

Re Chatterjee

IN THE MATTER OF:

The Mutual Fund Dealer Rules

and

Neelgiri Chatterjee

2024 CIRO 51

Canadian Investment Regulatory Organization
Hearing Panel (Nova Scotia District)

Heard: May 7, 2024 in Halifax, Nova Scotia (via videoconference)

Decision: May 7, 2024

Reasons for Decision: May 27, 2024

Hearing Panel:

R. Scott Peacock, Chair

Ann Etter, Industry Representative

David Acker, Industry Representative

Appearances:

Maria Di Clemente, CIRO Enforcement Counsel

Neelgiri Chatterjee, Respondent (present)

REASONS FOR ACCEPTANCE OF SETTLEMENT

INTRODUCTION

¶ 1 The Canadian Investment Regulatory Organization (“CIRO”) issued a Notice of Settlement Hearing dated 25 March 2024 in respect to Neelgiri Chatterjee (“the Respondent”) alleging that:

“Between January 7, 2020 and December 4, 2020, the Respondent cancelled, rather than amended, preauthorized contributions in the accounts of clients and established new pre-authorized contributions in order to meet sales targets or to qualify for a bonus based on the Dealer Member sales incentives, contrary to Mutual Fund Dealer Rule 2.1.1”

¶ 2 This matter came before the Panel to consider whether to accept or reject the proposed settlement based on the facts set out in the agreement.

¶ 3 The Panel heard from the parties, considered the exhibits and submissions of the parties. The Settlement Agreement was accepted after deliberations considering the nature of the violation, the Respondent’s background and the impact of the misconduct.

BACKGROUND

¶ 4 The Respondent was registered in the securities industry from August 2014 to February 2021. He was registered in Nova Scotia as a dealing representative with Scotia Securities Inc., a Dealer Member of CIRO. The Respondent was terminated on or about 10 February 2021 and is not currently registered in the securities industry in any capacity.

¶ 5 The Hearing was held in camera until such time as the Panel announced its decision to accept the agreement and then moved to an open hearing. An oral decision was rendered with written reasons to follow.

ANALYSIS

¶ 6 The Settlement Agreement provided the factual basis for the Panel's deliberations as to whether the agreement was reasonable and appropriate. There is clear evidence the Respondent cancelled the pre-authorized contributions ("PACs") of 21 clients and set up 31 new PACs for the new dollar amounts for his clients. Such misconduct is undoubtedly a violation of the Standard of Conduct Rule 2.1.1.

¶ 7 Enforcement Counsel in her submissions highlighted several additional factors relevant to our decision on the acceptability of the proposed settlement: (1) The Respondent received sales revenue for the full amount of the new PACs; (2) A troubling fact is that the Respondent created false or misleading notes on Investment Direction Forms; (3) The Respondent delayed creating the new PACs for several days to ensure receipt of CARs that he would not have been otherwise entitled to receive; (4) The Respondent solicited at least six clients to amend their PACs. The Respondent acknowledged the facts and apologized for the misconduct and gave assurance that the misconduct would not be repeated.

¶ 8 The Panel considered the admitted misconduct to be serious in nature and cannot be attributed to inexperience nor common oversight on the part of the Respondent. The Standard of Conduct is of general application to registered individuals and the securities industry.

"Each Member and Approved Person of a Member shall: (a) deal fairly, honestly and in good faith with its clients; (b) observe high standards of ethics and conduct in the transaction of business; (c) not engage in any business conduct or practice which is unbecoming or detrimental to the public interest;..."¹

The Panel is satisfied on the preponderance of the admitted facts that the Respondent violated Rule 2.1.1.

¶ 9 Enforcement Counsel and the Respondent have proposed a penalty in the Settlement Agreement consisting of:

1. a prohibition from conducting securities related business in any capacity while in the employ or associated with a CIRO Dealer Member for a period of twelve months commencing on the date of the Settlement Agreement acceptance;
2. a fine in the amount of \$12,500.00 in certified funds;
3. costs in the amount of \$5,000.00 in certified funds;
4. a payment installment plan as set out in the Settlement Agreement.

¶ 10 In its deliberations the Panel must consider the facts in the agreement in the light of the guiding principles and primary purpose of securities regulation. A broad public interest mandate including elements of fairness, prevention of fraudulent practices, and the public confidence in capital markets and securities industry. These principles were discussed in *Pezim v British Columbia (Superintendent of Brokers)*² an often relied upon precedent and guidance to Panels.

¶ 11 It is not the role of a Panel in settlement proceedings to impose a penalty that is not provided for in the Settlement Agreement. The two key considerations for its determination are: does the admitted conduct constitute a contravention of the By-laws, Mutual Fund Dealer Rules or Policies and is the proposed settlement penalty within a range of reasonableness and appropriateness in the nature of the misconduct. The settlement process in itself is to be considered by the Panel given the admissions made, acknowledgement of misconduct and saving in human and financial resources.³ Further the Panel being confined to the four corners of the

¹ Mutual Fund Dealer Rule 2.1.1

² [1994] 2 SCR 557

³ *Milewski Re*: [1991] 1 DACD No. 17

proposed Settlement Agreement does not have knowledge of all the facts, circumstances and influences that brought the parties together in the terms of the Agreement.⁴

¶ 12 The Panel has determined that the misconduct admitted in the Settlement Agreement does violate the Standard of Conduct. Although, upon the facts the Panel might have imposed another penalty on those facts; the Settlement Agreement does not fall outside the bounds of reasonableness and appropriateness on the facts.

¶ 13 The Panel had some concern with the application of the penalties to the Respondent who is currently employed by a Dealer Member or its affiliates in a nonregistered capacity. In such circumstances the Panel is of the view that the Dealer Member should have an obligation to provide a level of supervision that ensures there is no blurring of the lines between registered and not registered employment activities.

CONCLUSION

¶ 14 The terms of the Settlement Agreement are accepted and are effective on the date of the oral decision 7 May 2024.

DATED at Halifax, Nova Scotia this 27 day of May 2024

R. Scott Peacock

R. Scott Peacock, Chair

"Ann Etter"

Ann Etter, Industry Representative

"David Acker"

David Acker, Industry Representative

Appendix "A"
Settlement Agreement
File No. 202409

IN THE MATTER OF:

The Mutual Fund Dealer Rulesⁱ

and

Neelgiri Chatterjee

SETTLEMENT AGREEMENT

INTRODUCTION

¶ 1 The Canadian Investment Regulatory Organization, a consolidation of IIROC and the MFDA ("CIRO") will announce that it proposes to hold a hearing (the "Settlement Hearing") to consider whether, pursuant to

⁴ Uy (Re) 2018 LNC MFDA 87

Mutual Fund Dealer Rule 7.4.4.3, a hearing panel of the Nova Scotia District Hearing Committee (the “Hearing Panel”) of CIRO should accept the settlement agreement (the “Settlement Agreement”) entered into between Staff of CIRO (“Staff”) and Neelgiri Chatterjee (the “Respondent”).

¶ 2 Staff and the Respondent consent and agree to the terms of this Settlement Agreement.

¶ 3 Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

CONTRAVENTIONS

¶ 4 The Respondent admits to the following violation of the Mutual Fund Dealer Rules:⁵

Between January 7, 2020 and December 4, 2020, the Respondent cancelled, rather than amended, pre-authorized contributions in the accounts of clients and set-up new pre-authorized contributions, in order to meet sales targets or to qualify for a bonus based on the Dealer Member sales incentives, contrary to Mutual Fund Dealer Rule 2.1.1.

TERMS OF SETTLEMENT

¶ 5 Staff and the Respondent agree and consent to the following terms of settlement:

- (a) the Respondent shall be prohibited from conducting securities related business in any capacity while in the employ of or associated with a CIRO Dealer Member for a period of 12 months, commencing on the date that this settlement agreement is accepted by a Hearing Panel, pursuant to Mutual Fund Dealer Rule 7.4.1.1(c);
- (b) the Respondent shall pay a fine of \$12,500 in certified funds pursuant to Mutual Fund Dealer Rule 7.4.1.1(b);
- (c) the Respondent shall pay costs in the amount of \$5,000 in certified funds pursuant to Mutual Fund Dealer Rule 7.4.2;
- (d) the payment by the Respondent of the fine and costs described above in subparagraphs (b) and (c) shall be in certified funds as follows:
 - i. \$5,000 (costs) and \$5,000 (fine) shall be paid upon acceptance of the Settlement Agreement;
 - ii. \$1,250 (fine) shall be paid in six equal monthly installments, commencing on or before the last business day of the month following the acceptance of the Settlement Agreement and thereafter;
- (e) if the Respondent fails to make any of the payments of the costs and fine described above in subparagraph (d) when the payments become due, then any outstanding balance of the fine and costs owed by the Respondent shall become immediately due and payable to CIRO;
- (f) the Respondent shall in the future comply with Mutual Fund Dealer Rule 2.1.1; and
- (g) the Respondent shall attend on the date set for the Settlement Hearing.

¶ 6 The Respondent consents to the Hearing Panel making a confidentiality order on the following terms:

If at any time a non-party to this proceeding, with the exception of the bodies set out in Mutual Fund Dealer Rule 6.3, requests production of or access to exhibits in this proceeding that contain personal information as defined by CIRO’s Privacy Policy, then the Corporate Secretary’s Office, Mutual Fund Dealer Division of CIRO shall not provide copies of or access to the requested exhibits to the non-party without first redacting from them any and all intimate financial and personal information, pursuant to Rules 1.8(2) and (5) of the Mutual Fund Dealer Rules of Procedure.

⁵ Staff alleges that, at the time of conduct addressed in this proceeding, the Respondent contravened MFDA Rule 2.1.1, which is now incorporated into Mutual Fund Dealer Rule 2.1.1 referred to in this proceeding.

¶ 7 Staff and the Respondent agree to the settlement on the basis of the facts set out in this Settlement Agreement herein.

AGREED FACTS

Registration History

¶ 8 From August 2014 until February 21, 2021, the Respondent was registered in the securities industry.

¶ 9 From February 4, 2017 to February 21, 2021, the Respondent was registered in Nova Scotia as a dealing representative with Scotia Securities Inc. (the “Dealer Member”), a Dealer Member of CIRO (formerly a Member of the MFDA).

¶ 10 On or about February 10, 2021, the Dealer Member terminated the Respondent as a result of the conduct described herein, and the Respondent is not currently registered in the securities industry in any capacity.

¶ 11 At all material times, the Respondent carried on business in the Halifax, Nova Scotia area.

Cancelling, Rather than Amending, Existing PACs and Establishing New PACs

¶ 12 A pre-authorized contribution (“PAC”) is a type of trade authorized by a client whereby the client arranges for recurring contributions to be made from the client’s bank account or similar account to the client’s investment account at the Dealer Member, and instructs the Dealer Member to use the contributions to purchase one or more pre-selected mutual funds in the client’s investment account.

¶ 13 As part of the process for establishing or amending PACs in client accounts, the Approved Person must complete an Investment Direction Form (“IDF”) for the client account which includes, among other things, the date of the client instruction, the contribution details, and a description of the mutual fund to be purchased through the PAC.

¶ 14 In circumstances where an Approved Person receives a PAC request from a client by telephone, fax, or email, the Approved Person must document additional information in respect of the instructions received from the client.

¶ 15 At all material times, the Dealer Member maintained a sales incentive program whereby an Approved Person’s performance and bonus were evaluated based on sales revenue, also known as Customer Advice Results (“CARs”), generated by, among other things, the establishment of PACs.

¶ 16 At all material times, when a client requested a change to their PAC, the Dealer Member specified that its Approved Persons amend the PAC, rather than delete the PAC and establish a new PAC. The Dealer Member awarded CARs based on any net change to the PAC amount.

¶ 17 When a PAC was established, the Dealer Member awarded CARs for the full PAC amount. However, no CARs would be awarded when a PAC was set up on the same date an existing PAC was cancelled within the same account.

¶ 18 Between January 7, 2020 and December 4, 2020, the Respondent received instructions from 21 clients to amend the dollar amounts of their PACs in respect of their accounts at the Dealer Member.

¶ 19 Rather than amending the PAC amounts based on the clients’ instructions, the Respondent instead cancelled the PACs and set up 31 new PACs reflecting the new dollar amount requested by the clients.

¶ 20 As a result of the conduct described above, the Respondent received CARs for the full amounts of the new PACs, rather than CARs based on any net change to the amount of the existing PACs.

¶ 21 In all instances, the Respondent received telephone or email instructions from the clients to amend the PAC amounts, and, on the same date, the Respondent instead cancelled the PACs, as described above.

¶ 22 In all instances, the Respondent created false or misleading notes on IDFs that indicated that the Respondent had received instructions from the clients to establish new PACs on the date on the IDF, when, in fact, the clients had requested that the amounts of their existing PACs be amended several days earlier.

¶ 23 The Respondent established the new PACs several days later in order to receive CARs that the Respondent would otherwise not have been entitled to receive had the PACs been established on the same date that the Respondent cancelled the existing PACs, as described above.

¶ 24 At the material time, the Dealer Member's policies and procedures prohibited its Approved Persons from creating false or misleading records.

¶ 25 In at least six instances, the Respondent solicited the clients directly to amend their PACs, but then proceeded to cancel and re-establish new PACs in order for the Respondent to receive an unwarranted sales credit, as described above.

¶ 26 The details of the PACs established by the Respondent using IDF forms containing false or misleading information are as follows:

Client	PAC No.	Date of Transaction	PAC Transaction Type	Old PAC Amount	New PAC Amount
GS	1	Nov. 5, 2020	Delete	\$150	N/A
		Nov. 12, 2020	Add	N/A	\$550
MT	2	Oct. 14, 2020	Delete	\$25	N/A
		Oct. 19, 2020	Add	N/A	\$50
AE	3	Feb. 10, 2020	Delete	\$250	N/A
		Feb. 13, 2020	Add	N/A	\$200
	4	Feb. 10, 2020	Delete	\$150	N/A
		Feb. 13, 2020	Add	N/A	\$100
JB	5 (Account No. 1)	Jul. 16, 2020	Delete	\$200	N/A
		July 22, 2020	Add	N/A	\$100
	6 (Account No. 2)	March 16, 2020	Delete	\$200	N/A
		March 23, 2020	Add	N/A	\$100
TJ	7	Oct. 29, 2020	Delete	\$200	N/A
		Nov. 5, 2020	Add	N/A	\$300
JR	8	Nov. 9, 2020	Delete	\$146	N/A
		Nov. 16, 2020	Add	N/A	\$246
GB	9	June 5, 2020	Delete	\$200	N/A
		June 10, 2020	Add	N/A	\$220
	10	Sept. 24, 2020	Delete	\$220	N/A

Client	PAC No.	Date of Transaction	PAC Transaction Type	Old PAC Amount	New PAC Amount
		Sept. 28, 2020	Add	N/A	\$200
CJ	11	Sept. 2, 2020	Delete	\$150	N/A
		Sept. 8, 2020	Add	N/A	\$300
MM	12	June 4, 2020	Delete	\$400	N/A
		June 10, 2020	Add	N/A	\$500
VE	13	Feb. 18, 2020	Delete	\$150	N/A
		Feb. 21, 2020	Add	N/A	\$200
	14	March 13, 2020	Delete	\$200	N/A
		March 19, 2020	Add	N/A	\$200
	15	Aug. 18, 2020	Delete	\$200	N/A
		Aug. 25, 2020	Add	N/A	\$200
JS	16	Sept. 29, 2020	Delete	\$130	N/A
		Oct. 6, 2020	Add	N/A	\$100
JD	17	Jan. 7, 2020	Delete	\$120	N/A
		Jan. 13, 2020	Add	N/A	\$160
GM	18	Nov. 4, 2020	Delete	\$800	N/A
		Nov. 9, 2020	Add	N/A	\$900
	19	Nov. 4, 2020	Delete	\$800	N/A
		Nov. 9, 2020	Add	N/A	\$900
	20	Nov. 10, 2020	Delete	\$900	N/A
		Nov. 12, 2020	Add	N/A	\$950
	21	Nov. 10, 2020	Delete	\$900	N/A
		Nov. 12, 2020	Add	N/A	\$950
OA	22	April 15, 2020	Delete	\$250	N/A
		April 21, 2020	Add	N/A	\$270

Client	PAC No.	Date of Transaction	PAC Transaction Type	Old PAC Amount	New PAC Amount
CD	23	Feb. 19, 2020	Delete	\$250	N/A
		Feb. 24, 2020	Add	N/A	\$270
MF	24	Oct. 26, 2020	Delete	\$100	N/A
		Nov. 2, 2020	Add	N/A	\$150
GHPF	25	April 13, 2020	Delete	\$150	N/A
		April 20, 2020	Add	N/A	\$200
IEN	26	March 5, 2020	Delete	\$100	N/A
		March 9, 2020	Add	N/A	\$200
AB	27	Oct. 27, 2020	Delete	\$400	N/A
		Nov. 2, 2020	Add	N/A	\$420
CT	28	Dec. 4, 2020	Delete	\$100	N/A
		Dec. 8, 2020	Add	N/A	\$250
TS	29	Sept. 17, 2020	Add	N/A	\$185
		Sept. 17, 2020	Delete	\$185	N/A
		Sept. 22, 2020	Add	N/A	\$150
CC	30 (Account No.1)	Feb. 27, 2020	Delete	\$250	N/A
		March 9, 2020	Add	N/A	\$100
	31 (Account No.2)	Feb 27, 2020	Delete	\$100	N/A
		March 9, 2020	Add	N/A	\$50

¶ 27 The Respondent set up the 31 PACs in the clients' accounts, described above, in order to receive additional sales revenue credited towards achieving his sales targets, which would also be used to calculate the Respondent's annual bonus.

¶ 28 The Respondent received a bonus, due in part, to the additional sales revenue credited to the Respondent as a result of the conduct described herein. Due to the fact that sales revenue is only one factor used by the Dealer Member to determine a bonus, the exact amount of the bonus attributable to the conduct could not be quantified by the Dealer Member.

¶ 29 On February 10, 2021, the Dealer Member terminated the Respondent after discovering the conduct that is described in this Settlement Agreement.

Additional Factors

¶ 30 There is no evidence of any client loss, and no clients have complained to Dealer Member, the MFDA or CIRO.

¶ 31 The Respondent has not previously been the subject of MFDA or CIRO disciplinary proceedings.

¶ 32 By entering into this Settlement Agreement, the Respondent has saved CIRO the time, resources and expenses associated with conducting a contested hearing of the allegations.

ADDITIONAL TERMS OF SETTLEMENT

¶ 33 This settlement is agreed upon in accordance with Mutual Fund Dealer Rule 7.4.4 and Rules 14 and 15 of the Mutual Fund Dealer Rules of Procedure.

¶ 34 The Settlement Agreement is subject to acceptance by the Hearing Panel. At or following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement. Settlement Hearings are typically held in the absence of the public pursuant to Mutual Fund Dealer Rule 7.3.5 and Rule 15.2(2) of the Mutual Fund Dealer Rules of Procedure. If the Hearing Panel accepts the Settlement Agreement, then the proceeding will become open to the public and a copy of the decision of the Hearing Panel and the Settlement Agreement will be made available at www.ciro.ca.

¶ 35 The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel. Unless otherwise agreed, any monetary penalties and costs imposed upon the Respondent are payable immediately, and any suspensions, revocations, prohibitions, conditions or other terms of the Settlement Agreement shall commence, upon the effective date of the Settlement Agreement.

¶ 36 Staff and the Respondent agree that if this Settlement Agreement is accepted by the Hearing Panel:

- (i) the Settlement Agreement will constitute the entirety of the evidence to be submitted at the settlement hearing, subject to Rule 15.3 of the Mutual Fund Dealer Rules of Procedure;
- (ii) the Respondent agrees to waive any rights to a full hearing, a review hearing or appeal, including before the Board of Directors of CIRO or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction;
- (iii) except for any proceedings commenced to address an alleged failure to comply with this Settlement Agreement, Staff will not initiate any proceeding under the Mutual Fund Dealer Rules against the Respondent in respect of the facts and contraventions described in this Settlement Agreement. Nothing in this Settlement Agreement precludes Staff from investigating or initiating proceedings in respect of any related facts and contraventions that are not set out in this Settlement Agreement, whether known or unknown at the time of settlement. Furthermore, nothing in this Settlement Agreement shall relieve the Respondent from fulfilling any continuing regulatory obligations;
- (iv) the Respondent shall be deemed to have been penalized by the Hearing Panel pursuant to Mutual Fund Dealer Rule 7.4.1.1 for the purpose of giving notice to the public thereof in accordance with Mutual Fund Dealer Rule 7.4.5; and
- (v) neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil or other proceedings against the Respondent.

¶ 37 If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under Mutual Fund Dealer Rule 7.4.3 against the Respondent based on, but not limited to, the facts set out in this Settlement Agreement, as well as the breach of the Settlement Agreement. If such additional enforcement action is taken, the Respondent agrees that the proceeding(s) may be heard and determined by a

hearing panel comprised of all or some of the same members of the Hearing Panel that accepted the Settlement Agreement, if available.

¶ 38 If, for any reason, this Settlement Agreement is not accepted by the Hearing Panel, each of Staff and the Respondent will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to Mutual Fund Dealer Rules 7.3 and 7.4, unaffected by the Settlement Agreement or the settlement negotiations.

¶ 39 The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both the Respondent and Staff or as may be required by law. The terms of the Settlement Agreement will be released to the public if and when the Settlement Agreement is accepted by the Hearing Panel.

¶ 40 The Settlement Agreement may be signed in one or more counterparts, which together shall constitute a binding agreement. A facsimile or electronic copy of any signature shall be as effective as an original signature.

DATED this 22nd day of March, 2024.

“Neelgiri Chatterjee”
Neelgiri Chatterjee

“Witness”
Witness - Signature

“Witness”
Witness - Print name

“Maria Di Clemente”
Staff of the Canadian Investment Regulatory Organization
Maria Di Clemente, Enforcement Counsel

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ⁱ On January 1, 2023, the Investment Industry Regulatory Organization of Canada (“IIROC”) and the Mutual Fund Dealers Association of Canada (the “MFDA”) were consolidated into a single self-regulatory organization that is called the Canadian Investment Regulatory Organization (referred to herein as “CIRO”) and is recognized under applicable securities legislation. CIRO 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 certain by-laws, rules and policies of the MFDA that were in force immediately prior to amalgamation. Pursuant to Mutual Fund Dealer Rule 1A and s. 14.6 of By-law No. 1 of CIRO, contraventions of former MFDA regulatory requirements may be enforced by CIRO.