client's portfolio dropped from 39% to 24%.

¶ 58 Even though this should have reduced the percentage of the portfolio allocated to stocks, and more particularly its concentration in natural resources, her portfolio nevertheless remained overweighted in this sector because the Respondent was recommending that client LB invest even more in energy companies because of the falling interest rate.

¶ 59 By mid-February 2020, the world markets were hit by the consequences of the COVID-19 pandemic. The key indicators accordingly fell by approximately 34%.

¶ 60 On December 15, 2020, client LB decided, without solicitation, to proceed with the liquidation of all of the shares in her Raymond James accounts, including the CRE shares.

¶ 61 The CRE shares were therefore sold at an average unit price of more than \$0.70.

¶ 62 This unsolicited liquidation enabled client LB to generate a profit of nearly \$125,000 on her position in

CRE stocks since their acquisition at NBF.

¶ 63 But ultimately, because of the unsolicited liquidation of all of the shares held in her portfolio in December 2020 – mid-pandemic – client LB just broke even on the total capital that she had invested in stocks since the opening of her accounts at Raymond James; this, because so many of the stocks in her portfolio had lost value.

PURCHASE OF CPG SHARES IN A CONTEXT OF APPRECIATING VALUE OF THE CRE SHARES

¶ 64 CPG is a mid-sized petroleum producer listed on the TSX, with a market capitalization ranging between 5 and 3 billion dollars between 2016 and 2019.

¶ 65 On or around June 21, 2017, client LB, on the recommendation of the Respondent, purchased stocks in CPG and sold bond funds to do so.

¶ 66 Subsequently, several other CPG stock purchase transactions were executed in her accounts up until April 2019. Many of these were financed by selling off bond funds.

¶ 67 Between March 2018 and December 2019, the weighting of CPG stocks went from 5.37% to between 17.4% and 19.9% over the course of 2019.

¶ 68 Between June 2017 and December 2019, the CRE and CPG stock positions, combined, accounted for between 40% and 56% of client LB's total portfolio value, thus exposing her to an unsuitable increase in risk caused by the overweight and concentration of the positions.

CONTRAVENTIONS

¶ 69 By engaging in the conduct described above, the Respondent committed the following contravention of CIRO requirements:

Between March 2017 and December 2019, the Respondent failed to ensure that the recommendations he was making for the accounts of one of his clients were suitable for this client, contrary to Rule 1300.1(q) of the Investment Dealer and Partially Consolidated (IDPC) Rules.

TERMS OF SETTLEMENT

Respondent Commitment

¶ 70 The Respondent agrees to the following sanctions and costs:

- 1) Sanctions :
 - a) A fine of \$18,000, including disgorgement of \$4,000 obtained as financial benefit;
 - b) Successful completion of the Conduct and Practices Handbook exam, within 60 days following the Hearing Panel's acceptance of the Settlement Agreement;
- 2) Costs in the amount of \$2,000.

¶ 71 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 Enforcement Staff and the Respondent.

Staff Commitment

¶ 72 If the hearing panel accepts this Settlement Agreement, Enforcement 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.

¶ 73 If the Hearing Panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of this Settlement Agreement, Enforcement Staff may bring proceedings under Investment Dealer 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.

DISCUSSION

Hearing Panel's Role

¶ 74 The sanction guidelines, as well as the case law established in the matter, limit the role of a hearing panel seized of an application to accept a settlement agreement to accepting, within the agreement, a range of sanctions established previously in similar cases.

¶ 75 It is not up to the hearing panel to decide on the merits of the case or to suggest changes. The options for the hearing panel are to accept or reject the settlement agreement.

¶ 76 Thus, IDPC Rule 8125(5) provides that a hearing panel only has the power to determine whether a settlement agreement can be accepted or not.

¶ 77 That is what the hearing panel concluded in *Re Milewski*, [1999] I.D.A.C.D. No. 17. We cite the relevant passage here:

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 when 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.

¶ 78 This same principle is mentioned in *Re Arnold* 2023 CIRO 04 and in *Re Harwood* 2023 IIROC 04.

¶ 79 The hearing panel's examination must take into account both the mitigating and aggravating factors, along with any legal precedents.

MITIGATING AND AGGRAVATING FACTORS IDENTIFIED BY THE PARTIES

(a) MITIGATING FACTORS

¶ 80 In the matter at hand, the following mitigating factors were presented to the hearing panel:

- a) the Respondent did not benefit from his misconduct, since the penalty suggested in the Agreement includes disgorgement of the \$4,000 obtained as financial benefit;
- b) the Respondent did not engage in any discretionary trading in his client's accounts; the client always approved the transactions;
- c) the Respondent accepted responsibility for the contravention when he signed the Settlement Agreement; this saved CIRO the work and expense of a contested hearing, as well as the necessity of having his former client testify;
- d) the misconduct in question affected just one client;
- e) the Respondent has no disciplinary history;
- f) the Respondent believed, in good faith, that this type of investment was in his client's best interest, especially in the circumstances where market interest rates were falling at the time;
- g) the trades were not fraudulent in nature and did not have a goal of enriching the Respondent at his client's expense;
- h) the Respondent's misconduct ended in December 2019, nearly four years ago, and his conduct has posed no problem since;
- i) part of the Respondent's client's portfolio was always composed of bond funds.

(b) AGGRAVATING FACTORS

- ¶ 81 As for the aggravating factors, the parties submit that those are:
- a) the duty to determine the suitability of recommendations made to a client is a core obligation of the investment dealer and the fundamental *raison d'être* of the profession;
 - b) the Respondent's client was an older lady with only a high school diploma and was unemployed;
 - c) the client had considerable trust in the Respondent and had always followed his recommendations;
 - d) the Respondent is a highly experienced representative, having been registered since December 1986;
 - e) the misconduct occurred over a period of two years and nine months.

LEGAL PRECEDENTS

¶ 82 Having thus set the table, the parties discussed a number of precedents as follows.

PAST DECISIONS

¶ 83 The Respondent submitted to the Hearing Panel some past decisions on settlement agreements that present an examination of the contravention of Rule 1300.1(q) in analogous cases. These constitute relevant precedents for the work of this Hearing Panel.

1) *Re Dion*

¶ 84 In this decision on a settlement agreement, the respondent Dion admitted that he contravened Rule 1300.1(q) when he recommended an investment strategy and the purchase of securities in the gold and precious metals sector that were unsuitable for this client, given the client's financial situation, knowledge of investing, investment objectives and time horizon, and risk tolerance, as well as the current composition and risk level of the client's investment portfolio.

Re Dion 2017 IIROC 20, para. 9 [« *Re Dion* »] [Tab 4]

¶ 85 The hearing panel took into consideration factors stated in the Sanction Guidelines that are analogous to the facts in the present matter, emphasizing notably that:

- a) the investment strategy, while unsuited to this client, was established by the respondent in good faith. There was no fraudulent intent.
- b) the respondent had no disciplinary history;
- c) the investment strategy developed by the respondent was not in the nature of a fraud. The strategy did not aim to enrich Mr. Dion at his client's expense.
- d) thus, the recommended sanction includes disgorgement of \$2,976.32, namely the amount of the commissions collected, such that the Respondent will have derived no financial benefit from his misconduct.

Re Dion, supra, para. 29 [Tab 4]

¶ 86 The hearing panel therefore accepted the settlement agreement, imposing the following sanctions, which are in the same range as those proposed in the Settlement Agreement:

- a) A fine of \$25,000, including disgorgement of \$2,976 in commissions;
- b) Successful completion of the Conduct and Practices Handbook exam, within twelve months following acceptance of the settlement agreement;
- c) Costs in the amount of \$3,000.

Re Dion, supra, para. 39 [Tab 4]

2) *Re Roy*

¶ 87 In the settlement agreement that was the object of that decision, the respondent Roy admitted that, between January 2014 and December 2015, he failed to ensure that the recommendations he made for his client were suitable, contrary to Rule 1300.1(q).

Re Roy 2018 IIROC 11, para. 2 [“Roy”] [Tab 5]

¶ 88 Indeed, the risk associated with the securities purchased for the client and the active trading recommended and implemented by the respondent was not suitable for the client, considering her personal and financial circumstances, moderate risk tolerance and objectives focused on safe investments and income.

Roy, supra, para. 9, 12 of the appended settlement agreement [Tab 5]

¶ 89 The hearing panel took into account the mitigating factors described in the settlement agreement, including the fact that the respondent was attentive to his client and genuinely believed that his recommendations would generate growth in his client’s capital, just as in the present matter. The hearing panel also notes an aggravating factor, namely a disciplinary measure rendered against the respondent in 1999; which finds no application here.

Roy, supra, para. 7-8 [Tab 5]

¶ 90 Having examined the submission of the parties, the hearing panel was satisfied that the agreed penalties are fair and reasonable, that they fall within an acceptable range, and will act as a specific deterrent to the Respondent and provide a general deterrent to the industry. The penalties resemble those in the present matter, namely:

- a) a fine of \$22,500, including disgorgement of commissions;
- b) re-write the Conduct and Practices Handbook Examination within 90 days; and
- c) costs of \$2,500.

Roy, supra, para. 9-13 [Tab 5]

3) *Re Skelton*

¶ 91 In this matter which concerned a settlement agreement, the respondent Skelton admitted to two contraventions, namely failing to use due diligence to ensure that orders he placed for a client were suitable for that client, contrary to Rule 1300.1(q), and a second contravention of Rule 1300.4 and 1300.5.

Re Skelton 2012 IIROC 46, para. 2 [“Skelton”] [Tab 6]

¶ 92 IIROC counsel referenced various facts and potential mitigating and aggravating factors. The hearing panel accepted the submissions of counsel, with a few notes. Among the factors mentioned by IIROC counsel and the hearing panel were the following, which resemble the matter at hand:

- 1) the respondent has been a registrant in the securities industry for 40 years and has never been the subject of an IIROC disciplinary proceeding.
- 2) the conduct ended four years ago and there have been no issues with the respondent’s conduct since that time.
- 3) the respondent derived no personal benefit from the conduct in question. There was no evidence of dishonesty or deceit by the respondent.
- 4) The client was a retired widow, 85 to 90 years of age.
- 5) The respondent had sufficient knowledge and experience and ought to have recognized the obligations to the client, firm, IIROC, and public regarding improper sales practices.
- 6) The respondent accepted responsibility for his conduct, cooperated with IIROC, and is unlikely to engage in similar conduct in the future.

Skelton, supra, para. 16-17, 31-33 [Tab 6]

¶ 93 The hearing panel concluded that the settlement agreement terms were reasonable and within the

appropriate range for sanctions and met the Guidelines and the principles of specific and general deterrence. The hearing panel therefore imposed the following penalties on the respondent:

- a) a fine in the amount of \$30,000; and
- b) costs in the amount \$1,000.

Skelton, supra, para. 34-35 [Tab 6]

4) **Re Sabet**

¶ 94 In this matter which concerns a settlement agreement, the respondent Sabet admitted to two contraventions, namely having recommended the purchase and holding of securities that were unsuitable for a client, pursuant to this client's investment objectives, thus contravening Rule 1300.1(q), and a second contravention of Rule 43, which is not relevant here.

Re Sabet 2021 IIROC 3, para. 3 ["Sabet"] [Tab 7]

¶ 95 IIROC counsel's submission referenced various facts and mitigating and aggravating factors, which the hearing panel took into consideration:

- a) the respondent has been a registered representative for over 20 years and has no prior disciplinary record;
- b) she did not benefit financially from her misconducts;
- c) the respondent accepted responsibility for her conduct, cooperated with IIROC, and is unlikely to engage in similar conduct in the future.

Sabet, supra, para. 17

¶ 96 The hearing panel concluded that the settlement agreement terms are reasonable and within the appropriate range for sanctions and meet the Guidelines and the principles of specific and general deterrence. The hearing panel therefore imposed the following penalties on the respondent:

- a) a \$10,000 fine for this count.
- b) the obligation to pass the Conduct and Practices Handbook Course exam prior to reapproval with IIROC.
- c) costs in the amount of \$2,000.

Sabet, supra, para. 4, 21, 22

CONCLUSION

¶ 97 Having read these decisions in light of the Settlement Agreement, and after weighing the mitigating and aggravating factors, in particular the fact that the Respondent will not have benefited from his conduct, which may have been negligent, without being self-interested or dishonest; that he has admitted his misconduct; and that the client suffered no losses, the Hearing Panel concludes that the Settlement Agreement falls within an acceptable range of appropriateness.

¶ 98 For these reasons, the Hearing Panel accepts the Settlement and takes note of the commitments of the Respondent, namely:

- a) Payment of a fine of \$18,000, including disgorgement of \$4,000 obtained as financial benefit;
- b) Successful completion of the Conduct and Practices Handbook exam, within 60 days following the Hearing Panel's acceptance of the Settlement Agreement;
- c) Costs in the amount of \$2,000.

¶ 99 And takes note of the Staff commitment to initiate no further action if the agreement is respected:

- a) If the hearing panel accepts this Settlement Agreement, Enforcement 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.

- b) If the Hearing Panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of this Settlement Agreement, Enforcement Staff may bring proceedings under Investment Dealer 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.

Dated at Montréal, (Québec) October 6, 2023.

Me Jacques Fournier, Chair

Mr. Jean Morin

Me Jacques Lemay

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Canadian Investment Regulatory Organization (CIRO)¹ will issue a Notice of Application to announce a settlement hearing pursuant to sections 8215 and 8428 of the Investment Dealer and Partially Consolidated Rules (the Investment Dealer Rules) to consider whether a hearing panel should accept this Settlement Agreement between Enforcement Staff and Louis Desprès (the Respondent) (collectively, the Parties).

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Enforcement 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.
4. In view of the Agreed Facts, the Parties agree to make no further submissions in regard to this Settlement Agreement.
5. The Parties agree that acceptance of the Agreed Facts shall not bind the Respondent in respect of any other matter.
6. This Settlement Agreement may only be used for purposes of the present matter.

Overview

7. Between June 2017 and April 2019, the Respondent recommended and purchased securities in the energy and mines sector for the accounts of client LB; among these securities were shares in Crescent Point Energy (CPG) that were unsuitable for this client considering the circumstances described in this Settlement Agreement.
8. The CPG securities were unsuitable for client LB at the time of their purchase, as they presented too high a risk level for client LB due to their overweight in this client's portfolio.
9. Moreover, the concentration of client LB's portfolio in the energy and mines sector further increased her risk exposure.
10. Notwithstanding the foregoing, client LB did not suffer any capital loss in connection with her stock investments.

General Context

11. From January 1990 until October 2016, the Respondent was a registered representative employed with National Bank Financial Inc. (**NBF**), an IIROC Dealer Member.
12. Since October 2016, the Respondent has been a registered representative at the Québec City branch of Raymond James Ltd (**Raymond James**), an IIROC Dealer Member.
13. The Respondent has no disciplinary history with IIROC or the IDA.

Client LB

14. Client LB began her business relationship with the Respondent in 2007 while he was a representative of NBF.
15. The Respondent's services were recommended to her by someone close to her, since she had just come into a large sum of money as part of her divorce.
16. She had no previous experience in the investment field.
17. She had a high school diploma and was not employed.
18. Throughout her relationship with the Respondent, the transactions executed in client LB's accounts were recommended to her by the Respondent, with his explanations, and she followed all of his recommendations.
19. She had full confidence in the Respondent and signed all of the account application forms and updates, which were filled out by the Respondent with his explanations.
20. Client LB had active accounts at NBF and was advised by the Respondent from 2007 until fall 2016.
21. In 2010, client LB reunited with her ex-husband.
22. Until August 13, 2015, the documents for client LB's accounts at NBF stated that she was not employed, with the exception of 2008, that her knowledge of investing was minimal, that her investment objectives tended toward an income portfolio and that her risk tolerance was very low or low.
23. From 2012 to 2015, client LB's assets at NBF had grown by \$200,000, principally due to an inheritance that she received around 2013.
24. At NBF, effective August 13, 2015, due to the increased value of the client's assets, the Respondent proceeded to update the client's investor profile, changing it to "Conservative"; however, according to NBF's models, this profile henceforth allowed an asset allocation ranging between 20% and 45% stocks.
25. Client LB had three accounts at the time: a CAD cash account, an RRSP and a LIRA account.

Purchases of CRE stock at NBF

26. On September 18, 2014, on the recommendation of the Respondent, client LB made an initial purchase of Critical Elements Corporation (CRE) shares, which were valued at \$0.33.
27. CRE was a junior mining exploration company operating in Québec and listed on the TSX Venture Exchange.
28. Between September 2014 and June 2015, client LB acquired a total of 341,200 shares in CRE, at an average unit cost of \$0.245, a total investment of \$83,442.
29. In June 2016, a volume of 50,000 CRE shares were sold in client LB's accounts, at a unit value of \$0.64, for a total of approximately \$31,360.
30. In October 2016, CRE shares were trading at approximately \$0.50. Client LB held 291,200 shares in CRE, which were valued at \$145,600.

Client moves to Raymond James

31. In October 2016, the Respondent joined the Raymond James investment firm.

32. On October 19, 2016, the client transferred all of her assets to Raymond James in order to continue her business relationship with the Respondent, since she was satisfied with his services.
33. The client's assets were not liquidated at that time, rather her portfolio was transferred in full to Raymond James.
34. Consequently, the composition of her portfolio at Raymond James in October 2016 was identical to the portfolio that she held with NBF in September 2016.
35. In December 2016, after the client opened accounts with Raymond James, her portfolio allocation was 70.73% income funds and 29.37% stocks, 23.94% of which was in CRE shares.

New accounts opened with Raymond James, appreciation of CRE stock value and subsequent updates of the client's investor profile

36. At the time of the account transfers to Raymond James, client LB was 63 years of age and henceforth retired.
37. On **October 19, 2016**, the Respondent filled out an initial client account agreement for client LB, in her presence (the **October 2016 Agreement**).
38. In the section of the agreement pertaining to the client profile, the Respondent indicated that client LB's investment knowledge was generally good and that her investment experience with stocks, mutual funds and bonds was excellent.
39. At this meeting, the Respondent also added a note to the October 2016 Agreement, stating that client LB is a [translation] *"long-standing client and has good experience with stocks and bonds, and does not need a large financial return from her investments."*
40. Four separate accounts were therefore opened: a CAD cash account, a US cash account, an RRSP and a LIRA account (later converted to a LIF account in 2017) with time horizons ranging from 8 to 10 years (namely from 2024 to 2026)
41. For each of these accounts, the Respondent entered an investment objective ranging from 60% to 78% income and a low risk tolerance of 70% to 80%.
42. The assets that client LB held and transferred to Raymond James are categorized and evaluated according to the Raymond James chart, which is different from the NBF chart, particularly as regards the assessment of the risks assigned to the different stocks held by client LB. Raymond James applies an assessment chart to each individual stock, whereas the risk assessment at NBF follows standard profiles.
43. Thus, the client's investor profile at Raymond James was different than NBF's, due to a different way of categorizing risks and securities.
44. So, the Respondent filled out the client's October Agreement with the investment objectives and risk tolerance that he originally determined for the portfolio that was transferred from NBF.
45. On **January 30, 2017**, the Respondent had to revise the risk assessment of the assets that client LB had in mutual funds, since he had misunderstood the Raymond James chart of risk levels for bond mutual funds.
46. Having made the required adjustments to the asset categorization for the bond mutual funds held by the client based on their risk level according to the Raymond James chart, the Respondent updated the client's investor profile, adjusting the profile to match the higher risk level of client LB's portfolio, henceforth representing her as having an "average" and "high" risk tolerance (the **First Update of Client LB's Investor Profile**).
47. At the same time, the Respondent also increased client LB's risk tolerance as stated on the form, to reflect the appreciation in value of the CRE shares held in the portfolio. As at January 31, 2017, CRE shares were trading at \$0.65.
48. In February 2017, the client decided to make a withdrawal from her accounts, because she needed

liquidity (cash). So, 10,000 shares of CRE were sold at a unit price of \$0.79

49. As of March 2017, on the Respondent's recommendation, certain bond funds were liquidated from client LB's accounts in order to invest more in energy market shares, thus increasing the percentage of venture capital in client LB's portfolio.
50. Between March 2017 and November 2019, approximately \$173,804 of the amounts used to purchase shares in this market sector came from the liquidation of bond funds in client LB's accounts.
51. In March 2017, the client's asset allocation was 63.27% income funds, while the stock portion was 36.73%, 32.05% of which was in CRE shares. In December 2019, her asset allocation was 45.67% income funds and 54.33% stocks, of which 41.75% was in CRE and CPG shares.
52. The investments were mostly in oil stocks, which at the time paid higher dividends than the interest rates paid by the bond funds.
53. Between March 2017 and December 2019, the weighting of the energy sector went from 2.63% to 27.51%.
54. On **March 29, 2018**, CRE's share value having appreciated yet again, the risk level of the client's portfolio no longer coincided with the last profile update the Respondent had made in January 2017; indeed this new appreciation in value had raised the risk level beyond the stated risk tolerance.
55. The Respondent therefore met with the client to discuss the situation and to change her investor profile, increasing her risk tolerance to reflect the higher risk level that had resulted, notably from the appreciation in value of the CRE shares in her portfolio, and which he recommended that she keep given her time horizons; to which she agreed (the **Second Update to Client LB's Investor Profile**).
56. The Respondent then explained to client LB that this update was necessary in order to keep the CRE shares in her portfolio, as long as she was agreeable to this. Client LB then initialed the update form, which bore the following mention at the bottom of the page: [translation] *"My advisor has informed me that my portfolio is exposed to a higher risk than I am prepared to assume according to my risk tolerance and objectives and has recommended that I make adjustments to my assets. I agree to expose myself to a higher risk by keeping my assets as they are and prefer to modify my aforementioned risk tolerance and objectives rather than reduce the risk associated with my portfolio (sic)."*
57. On this same date, the Respondent also had client LB sign a document, cosigned by the Respondent, which stipulated that she [translation] *"is a long-standing client who is used to investing in natural resources and small-cap securities. Her net value is higher than her stated financial needs. She has always kept a healthy proportion of her assets in bonds, which provide her with the income that she needs in order to live."*
58. Between the opening of the new accounts at Raymond James in October 2016 and the month of September 2020, the CRE shares represented between 24% and 51% of the total portfolio value.
59. The client did not purchase any additional CRE shares between the opening of her accounts at Raymond James in October 2016 and the unsolicited liquidation of the CRE shares in December 2020. She had simply kept the shares acquired in 2014 and 2015 while she was a client of NBF.
60. Between **March 2018 and September 2019**, the value of the CRE shares having gone from \$1.02 to \$0.39, the weighting of this security in the client's portfolio dropped from 39% to 24%.
61. Even though this should have reduced the percentage of the portfolio allocated to stocks, and more particularly its concentration in natural resources, her portfolio nevertheless remained overweighted in this sector because the Respondent was recommending that client LB invest even more in energy companies because of the falling interest rate.
62. By **mid-February 2020**, the world markets were hit by the consequences of the COVID-19 pandemic. The key indicators accordingly fell by approximately 34%.
63. On **December 15, 2020**, client LB decided to proceed with the unsolicited liquidation of all of the shares in

her Raymond James accounts, including the CRE shares.

64. The CRE shares were therefore sold at an average unit price of more than \$0.70.
65. This unsolicited liquidation enabled client LB to generate a profit of nearly \$125,000 on her position in CRE stocks since their acquisition at NBF.
66. But ultimately, because of the unsolicited liquidation of all of the shares held in her portfolio in December 2020 – in the middle of a pandemic – client LB just broke even on the total capital that she had invested in stocks since the opening of her accounts at Raymond James; this because so many of the stocks in her portfolio had lost value.

Purchase of CPG shares in a context of appreciating value of the CRE shares

67. CPG is a mid-sized petroleum producer listed on the TSX, with a market capitalization ranging between 5 and 3 billion dollars between 2016 and 2019.
68. On or around June 21, 2017, client LB, on the recommendation of the Respondent, purchased stocks in CPG and sold bond funds to do so.
69. Subsequently, several other CPG stock purchase transactions were executed in her accounts up until April 2019. Many of these were financed by selling off bond funds.
70. Between March 2018 and December 2019, the weighting of CPG stocks went from 5.37% to between 17.4% and 19.9% over the course of 2019.
71. Between June 2017 and December 2019, the CRE and CPG stock positions combined accounted for between 40% and 56% of client LB's total portfolio value, thus exposing her to an unsuitable increase in risk caused by the overweight and concentration of the positions.

PART IV – CONTRAVENTIONS

72. By engaging in the conduct described above, the Respondent committed the following contravention of CISO requirements:

Between March 2017 and December 2019, the Respondent failed to ensure that the recommendations he was making for the accounts of one of his clients were suitable for this client, contrary to Rule 1300.1(q) of IIROC's Dealer Member Rules.

PART V – TERMS OF SETTLEMENT

73. The Respondent agrees to the following sanctions and costs:
 - a. Sanctions :
 - i. A fine of \$18,000, including disgorgement of the financial benefits of \$4,000;
 - ii. Successful completion of the Conduct and Practices Handbook exam, within 60 days following the Hearing Panel's acceptance of the Settlement Agreement;
 - b. Costs in the amount of \$2,000.
74. 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 Enforcement Staff and the Respondent.

PART VI – STAFF COMMITMENT

75. If the hearing panel accepts this Settlement Agreement, Enforcement 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.
76. If the Hearing Panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of this Settlement Agreement, Enforcement Staff may bring proceedings under Investment

Dealer 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

77. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
78. This Settlement Agreement shall be presented to a hearing panel at a settlement hearing in accordance with sections 8215 and 8428 of the Investment Dealer Rules, in addition to any other procedures that may be agreed upon between the parties.
79. Enforcement Staff and the Respondent agree that this Settlement Agreement will form all 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.
80. If the Hearing Panel accepts this Settlement Agreement, the Respondent agrees to waive all rights under the CIRO Rules and any applicable legislation to any further hearing, appeal and review.
81. If the Hearing Panel rejects this Settlement Agreement, Enforcement Staff and the Respondent may enter into another settlement agreement or Enforcement Staff may proceed to a disciplinary hearing based on the same or related allegations.
82. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
83. This Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and CIRO will post a copy of this Settlement Agreement on the CIRO website. CIRO will publish a notice and news release of the facts, contraventions, and the sanctions agreed upon in this Settlement Agreement and the Hearing Panel's written reasons for its decision to accept this Settlement Agreement.
84. If this Settlement Agreement is accepted, the Respondent agrees that neither they nor anyone on their behalf, will make a public statement inconsistent with this Settlement Agreement.
85. This Settlement Agreement is effective and binding upon the Respondent and Enforcement Staff as of the date of its acceptance by the Hearing Panel.

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

86. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.
87. An electronic copy of any signature will be treated as an original signature.

DATED this 29th day of June, 2023.

(S) Nathalie Blais

Witness

(S) Louis Desprès

Respondent

(S) Sylvie Poirier

Sylvie Poirier

Enforcement Counsel

on behalf of Enforcement Staff of the
Canadian Investment Regulatory
Organization (CIRO)

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¹On January 1, 2023, IIROC and the MFDA were consolidated into a single self-regulatory organization recognized under applicable securities legislation.

The Canadian Investment Regulatory Organization (“CIRO”) has adopted interim rules that incorporate the pre-amalgamation regulatory requirements contained in the rules and policies of IIROC and the by-law, rules and policies of the MFDA (the “Interim Rules”). The Interim Rules include (i) the Investment Dealer and Partially Consolidated Rules, (ii) the UMIR and (iii) the Mutual Fund Dealer Rules. These rules are largely based on the rules of IIROC and the rules and certain by-laws and policies of the MFDA that were in force immediately prior to amalgamation. Where the rules of IIROC and the rules and by-laws and policies of the MFDA that were in force immediately prior to amalgamation have been incorporated into the Interim Rules, Enforcement Staff have referenced the relevant section of the Interim Rules.

Section 1105 (Transitional provision) of the Investment Dealer and Partially Consolidated Rules sets out CIRO’s continuing jurisdiction, including that CIRO shall continue the regulation of any person subject to the jurisdiction of the Investment Industry Regulatory Organization of Canada that was formerly conducted by the Investment Industry Regulatory Organization of Canada.