

Re Bédard

IN THE MATTER OF

**THE INVESTMENT DEALER AND PARTIALLY CONSOLIDATED RULES AND THE DEALER
MEMBER RULES**

AND

Michel Bédard

2024 CIRO 34

Canadian Investment Regulatory Organization
Hearing Panel (Québec District)

Heard: February 20, 2024

Decision: February 20, 2024

Reasons for Decision: March 4, 2024

Hearing Panel:

Michel Brunet (Chair), Marie-Julie Nicolo, Yves Ruest

Appearances:

Francis Larin, Enforcement Counsel

Nicolas Plourde, Counsel for the Respondent

Michel Bédard, Respondent (present)

DECISION AND REASONS FOR ACCEPTANCE OF THE SETTLEMENT AGREEMENT

THE SETTLEMENT AGREEMENT

¶ 1 On November 14, 2023, CIRO staff and Michel Bédard entered into a settlement agreement (“the Settlement Agreement”), which is attached to this decision.

¶ 2 The purpose of the settlement hearing, which was conducted as an electronic hearing on February 20, 2024, was to consider whether, under sections 8215 and 8428 of the Investment Dealer and Partially Consolidated Rules, the Hearing Panel should accept the Settlement Agreement that CIRO Enforcement Staff and the Respondent had jointly recommended, in accordance with the terms and conditions set out below.

¶ 3 The question that arose essentially concerned the appropriateness of the sanctions provided for in the Settlement Agreement, with the parties making submissions on those sanctions.

¶ 4 Following the submissions and a brief deliberation, the Hearing Panel informed the parties that it was accepting the Settlement Agreement and would provide the reasons at a later date.

The Contraventions

¶ 5 The Respondent acknowledges his responsibility for the following contraventions:

Allegation 1

Between June 2020 and November 2021, the Respondent made discretionary trades in the accounts of

two clients, without the accounts having been preauthorized and accepted as discretionary accounts, contrary to IIROC Dealer Member Rule 1300.4.

Allegation 2

Between June 2020 and November 2021, the Respondent falsely represented to his firm, through his written notes, that he had discussed with two of his clients prior to the aforementioned transactions, contrary to Consolidated Rule 1400.

Allegation 3

Between June 2020 and October 2021, the Respondent failed to use due diligence to ensure that options traded in the account of one of his clients were suitable for said client, contrary to IIROC Dealer Member Rule 1300.1(q).

Allegation 4

Between June 2020 and November 2021, the Respondent failed to use due diligence to ensure that the option trading strategy used for two of his clients was within the bounds of good business practice, contrary to IIROC Dealer Member Rule 1300.1(o).

Allegation 5

Between June 2020 and November 2021, the Respondent failed to disclose to two of his clients the information relating to the fees payable before executing the trades in their accounts, contrary to IIROC Dealer Member Rule 29.9(1)(a).

The Facts

¶ 6 The agreed facts are set out in Part III of the Settlement Agreement. Readers are invited to read them. However, we feel it is appropriate to highlight the ones that most influenced our judgment in determining the appropriateness of the sanctions.

¶ 7 The Respondent has been registered with relevant bodies for nearly 40 years. In addition, the Respondent was a branch manager with his current employer, Desjardins Securities Inc. (DS), for more than 18 years. The Respondent therefore has a great deal of experience in his field.

¶ 8 Beginning in summer 2020, the Respondent undertook an active option trading strategy in the accounts of two of his clients who had no knowledge of options trading. This strategy was not guided by any target return objective and resulted in significant losses for these clients, namely capital losses of nearly \$469,000 for one of these clients between June 2020 and February 2022 and capital losses of nearly \$53,000 for the other between August 2020 and November 2021.

Discretionary Trading

¶ 9 The Respondent acknowledges that he effected many discretionary trades in the accounts of two clients, without these accounts being preauthorized or approved as discretionary accounts. Hundreds of transactions were made in these accounts over relatively short periods of time, few of which were discussed in advance between the Respondent and his clients.

Respondent's Internal Notes

¶ 10 The Respondent created false notes of alleged conversations with his clients, in particular with regard to the option trades.

Unsuitability

¶ 11 The Respondent took it upon himself to open an option margin account and began an active option trading strategy for one of his clients. He also changed the client's investment objectives to align the client's file with the client's portfolio, in accordance with the option trading strategy then employed by the Respondent.

Sound Business Practice

¶ 12 The Respondent's option trading strategy for two of his clients generated substantial commissions for

him over a short period of time, amounting to \$226,492.

Fee Disclosure

¶ 13 The many discretionary trades effected by the Respondent, including option trades, generated fees for his clients that the Respondent did not disclose to them.

Mitigating Factors

¶ 14 The absence of a disciplinary record, the agreements between the clients and DS regarding the amount of compensation to be paid to the clients, the measures imposed on the Respondent by DS as a result of the Respondent's conduct, and, as was stated during the hearing, the Respondent's payment to DS of an amount satisfactory to DS in connection with the compensation paid to the clients are factors that were taken into consideration.

Acceptance of the Settlement Agreement

¶ 15 The Hearing Panel may accept or reject the Settlement Agreement. It is well accepted that the Settlement Agreement should be accepted so long as the sanctions set out therein fall within a reasonable range of appropriateness.

¶ 16 Numerous prior hearing panel decisions were submitted to us to determine whether the sanctions set out in the Settlement Agreement should be accepted.

¶ 17 A number of the decisions submitted, including *Re Maurice* 2019 IIROC 20, address the principles that should guide the Hearing Panel in determining the acceptability of settlement agreements based on the sanctions set out therein.

¶ 18 In *Re Maurice*, the Hearing Panel referred to the principles put forward in *Re Milewski* [1999] I.D.A.C.D. No. 17:

Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council in making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.

This understanding is reflected in paragraph 20.26 of the By-laws, which authorizes the District Council to "accept," rather than "approve," a settlement agreement. In each case, a District Council must determine appropriateness, but the standards applicable to its doing so on a settlement hearing differ from those in a contested hearing. Thus, the penalties imposed under settlement agreements, while relevant to a District Council exercising its discretion to penalize, provide only limited assistance in a hearing like this one. (pp. 9–10).

¶ 19 *Re Jacob* 2017 IIROC 17 is also among the decisions that were brought to our attention and from which we reproduce the following passage:

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

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

respondents for similar contraventions in similar circumstances.

SANCTIONS

¶ 20 The Settlement Agreement provides the following serious sanctions:

- a) A \$30,000 fine for Allegation 1;
- b) A \$30,000 fine for Allegation 2;
- c) A \$30,000 fine for Allegation 3;
- d) A \$50,000 fine for Allegation 4;
- e) A \$10,000 fine for Allegation 5;
- f) Disgorgement of \$226,492 representing the commissions collected by the Respondent;
- g) Suspension of the Respondent's registration with CIRO for a period of two (2) months, to begin seven (7) days after the acceptance of the Settlement Agreement;
- h) An additional amount of \$10,000 in costs.

¶ 21 It should be noted that the Respondent has complied with the following measures imposed upon him by DS:

- That he re-write and pass the Conduct and Practices Handbook examination;
- Twelve (12) months of strict supervision.

¶ 22 The Respondent's alleged misconduct is serious. We find that the sanctions provided under the Settlement Agreement fall within a reasonable range of appropriateness in light of that misconduct. They are consistent with the sanction principles set out in the CIRO Sanction Guidelines:

[...] Sanctions are preventative in nature and should protect the public, strengthen market integrity, and improve business standards.

[...] Sanctions should be significant enough to prevent and discourage future misconduct by the respondent (specific deterrence) and to discourage others from engaging in similar misconduct (general deterrence).

CONCLUSION

¶ 23 Based on the above, the Hearing Panel accepts the Settlement Agreement.

Dated at Montreal on March 4, 2024.

"Michel Brunet"

Michel Brunet, Chair

"Marie-Julie Nicolo"

Marie-Julie Nicolo

"Yves Ruest"

Yves Ruest

Appendix "A"
Settlement Agreement

IN THE MATTER OF

**THE INVESTMENT DEALER AND PARTIALLY CONSOLIDATED RULES AND THE DEALER
MEMBER RULES**

AND

Michel Bédard

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

¶ 1 The Canadian Investment Regulatory Organization (“CIRO”)ⁱ 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 Michel Bédard (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.

Registration history

¶ 4 The Respondent has been registered with the Canadian Investment Regulatory Organization (“CIRO”) and its predecessors, the Investment Industry Regulatory Organization of Canada (“IIROC”) and the Investment Dealers Association of Canada (“IDA”), since 1986.

¶ 5 The Respondent has been registered and in the employ of Desjardins Securities Inc. (“DS”) since July 1996.

¶ 6 From February 1999 to June 2017, the Respondent was also registered as a Branch Manager of DS.

Particulars

Client GDB

¶ 7 Client DB opened a brokerage account with the Respondent in 2010, in the name of her holding company (GDB).

¶ 8 The investor profile for this client, as it appears from her file with updates made in 2014 and 2016, indicated that her investment knowledge was [TRANSLATION] “good,” that her risk tolerance was “moderate” and that her investment objectives for this account were exclusively for “moderate to higher risk income and investment securities”.

¶ 9 Client DB had no knowledge of option trading.

¶ 10 Until 2020, GDB’s portfolio consisted of relatively conservative investments.

¶ 11 No dissatisfaction was expressed by the client with this type of investment or the returns it generated.

¶ 12 Client DB’s professional duties prevented her from performing daily monitoring of her portfolio, and she fully trusted the Respondent to look after her portfolio.

¶ 13 On or around February 18, 2022, through her authorized representative, client GDB submitted a complaint against the Respondent.

Client FML

¶ 14 In September 2018, clients MM and RL opened a brokerage account with DS, in the name of a family trust (FML).

¶ 15 The investor profile for these clients, as it appears from their file, referred to investment knowledge as

[TRANSLATION] “good,” a “moderate” risk tolerance and investment objectives exclusively composed of “moderate to higher risk income and investment securities”.

¶ 16 The Respondent took over managing this account from client FML as of January 2020.

¶ 17 Communications relating to FML’s account were mainly with its representative RL.

¶ 18 RL had no knowledge of option trading.

¶ 19 On or around February 14, 2022, through its authorized representatives, client FML submitted a complaint against the Respondent.

Option accounts

¶ 20 As of the summer of 2020, the Respondent undertook an active option trading strategy in the accounts of clients GDB and FML.

¶ 21 For client GDB, the Respondent opened an option margin account in June 2020.

¶ 22 For client FML, the Respondent opened an option margin account in August 2020.

¶ 23 This trading strategy relied in particular on short-term fluctuations in the prices of the underlying shares to increase the return on these clients’ portfolios.

¶ 24 For clients GDB and FML, this strategy was not guided by any target return objective and resulted in significant losses for these clients.

¶ 25 In the case of client GDB, the capital losses resulting from these option transactions amounted to \$468,809 between June 2020 and February 2022.

¶ 26 In addition, GDB’s portfolio generated returns of 27.54% during this period.

¶ 27 In the case of client FML, the capital losses resulting from these option transactions amounted to \$52,931 between August 2020 and November 2021.

¶ 28 In addition, FML’s portfolio generated returns of 0.19% during this period.

Discretionary trading

¶ 29 The Respondent has admitted to numerous discretionary trades in the accounts of clients GDB and FML.

¶ 30 None of these accounts were preapproved or designated as discretionary accounts.

¶ 31 For client GDB, only 24 of the 379 option transactions carried out from June 2020 to October 2021 were discussed in advance by the Respondent and his client.

¶ 32 For client FML, only 8 of the 101 option trades carried out from August 2020 to November 2021 were discussed in advance by the Respondent and its client.

¶ 33 Accordingly, for the period from June 2020 to November 2021, the Respondent made 448 discretionary transactions in the accounts of clients GDB and FML.

Respondent’s internal notes

¶ 34 The Respondent admitted to creating false notes of alleged conversations with clients GDB and FML, in particular with regard to the option trades described above which were carried out on a discretionary basis.

¶ 35 In this regard, the Respondent also ignored certain reminders from his employer.

Unsuitability

¶ 36 It was on the Respondent’s initiative alone that he opened an option margin account and began an active option trading strategy in June 2020 for client GDB.

¶ 37 When this option margin account was opened, the investment objectives of client GDB were also amended by the Respondent on or around August 19, 2020:

GDB	June 8, 2020	August 19, 2020
Investment objectives		
Moderate to higher risk income and growth securities	80%	30%
Speculative securities and stock market strategies	20%	70%
Risk tolerance		
Low		
Moderate		
High	100%	100%

¶ 38 However, the purpose of this update was not to truly reflect client GDB’s risk tolerance or investment objectives, but rather to align the client’s file with the client’s portfolio, in accordance with the option trading strategy now employed by the Respondent.

¶ 39 Despite the investor profile and portfolio mix of client GDB through June 2020, the Respondent recommended that the client continue with her option trading strategy even after substantial gains may have been realized.

Sound business practice

¶ 40 The Respondent acknowledged that this option trading strategy, implemented for clients GDB and FML, resulted in a high number of commissions.

¶ 41 Between June 2020 and November 2021, for clients GDB and FML, the total commissions remitted to the Respondent under the option trading strategy amounted to \$226,492.

Fee disclosure

¶ 42 The Respondent acknowledged that he had not disclosed to clients GDB and FML the fees payable for the option transactions carried out in their accounts, particularly regarding the transactions described in paragraph 33.

¶ 43 The parties also considered the following factors:

- a. The Respondent had no prior disciplinary history before CIRO;
- b. Clients GDB and FML agreed with DS on the amount of compensation, to be settled following their respective complaints against the Respondent;
- c. On or around October 21, 2022, DS imposed the following measures on the Respondent:
 - that he re-write and pass the Conduct and Practices Handbook (“CPH”) examination;
 - twelve (12) months of strict supervision;
 - a monetary penalty of \$150,000.
- d. As of the date hereof, the Respondent has complied with the first two aforementioned measures, with DS having agreed to lift the monetary penalty in light of this Settlement Agreement and the related sanctions.

PART IV – CONTRAVENTIONS

¶ 44 By engaging in the conduct described above, the Respondent acknowledges his responsibility for the following contraventions:

Count 1

Between June 2020 and November 2021, the Respondent made discretionary trades in the accounts of two clients, without the accounts having been preauthorized and accepted as discretionary accounts, contrary to IIROC Dealer Member Rule 1300.4.

Count 2

Between June 2020 and November 2021, the Respondent falsely represented to his firm, through his written notes, that he had discussed with two of his clients prior to the aforementioned transactions, contrary to Consolidated Rule 1400.

Count 3

Between June 2020 and October 2021, the Respondent failed to use due diligence to ensure that options traded in the account of one of his clients were suitable for said client, contrary to IIROC Dealer Member Rule 1300.1(q).

Count 4

Between June 2020 and November 2021, the Respondent failed to use due diligence to ensure that the option trading strategy used for two of his clients was within the bounds of good business practice, contrary to IIROC Dealer Member Rule 1300.1(o).

Count 5

Between June 2020 and November 2021, the Respondent failed to disclose to two of his clients the information relating to the fees payable before executing the trades in their accounts, contrary to IIROC Dealer Member Rule 29.9(1)(a).

PART V – TERMS OF SETTLEMENT

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

- a) A fine in the amount of \$30,000 for Count 1;
- b) A fine in the amount of \$30,000 for Count 2;
- c) A fine in the amount of \$30,000 for Count 3;
- d) A fine in the amount of \$50,000 for Count 4;
- e) A fine in the amount of \$10,000 for Count 5;
- f) Disgorgement of \$226,492 representing the commissions collected by the Respondent, in accordance with paragraph 41 of this Settlement Agreement;
- g) Suspension of his registration with CIRO for a period of two (2) months, with such suspension to commence seven (7) days after the acceptance of this Settlement Agreement;
- h) An additional amount of \$10,000 in costs.

¶ 46 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

¶ 47 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.

¶ 48 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

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

¶ 50 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.

¶ 51 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.

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

¶ 53 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.

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

¶ 55 The Settlement Agreement will become available to the public upon its acceptance by the hearing panel, and CIRO will post a full 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.

¶ 56 If this Settlement Agreement is accepted, the Respondent agrees that neither he nor anyone on his behalf will make a public statement inconsistent with this Settlement Agreement.

¶ 57 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

¶ 58 The Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

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

DATED the 14 day of the month of November 2023.

Witness

"Michel Bédard"
Respondent

"Francis Larin"
Francis Larin
Senior Enforcement Counsel, on behalf of Enforcement Staff, CIRO

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ⁱ On 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-laws, rules and policies of the MFDA (the "Interim Rules"). The Interim Rules include (i) the Investment Dealer and Partially Consolidated Rules, (ii) the Universal Market Integrity Rules ("UMIR") and (iii) the Mutual Fund Dealer Rules. These rules are largely based on the rules of IIROC and certain by-laws, rules and policies of the MFDA that were in force immediately prior to amalgamation. Where provisions referred to herein were part of the rules of IIROC and the rules, by-laws or policies of the MFDA that were in force immediately prior to amalgamation and that were 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.