Re Crocker

IN THE MATTER OF:

The Investment Dealer and Partially Consolidated Rules

and

Robert Weston Crocker

2024 CIRO 05

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: December 18, 2023, in Toronto, Ontario (via videoconference)
Decision: December 18, 2023
Reasons for Decision: January 8, 2024

Hearing Panel:
Christopher Portner, Chair, David Lang and Steven Garmaise

Appearances:
April Engelberg, Senior Enforcement Counsel
Bruce O'Toole, for Robert Weston Crocker
Robert Weston Crocker (present)

REASONS FOR DECISION ON ACCEPTANCE OF SETTLEMENT

INTRODUCTION

¶ 1 On December 8, 2023, a Notice of Motion was issued relating to a motion that Enforcement Staff of the Canadian Investment Regulatory Organization ("CIRO") would bring to a hearing panel requesting that it consider a settlement agreement between Enforcement Staff and Robert Weston Crocker (the "Respondent"), dated December 6, 2023 ("Settlement Agreement") pursuant to Rules 8215 and 8428 of the Investment Dealer and Partially Consolidated Rules (the "IDPC Rules").

¶ 2 The Settlement Agreement, a copy of which is attached to these Reasons, addresses allegations that the Respondent contravened Dealer Member Rule 1300.1(a) by completing Know Your Client ("KYC") information that he knew was inaccurate, and IDPC Rule 1400 by completing purchases of private placements for a client's account which should have been, but was not, marked "PRO", i.e. not eligible for these investments, contrary to the standards of conduct that apply to a regulated person.

¶ 3 On December 18, 2023, the Hearing Panel heard submissions by Senior Enforcement Counsel of CIRO and the Respondent's counsel with respect to the acceptance of the Settlement Agreement by the Hearing Panel. Following the submissions, the Hearing Panel adjourned to consider the appropriateness of the sanctions and costs provided in the Settlement Agreement.

¶ 4 After considering the submissions, the IIROC Sanction Guidelines[1] and prior decisions of hearing panels, the Hearing Panel accepted the Settlement Agreement with written reasons to follow. These are our reasons.

BACKGROUND

¶ 5 Commencing in November 2016, the Respondent worked as a Registered Representative at the same branch of BMO Nesbitt Burns as another Registered Representative (the "RR"). In May 2016, the RR began working at RBC Dominion Securities ("RBC DS") and, in August 2019, the Respondent began working at Canaccord Genuity Corp.("Canaccord").

¶ 6 While working at Canaccord, the Respondent became the advisor for the RR's spouse or common law spouse (the "Client"). In or about April 2020, the Respondent opened an account at Canaccord for the Client. The KYC information indicated that the RR was the Client's spouse or common law spouse. There was no indication that the RR was a joint account holder or authorized party on the Client's account. The RR's occupation was shown as "Real Estate Deve" and the KYC information further indicated that he was not related to and did not reside at the same residence as the Client. At all relevant times, the address on the Client's account was the same as that of the RR.

¶ 7 The KYC information did not disclose that the RR was a Registered Representative with RBC DS. The RR did not, at any time, have any personal investment accounts at Canaccord.

¶ 8 In April 2020, the Respondent sent the unsigned KYC documents to the RR, but not the Client, by email at the RR's RBC DS email address which the Respondent had been using since 2019. The RR returned the KYC document with the Client's signature by email later the same day from the same RBC DS email address.

¶ 9 The Respondent completed the purchase of five private placements in the Client's account. The placements, which had a value of $177,000, were not "PRO" eligible. Between April and December 2020, the Respondent received commissions for the private placements of approximately $8,190.

¶ 10 The Respondent worked in the industry for approximately nine years and had no prior disciplinary history. There is no evidence that any clients suffered loss as a result of his misconduct.

CONTRAVENTIONS

¶ 11 The Settlement Agreement states that, by engaging in the conduct described above, the Respondent:

(a) failed to learn and remain informed of the essential facts relating to a client by completing KYC information that he knew was inaccurate, contrary to Dealer Member Rule 1300.1(a); and

(b) completed purchases of private placements for the Client, which were non-PRO eligible when he knew that the Client's account should have been marked PRO, contrary to IDPC Rule 1400.

SANCTIONS AND COSTS

¶ 12 With respect to the foregoing contraventions, Enforcement Staff and the Respondent agree in the Settlement Agreement, a copy of which is attached, to the following sanctions and costs:

(a) a fine of $30,000;

(b) the disgorgement of $8,078;

(c) a six-month suspension from registration with CIRO;

(d) re-writing the Conduct Practices Handbook course prior to any re-registration with CIRO;

(e) strict supervision of six months upon any re-registration with CIRO; and

(f) costs of $10,000.

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[1] The Investment Industry Regulatory Organization ("IIROC") is one of the two predecessor regulatory organizations of CIRO.

¶ 13 If the Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees to pay the amounts detailed in paragraph 12 above within 30 days of such acceptance unless otherwise agreed between Enforcement Staff and the Respondent.

RESPONSIBILITY OF THE HEARING COMMITTEE

¶ 14 Pursuant to IDPC Rule 8215(5), the Hearing Panel may only accept or reject the Settlement Agreement. Senior Enforcement Counsel referred the Hearing Panel to *Re Milewski*[2] in which the District Council stated that:

> 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 settlement.[3]

ANALYSIS

¶ 15 The Hearing Panel received a Settlement Book from the parties which, in addition to the Settlement Agreement, included (i) copies of IDPC Rules 1300.1, 1401, 8215 and 8428; (ii) the IIROC Sanction Guidelines; and (iii) five prior IIROC cases including *Re Milewski* referred to in paragraph 14 above and the four cases which are addressed in paragraphs 16 and 17 below.

¶ 16 With respect to the first contravention by the Respondent, it is clear from the facts on which the parties agreed that the Respondent either totally failed to adequately assess, or completely ignored, the relationship between the RR and the Client notwithstanding his knowledge of the RR's function and place of employment, thereby contravening Dealer Member Rule 1300.1(a). In this regard, Senior Enforcement Counsel referred the Hearing Panel to:

(a) *Re Jacobsen*[4], in which the respondents acted contrary to Dealer Member Rule 1300.1(a) by failing to use due diligence to ensure that his clients qualified as accredited investors as defined in National Instrument 45-106 before facilitating their purchase of securities pursuant to prospectus exemptions. The respondents were required to (i) pay fines in the amount of $15,000 and $25,000, respectively; (ii) each pay an additional amount of $2,096 being the amount of commissions earned; (iii) each successfully complete the Conduct and Practices Handbook course prior to any re-registration; and (iv) each pay costs in the amount of $2,500.

(b) *Re Moon et al*[5], in which the three respondents solicited and facilitated the purchase of securities pursuant to an exemption from the prospectus and registration requirements of the *Securities Act* of Ontario. The case involved 38 clients, who purchased nearly $1 million of such securities but did not appear to be accredited investors. The respondents were required to pay $35,000, $20,000 and $15,000, respectively, and costs in the amount of $6,000.

¶ 17 With respect to the second contravention by the Respondent, his purchase of five separate and ineligible private placements for the Client's account over a seven-month period demonstrates a complete disregard for, or indifference to, IDPC Rule 1400. In this regard, Senior Enforcement Counsel referred the Hearing Panel to:

(a) *Re McKee*[6], in which the respondent opened an account for a client who was the director, officer and shareholder of a corporation and the spouse of an individual (the "Spouse"), both of whom were subjects of a securities regulatory proceeding. The respondent's branch manager asked the

[2] [1999] I.D.A.C.D No. 17.
[3] *Ibid*, at pages 11-12.
[4] 2013 IIROC 59.
[5] 2017 IIROC 42.
[6] 2020 IIROC 12.

respondent if the client was associated with the Spouse but used a given name that was similar but not identical to that of the Spouse. The respondent advised the branch manager that the client was not associated with that name which was a misleading representation as the respondent knew or ought to have known that the purpose of the enquiry was to determine whether the client had any connection to the Spouse who was the subject of the securities regulatory proceeding. When the branch manager subsequently asked the respondent if the client was connected to the corporation, the respondent falsely represented that she was not. The respondent was required to pay a fine in the amount of $30,000, and costs in the amount of $5,000 and re-write the Conduct and Practices Handbook course prior to any re-registration.

(b) *Re Bealer*[7], in which the respondent contravened IDPC Rule 1400 by, among other things, failing to designate several client accounts as PRO-accounts and then investing client accounts in ineligible new issues without receiving appropriate approvals from his firm. The accounts in question participated in 32 new issues having a value of approximately $1,966,575 of which $1,286,275 of the purchases were sold for a realized gain of $111,087. The respondent was required to (i) pay a fine of $50,000 plus disgorgement in the amount of $17,269; (ii) be subject to a five-month prohibition of approval from registration and a twelve-month period of close supervision; and (iv) pay costs in the amount of $5,000.

¶ 18 Although the sanctions and costs set out in the Settlement Agreement are not separately allocated to the first and second contraventions, the Hearing Panel views them as being consistent with those described in *Re Jacobsen* and *Re Moon et al*, with respect to the contravention by the Respondent of Dealer Member Rule 1300.1(a), and *Re McKee* and *Re Bealer*, with respect to the contraventions by the Respondent of IDPC Rule 1400. This is particularly appropriate with respect to the requirements that the Respondent be suspended from registration for six months and thereafter be subject to strict supervision for six months upon any re-registration and, further, be required to successfully re-write the Conduct Practice Handbook course.

¶ 19 Finally, the Hearing Panel has considered the IIROC Sanction Guidelines, which "are intended to promote consistency, fairness and transparency by providing a framework to guide the exercise of discretion in determining sanctions which meet the general sanctioning objectives."[8]

¶ 20 The Sanction Guidelines further state:

> Where there are multiple violations, the overall sanction imposed should not be excessive or disproportionate to the gravity of the total misconduct at hand. For this reason, a global approach to sanctioning may be appropriate where the imposition of a sanction for each contravention would have the effect of imposing on the respondent a cumulative sanction that is excessive.[9]

CONCLUSIONS

¶ 21 For the foregoing reasons, the Hearing Panel is of the opinion that the sanctions set out in the Settlement Agreement are within the range of reasonableness and, accordingly, are accepted.

Dated at Toronto, Ontario this 8 day of January 2024.

"Christopher Portner"

Christopher Portner, Chair

"David Lang"

[7] 2022 IIROC 30.
[8] IIROC Sanction Guidelines at page 2.
[9] *Ibid*, at Part I, Section 1.

David Lang

"Steven Garmaise"

Steven Garmaise

Appendix A
Settlement Agreement

IN THE MATTER OF
THE INVESTMENT DEALER AND PARTIALLY CONSOLIDATED RULES
AND THE DEALER MEMBER RULES
AND
ROBERT WESTON CROCKER

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

¶ 1 The Corporation[i] will issue a Notice of Motion 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 Robert Weston Crocker (the "Respondent").

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.

Overview

¶ 4 Beginning in November 2016, the Respondent worked as a Registered Representative at the same branch of BMO Nesbitt Burns Inc. ("BMO") with another Registered Representative (the "RR"). In May 2018, the RR began working at RBC Dominion Securities ("RBC DS"). In August 2019, the Respondent began working at Canaccord Genuity Corp ("Canaccord").

¶ 5 While at Canaccord, the Respondent became the advisor for the RR's spouse or common law spouse (the "Client"). The Respondent failed to learn and remain informed of the essential facts relative to the Client by completing Know Your Client ("KYC") information that he knew was inaccurate.

¶ 6 The Respondent completed several purchases of private placements for the Client's account which were not PRO eligible when he knew that the Client's account should have been, but was not, marked PRO, contrary to the standards of conduct that apply to a Regulated Person.

Background

¶ 7 The Respondent was first employed in the industry in May 2012. He was first registered at BMO from November 2016 to August 2019; at Canaccord from August 2019 until he was terminated in January 2021; at Echelon Wealth Partners Inc. from March 2021 until he was terminated in August 2022. The Respondent is not currently registered and has no previous disciplinary history.

KYC Information

¶ 8 In or about April 2020, the Respondent opened an account at Canaccord for the Client. The KYC information indicated that:

- the Client's spouse or common law spouse was the RR;
- there was no indication that the RR was a joint account holder or authorized party on the account;
- the RR's occupation was documented as "Real Estate Deve"; and
- in response to the question: "Is [the Client] related to and residing at the same address as an Employee of [the Firm] or any other investment firm?" the answer was "No".

¶ 9 The KYC did not otherwise include any reference to the fact that the RR was employed as a Registered Representative with RBC DS. The RR did not have any personal investment accounts at Canaccord during the lifetime of the Client's account with the Respondent.

¶ 10 At all relevant times, the address on the Client's account was the same as the RR's address.

¶ 11 In April 2020, the Respondent sent the unsigned KYC document via email to the RR at his RBC DS email address; the Respondent had been using this email address for the RR since 2019. The Client was not a recipient on this email. The RR emailed the KYC document with the Client's signature to the Respondent later the same day from the same RBC DS email address.

¶ 12 In light of the RR's status with RBC DS, the Client's account should have been, but was not, marked as a PRO account at Canaccord.

¶ 13 If the Client's account had been properly marked as a PRO account, it would not have been able to participate in the private placements described below.

Private Placements Purchased in the Client's Account – Not PRO Eligible

¶ 14 The Respondent completed purchases for five private placements in the Client's account for a value of approximately $177,000 which were not PRO eligible as follows:

	Issuer	Initial Purchase Date	Cost
a.	1205457 B.C Ltd (Pure Extract Technologies Inc.)	6/11/2020	$20,000.00
b.	Mednow Inc.	7/10/2020	$30,000.00
c.	GHP Noetic Science-Psychedelic Pharma Inc.	8/11/2020	$7,000.00
d.	Pivotree Inc.	10/30/2020	$5,100.00

e.	Psybio. Therapeutics Inc.	12/3/2020	$114,900.00
	Total		**$177,000.00**

The Respondent's Financial Benefit

¶ 15 Between April 2020 and December 2020, the Respondent received 100% of the payout of commissions for transactions in the Client's account. The Respondent's commissions for the above noted purchases of private placements that were not PRO eligible was approximately $8190.00.

Other Factors

¶ 16 The Respondent was in the industry for approximately nine years. There is no evidence that any clients suffered a loss as a result of the Respondent's misconduct.

PART IV – CONTRAVENTIONS

¶ 17 By engaging in the conduct described above, the Respondent committed the following contraventions of Corporation requirements:

(i) Between April 2020 and December 2020, the Respondent failed to learn and remain informed of the essential facts relative to a client by completing Know Your Client information that he knew was inaccurate, contrary to Dealer Member Rule 1300.1(a); and

(ii) Between April 2020 and December 2020, the Respondent completed purchases of private placements for a client which were non-PRO eligible when he knew that the Client's account should have been marked PRO, contrary to Investment Dealer Rule 1400.

PART V – TERMS OF SETTLEMENT

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

i. fine of $30,000;
ii. disgorgement of $8,078;
iii. six months suspension from registration with the Corporation;
iv. re-write Conduct Practices Handbook prior to any re-registration with the Corporation;
v. strict supervision of 6 months upon any re-registration with the Corporation; and
vi. costs of $10,000.

¶ 19 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

¶ 20 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.

¶ 21 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

¶ 22 This Settlement Agreement is conditional on acceptance by the hearing panel.

¶ 23 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.

¶ 24 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.

¶ 25 If the hearing panel accepts this Settlement Agreement, the Respondent agrees to waive all rights under the Rules of the Corporation and any applicable legislation to any further hearing, appeal and review.

¶ 26 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.

¶ 27 The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the hearing panel.

¶ 28 This Settlement Agreement will become available to the public upon its acceptance by the hearing panel and the Corporation will post a copy of this Settlement Agreement on the Corporation website. The Corporation 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.

¶ 29 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.

¶ 30 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

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

¶ 32 An electronic copy of any signature will be treated as an original signature.

DATED this "6" day of December, 2023.

"Emily Magowan" "Robert Weston Crocker"

Witness **Robert Weston Crocker**

DATED this "6" day of December, 2023.

"Ricki Ann Newmarch"

Witness

"April Engelberg"

April Engelberg

Senior Enforcement Counsel on behalf of
Enforcement Staff of the Corporation

The Settlement Agreement is hereby accepted this "18" day of "December", 2023 by the following Hearing panel:

Per: "Christopher Portner"
Chair

Per: "David Lang"
Industry Member

Per: "Steve Garmaise"
Industry Member

[i] On January 1, 2023, IIROC and the MFDA were consolidated into a single self-regulatory organization recognized under applicable securities legislation. The New Self-Regulatory Organization of Canada (the "Corporation") 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.