Unofficial English Translation

Re Lemire

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Jean-Claude Lemire

2018 IIROC 24

Hearing Panel
of the Investment Industry Regulatory Organization of Canada
(Québec District)

Hearing: June 1, 2018, at Montréal. Record taken under advisement on June 22, 2018.
Decision: July 10, 2018, at Montréal

Hearing Panel:
Michèle Rivet Ad. E., Chair, Mr. Jean Jeannot and Mr. Marcel Paquette
Appearances:
Francis Larin, Senior Enforcement Counsel, for Staff of IIROC
Gabriel Querry, replacing Julie-Martine Loranger Ad.E., for Mr. Jean-Claude Lemire

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DECISION ON SETTLEMENT AGREEMENT

¶ 1 This is a decision pertaining to a Settlement Agreement signed by Mr. Jean-Claude Lemire on February 16, 2018, and by Enforcement Counsel, for Enforcement Staff of IIROC, on March 2, 2018.

¶ 2 The Settlement Agreement appended to this decision is an integral part hereof.

¶ 3 This matter was initially, on March 6, set to proceed on April 22. On March 7, counsel for Mr. Jean-Claude Lemire, Ms. Loranger, obtained a postponement of the matter until May 25, given her client's absence from the country on April 22; on May 3, counsel for Mr. Lemire requested a postponement; the hearing was then set for June 1.

¶ 4 Under the terms of Rule 8215 of the Consolidated Rules of IIROC, shall the Hearing Panel accept or reject the Settlement Agreement as presented? That is the question that the Hearing Panel must answer.

¶ 5 Mr. Lemire admits having effected, between July 30 and August 29, 2014, six discretionary trades in the accounts of two clients, without these accounts being preauthorized or approved as "discretionary" accounts.

¶ 6 Mr. Lemire also admits having failed, between August 26 and 28, 2014, to use due diligence in three buy transactions to ensure that the trades were within the bounds of good business practice.

¶ 7 Finally, Mr. Lemire admits that, between August 26 and 28, 2014, in 3 buy transactions, he did not

contact the two clients to communicate the required information about purchases to which deferred sales charges apply.

¶ 8 Consequently, Mr. Lemire accepts the following penalties as mentioned in the Settlement Agreement:

a) An aggregate fine in the amount of $20,000, as follows:

- a $5,000 fine on Count 1:

  Between July 30 and August 29, 2014, the Respondent effected six discretionary trades in two clients' accounts, without the accounts having been preauthorized and approved as "discretionary" accounts, contrary to IIROC Dealer Member Rules 1300.4 and 1300.5;

- a $10,000 fine on Count 2:

  In three buy transactions effected on August 26 and 28, 2014, the Respondent failed to use due diligence to ensure that the trades were within the bounds of good business practice, contrary to IIROC Dealer Member Rule 1300.1(o); and

- a $5,000 fine on Count 3:

  In 3 buy transactions effected on August 26 and 28, 2014, the Respondent did not communicate to his two clients the required information about purchases to which deferred sales charges apply, contrary to IIROC Dealer Member Rule 29.9(1)(b).

b) In the event of re-registration with IIROC, a period of twelve (12) months of strict supervision;

c) Mr. Lemire agrees to pay IIROC costs in the amount of $1,000.

¶ 9 Before analyzing the facts in the matter, it is useful to review what the authority of a hearing panel consist of.

I. THE AUTHORITY OF A HEARING PANEL

¶ 10 The authority of a hearing panel, when seized of a settlement agreement, is clearly set out in Rule 8200 entitled *Enforcement Proceedings*. As Rule 8215(5) states, a hearing panel may either accept or reject the agreement.[1]

¶ 11 Recently, on October 4, 2017, a hearing panel again reviewed the principles that govern its authority.[2]

¶ 12 The case law is consistent: it is up to the hearing panel to examine whether, given the contraventions admitted by the Respondent, the sanctions in the agreement fall within a reasonable range; to this end, it is important both to review the IIROC ***Sanction Guidelines***, as approved on February 2, 2015, and to look at the relevant case law.

¶ 13 In *Sole*, the decision rendered by a hearing panel in Toronto on August 16, 2016[3] is based on the case law, as is *Re Kloda*[4], which was rendered in Québec on December 8, 2016:

- The Hearing Panel should accept the Settlement Agreement unless it views the penalty as clearly falling outside a reasonable range of appropriateness;

- The Settlement Agreement should be rejected if it is contrary to the public interest or brings the

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[1] *Re Turenne,* 2013 IIROC 43.

[2] *Re Proulx*, 2017 IIROC 47.

[3] *Re Sole,* 2016 IIROC 30.

[4] *Re Kloda,* 2016 IIROC 50.

administration of the IIROC Rules into disrepute.

¶ 14 At the hearing on June 1, 2018, after oral submissions, we called counsel for both parties to chambers and asked them to submit additional notes on the question of the authority of the hearing panel. When the hearing resumed, we explained the reasons for this suspension to Mr. Lemire as follows:[5]

> "The reason why we wanted to see them (counsel) is because we are having some difficulty or some questions, or some… some discomfort with the Settlement Agreement before us. And both counsels are going to submit notes to us by June 14 at the latest for Mr. Larin, and by June 22 for your counsel. We are wondering whether the only possibility is to accept or reject, or whether this suspension isn't going to allow, in exceptional circumstances, obviously, to allow a modulated agreement to be presented to the Hearing Panel."

¶ 15 Enforcement Counsel for Staff of IIROC, Mr. Larin, gave us his notes on June 13; as for counsel for Mr. Lemire, Ms. Loranger, we received her communication on June 19, a communication to which she attached a letter sent to her colleague on June 7 by Mr. Querry, enumerating the grounds that sustain in point of law the authority of the hearing panel to request a modulated agreement. We thank them for this.

¶ 16 Counsel for Mr. Lemire argued[6] that the hearing panel "not only had the power, it had the duty to inform the parties of its concerns and to give them the opportunity to alleviate them, notably by adjusting the agreement." He bases his argument on the Supreme Court of Canada decision *R. v. Anthony-Cook*[7] rendered in 2016:

> [TRANSLATION] "If the Supreme Court requires that the parties have the opportunity to alleviate the decision-maker's concerns and that a respondent be able to withdraw his guilty plea if the concerns are not alleviated, then it is clear that the hearing panel must allow the parties to adjust the agreement to avoid its rejection and having to go back to square one."

¶ 17 Counsel for Mr. Lemire adds that [TRANSLATION] "this route is not unheard of." He cites two decisions by the Financial Markets Administrative Tribunal[8]: [TRANSLATION] "a tribunal whose mandate is analogous to that of the hearing panel – where the chair Ms. Girard has suspended hearings on settlement agreements to allow the parties to explore the possibility of adjusting the agreements in light of her concerns."

¶ 18 Furthermore, counsel cites the General Principles of Rule 8403 of the *Rules of Practice and Procedure*, specifically paragraphs 1, 3 and 4:

> (1) The Rules of Procedure shall be interpreted and applied to secure a fair hearing and just determination of a proceeding on its merits and the most expeditious and least expensive conduct of the proceeding.
>
> (3) Subject to a requirement in the Rules of Procedure, a hearing panel has authority to control the process of a proceeding before it and may exercise any of its powers on its own initiative or at the request of a party, including
>
> > (i) issuing procedural directions or orders with respect to the application of the Rules of Procedure in respect of any proceeding,

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[5] Stenographic notes of the Hearing, pages 48 and 49. This excerpt is from correspondence submitted by Mr. Lemire's counsel.

[6] In a letter addressed to Mr. Larin on June 7, signed by Mr. Querry, enclosed with the June 19 submission to the Hearing Panel by Ms. Loranger.

[7] *R. v. Anthony-Cook,* paragraphs 58 and 59 of the judgment, unanimous judgment of the court penned by Moldaver J. Coram: Abella, Moldaver, Karakatsanis, Wagner, Gascon, Côté and Brown JJ.

[8] *Autorité des marchés financiers c. Alliance pour la santé étudiante au Québec inc.*, 2016 QCTMF 54; *Autorité des marchés financiers c. Financière Banque Nationale inc.* 2018 QCTMF 6.

(iv) waiving or varying any Rule of Procedure in respect of a proceeding.

(4) At the request of a party, a hearing panel may provide for any procedural matter that is not provided for in IIROC requirements or the Rules of Procedure by analogy to the Rules of Procedure or by reference to the rules of procedure of another self-regulatory organization or professional association or to the rules applicable to a securities regulatory authority or superior court in the District in which the proceeding occurs.

¶ 19 Finally, counsel compares Rule 20.36 *Corporation Hearing Process* with the new Rule 8200 *Enforcement Proceedings*, namely paragraph 15 of section 8215. He expresses himself as follows:

> [TRANSLATION] "First of all, both in the old rules and the new ones, the binary choice of accepting or rejecting the agreement is offered to the hearing panel only once the matter is taken under advisement, not before. Secondly, the word "only" no longer appears in the new rules. It may be deduced that the regulator's intention, in omitting the word "only" in the new rules was to support the settlement hearings with a more flexible framework, that coincides with the one stated by the Supreme Court in *Anthony-Cook*."

¶ 20 At the outset, counsel for Mr. Lemire asks his colleague, in his June 7 letter, that the agreement be adjusted and proposes the parameters:

> [TRANSLATION] "We believe that an acceptable fine, that would address the concerns of the hearing panel, must not exceed $10,000 in total, as the hearing panel implied. We also believe that an acceptable agreement must allow Mr. Lemire to pay the fine in installments of $1,000 per month, so that he can alleviate the impact of the payments on his retirement finances. Our client has already confirmed to us that we had his instructions in order to adjust the agreement in this fashion."

¶ 21 Counsel for IIROC answers in the negative to this request and the question asked by the Hearing Panel. He indicates that the case law in this matter has been consistent for several years. He refers to the decisions already produced in arguments, some of which were made by IIROC hearing panels[9] or courts of law[10]. Mr. Larin finishes up with the 2017 decision of a hearing panel, in *Re JitneyTrade*[11], which reiterates that the jurisdiction of a hearing panel "is limited to either accepting or rejecting the settlement agreement. We have no jurisdiction to modify it in any way." This paragraph of *Re JitneyTrade* is based on the decision of the hearing panel in *Re Turenne*[12] and on Rule 20.36(1).

¶ 22 He further adds that the proposed sanctions ($20,000.00), negotiated between the parties represented by counsel, are not unreasonable to the point of bringing the administration of IIROC's disciplinary process into disrepute, notably [TRANSLATION] "in light of IIROC's guidelines and the decisions submitted to the members in *Darrigo*, *Fridgant* and *Burner* and also, the framework applicable to the presentation of an offer of settlement under the relevant rules and case law."

¶ 23 Mr. Larin concludes:

> [TRANSLATION] "Consequently, were the Hearing Panel able to suggest that the parties revisit some of the terms of their agreement, we respectfully submit that proceeding in this manner would be contrary to the framework set out in our rules."

¶ 24 What about that?

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[9] *Re Cavaleris*, 2017 IIROC 4; *Re Kloda*, 2016 IIROC 50; *Re Nesbitt Burns*, 2012 IIROC 21.

[10] *R. v. Anthony-Cook*, 2016 SCC 43; *Poulin v. R.*, 2010 QCCA 1854.

[11] *Re JitneyTrade*, 2017 IIROC 25.

[12] *Re Jacques Turenne*, 2013 IIROC 43, at paragraph 18.

¶ 25 For a better grasp of the role of a hearing panel, traditionally, the latter refers to the trial judge in a criminal matter who must rule on the joint sentencing recommendation of counsel for both prosecution and defense, by determining whether to accept or reject this joint recommendation. The Supreme Court Judgment *R v. Anthony-Cook* is particularly important here. It should be carefully reviewed according to *Re Proulx*, the hearing panel decision rendered on October 4, 2017.[13]

¶ 26 Justice Moldaver, writing on behalf of his colleagues, elaborates on the necessary stringency of the public interest test: "The prospect of a joint submission that carries with it a high degree of certainty encourages accused persons to enter a plea of guilty[14](…) He asserts the importance of trial judges "exhibiting restraint, rejecting joint submissions only where the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system."[15]

¶ 27 The trial judges should approach the joint submission on an "as-is" basis. That is to say, the public interest test applies whether the judge is considering varying the proposed sentence or adding something to it that the parties have not mentioned[16], such as when he or she is considering "jumping" or "undercutting" a joint submission.[17](…) When faced with a contentious joint submission, "trial judges will undoubtedly want to know about the circumstances leading to the joint submission – and in particular, any benefits obtained by the Crown or concessions made by the accused."[18] What's more, if the trial judge is not satisfied with the sentence proposed by counsel, he or she should "notify counsel that he or she has concerns, and invite further submissions on those concerns, including the possibility of allowing the accused to withdraw his or her guilty plea, as the trial judge did in this case."[19] Justice Moldaver adds that if the trial judge's concerns about the joint submission are not alleviated, the judge may allow the accused to apply to withdraw his or her guilty plea.[20] Trial judges who remain unsatisfied by counsel's submissions should provide clear and cogent reasons for departing from the joint submission.[21]

¶ 28 Both the general economy of the texts governing IIROC and, more broadly, the principles regarding the security of the justice system make it very plain that a hearing panel, having taken a matter under advisement, cannot modify the settlement agreement as presented. If such is the case, it must reject it.

¶ 29 But that is not the case here.

¶ 30 The Hearing Panel considers that it had a duty to inform the counsels of "its discomfort", its "concerns" to use the expression in *Anthony-Cook,* immediately following counsels' arguments and before taking the matter under advisement, to avoid a possible rejection of the agreement during deliberations. This flexibility and agility in no way undermine the existing system; to the contrary, they contribute to a healthy administration of justice. They ensure its efficiency. Modulating the agreement so that it can be ratified helps avoid the risk, if it is rejected by the Hearing Panel during deliberations, of having to start the proceedings over in front of a new panel, from square one.

II. THE FACTS

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[13] *Re Proulx* IIROC 47, paragraphs 13 to 16.

[14] At paragraph (41).

[15] At paragraphs 49 to 61.

[16] At paragraph (51).

[17] At paragraph (52).

[18] At paragraph (53).

[19] At paragraph (58).

[20] At paragraph (59).

[21] At paragraph (60).

¶ 31 Mr. Lemire had been approved as a registered representative by IIROC and by the IDA, since April 13, 2000 and was employed with Groupe Option Retraite inc. Following the acquisition of Groupe Option Retraite inc., Mr. Lemire was registered with National Bank Financial Inc. (NBF Inc.) on November 24, 2008 and with National Bank Financial Ltd. (NBF Ltd.), effective July 17, 2009;

¶ 32 The Respondent has been on sick leave since July 25, 2016, is no longer a registrant of IIROC and has not been employed with National Bank Financial since November 30, 2016.

¶ 33 As of February 2013, following his colleague's retirement, Mr. Lemire was henceforth the only registered representative acting for clients RC and RN, a married couple.

¶ 34 On or around July 17, 2014, following a meeting between the Respondent and his clients, RC and RN, it was allegedly agreed to transfer positions held at Franklin Templeton to their accounts at NBF; the possibility of eventually liquidating these positions was also allegedly discussed in the context of implementing a new investment strategy that would be developed later.

¶ 35 On July 30, 2014, Mr. Lemire exercised discretionary authority to liquidate the positions held in the Franklin Quotential Balanced Growth Portfolio (the EFQ fund) in both of RC's accounts.

¶ 36 On August 26, 2014, Mr. Lemire exercised discretionary authority to liquidate the position held by RN in the EFQ fund; these positions in the EFQ fund held in RC and RN's accounts were, at the time, free of all deferred sales charges. Still on August 26, 2014, Mr. Lemire proceeded to purchase two positions in the EFQ fund for both of client RC's accounts, without having obtained the latter's prior consent. The two positions in the EFQ fund for RC's accounts now carried declining deferred sales charges over a seven-year schedule.

¶ 37 On August 28, 2014, Mr. Lemire mistakenly purchased a position in the Franklin Quotential Balanced Income Portfolio, rather than the EFQ fund, for his client RN, and without having obtained the latter's prior consent; this position also included declining deferred sales charges over a seven-year schedule

¶ 38 At no time did Mr. Lemire inform his clients RN and RC of the existence of these deferred sales charges for the three purchase transactions effected on August 26 and 28, 2014; however, the funds that were the object of the purchase transactions were not in and of themselves unsuitable for the clients RN and RC.

¶ 39 The three purchase transactions initially earned the Respondent $2,241 in gross commissions.

¶ 40 The subsequent cancellation of the trades by NBF resulted in the commissions being reversed with no monetary loss to the clients RC and RN, such that their accounts were restored to their initial state, without any charge to them.

III THE ANALYSIS

¶ 41 The primary purpose of disciplinary sanctions is to maintain high standards of conduct in the securities industry, to protect the integrity of the capital market as well as the public's confidence in it.

¶ 42 IIROC's counsel submitted decisions in support of his claims, distinguishing them by count. With respect to Count 1, the decisions are *Li*[22], *Smith*[23], *Taggart*[24] and *Karcz*[25]. For Count 2, the decisions are

[22] *Re Li,* 2016 IIROC 34.

[23] *Re Smith,* 2016 IIROC 15.

[24] *Re Taggart*, 2013 IIROC 24.

[25] *Re Karcz*, 2010 IIROC 22.

Darrigo[26], *Burner*[27] and *Fridgant*[28]. We review the ones we consider relevant here.

¶ 43 *Re Li* is not comparable in any way to Mr. Lemire's case, either with respect to the importance and duration of the violations of which Mr. Li was found guilty following a proceeding, with no cooperation on his part, or with respect to the sanctions imposed.

¶ 44 *Re Smith,* a decision on a settlement agreement, deals with contraventions that occurred between January 1 and August 28, 2013, concerns some 21 clients and involves over 600 transactions, [TRANSLATION] "although it was not possible to identify what percentage of these trades were discretionary trades."[29] Mr. Smith was fined $10,000.00.

¶ 45 The decision in *Re Taggart* also deals with a settlement agreement. It concerns events that occurred between 2005 and 2008, years during which Mr. Taggart effected at least 100 discretionary trades on behalf of three clients without these accounts being preauthorized and approved as discretionary accounts. The sanctions provided for in the settlement agreement were a fine of $15,000.00 and costs of $3,000.00.

¶ 46 *Re Karcz*, also a decision on a settlement agreement, deals with a period from December 12, 2007 to August 12, 2008 and concerns some 842 discretionary trades on behalf of eight clients. The fine was $20,000.00.

¶ 47 In *Re Darrigo*, the sanctions were imposed after Mr. Darrigo was found guilty. Mr. Lemire's counsel made the following analysis of this decision which we sum up here:

Re Darrigo (Decision on Liability, para. 22)	Mr. Lemire
1. Darrigo effected a large number of transactions involving deferred sales charges. For a total of approximately $2.9M in transactions, the clients incurred $116,000 in DSC fees.	1. Mr. Lemire is being accused of purchasing two positions involving DSC fees.
2. Darrigo effected the transactions over a period of more than a year.	2. The transactions Mr. Lemire is accused of took place on August 26 and 28, 2018.
3. The accounts managed by Darrigo showed a very high turnover of positions. Numerous securities with DSC fees were replaced with similar securities. Some securities could have been replaced with similar securities at no cost to the client. On many occasions, profitable securities were sold.	3. Mr. Lemire is not being accused of any turnover system. It is acknowledged that the funds purchased were not unsuitable for the clients.
4. The high turnover of securities with DSC fees generated high DSC fees and low profits for the clients, but high commissions for Darrigo ($69,000, para. 29). The agreement describes an abusive strategy for generating commissions (p. 12, para. 5).	4. The transactions were reversed, without loss to the clients, and Mr. Lemire waived the $2,241 of commissions generated by the transactions.
5. Darrigo's clients lost $72,000 $ (para. 29).	5. Mr. Lemire's clients did not suffer any loss.

[26] *Re Darrigo*, 2014 IIROC 48; 2015 IIROC 3.

[27] *Re Burner*, Decision on Penalty, December 8, 2010, Decision on Liability, August 3, 2010, Record No. 201004.

[28] *Re Fridgant*, 2000 I.D.A.C.D. 27.

[29] At paragraph 16 of the decision.

Re Darrigo (Decision on Liability, para. 22)	Mr. Lemire
6. Darrigo did not accept responsibility for his actions (Decision on Penalty, para. 19).	6. Mr. Lemire was prepared to acknowledge his responsibility in an agreement.
7. Darrigo's actions were deliberate and calculated. They were intended to generate a profit for Darrigo (Decision on Liability, para. 21).	7. Mr. Lemire's actions were not deliberate or calculated. They were not aimed at generating a profit for Mr. Lemire.
8. Darrigo was fined a total of $20,000 ($134,170 less the disgorgement of the commissions and loans) for serious, deliberate and greedy actions.	8. The agreement provides for an aggregate fine in the amount of $20,000.

¶ 48 Does the weighting of the various aggravating and mitigating factors allow the Hearing Panel to accept this Settlement Agreement and to conclude that the sanctions are reasonable as defined by the applicable law?

¶ 49 In short:

- Mr. Lemire has admitted effecting trades on August 26 and 28, 2014;
- Two purchases of positions involved DSC fees;
- The funds purchased were not unsuitable for the clients;
- The transactions were reversed, without any loss to the clients;
- Mr. Lemire waived $2,241 of commissions generated by the trades;
- Mr. Lemire acknowledges his responsibility in the agreement and cooperated in it;
- Mr. Lemire has no disciplinary record;
- The aggregate fine is $20,000.

¶ 50 First of all, we should say that some of the Hearing Panel members wonder about Count 3, which refers to Rule 29.9(1)(b), Conduct of Business, Pre-Trade Disclosure of Charges, which reads as follows:

> (1) Before a Dealer Member accepts an instruction from a client to purchase or sell a security in an account other than a managed account, the Dealer Member must disclose to the client:
>
> (…)
>
> (b) In the case of a purchase to which deferred charges apply, that the client might be required to pay a deferred sales charge on the subsequent sale of the security and the fee schedule that will apply.

How, they wonder, can a client be informed of charges, if, as is the case in Count 3, the trades are discretionary?

¶ 51 Disciplinary sanctions have a dual purpose: not only are they a specific penalty for contravening the Rules, they are also a means of deterrence: "In order to achieve this, sanctions should be significant enough to prevent and discourage future misconduct by the respondent (specific deterrence), and to deter others from engaging in similar misconduct (general deterrence)."[30]

[30] IIROC Sanction Guidelines, Part 1, Sanction Principles for IIROC Disciplinary Proceedings, February 2, 2015, quoted in *Re Proulx*, at paragraph 19.

¶ 52 Cognizant of the importance of this principle, the Hearing Panel should find here nevertheless that the fines demanded, and to which Mr. Lemire has agreed, are extremely high. Indeed, case law, based on a proportionality criterion, should be applied to Mr. Lemire's case.

¶ 53 However, Mr. Lemire has clearly indicated that he wishes to put these events behind him as quickly as possible; he is still suffering from the fallout and has been on sick leave since July 2016.

¶ 54 Under the circumstances, the Hearing Panel feels that, given the refusal of IIROC's counsel to modulate the initial agreement, it is probably preferable for the proper administration of justice to ratify this agreement rather than have Mr. Lemire run the risk of having to undergo a new proceeding.[31]

IV CONCLUSION

¶ 55 **FOR THESE REASONS, the Hearing Panel:**

ACCEPTS the Settlement Agreement as appended and presented, and

GIVES EFFECT to it from this date.

Montréal, July 10, 2018

Ms. Michèle Rivet

Mr. Jean Jeannot

Mr. Marcel Paquette

SETTLEMENT AGREEMENT

PART I - INTRODUCTION

1. The Investment Industry Regulatory Organization of Canada (IIROC) will issue a notice of application to announce that a settlement hearing will be held before a hearing panel (the Hearing Panel) to consider whether, pursuant to Rule 8215 of IIROC's Enforcement, Examination and Approval Rules, it should accept a Settlement Agreement (the Settlement Agreement) between Staff of IIROC (Staff) and Jean-Claude Lemire (the Respondent).

PART II - JOINT SETTLEMENT RECOMMENDATION

2. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement in accordance with the terms set forth below.

PART III – AGREED FACTS

3. For purposes of the Settlement Agreement, the Respondent agrees with the facts set out in Part III of this Settlement Agreement.

Summary

4. The Respondent effected six discretionary trades in the accounts of two clients, without these accounts being preauthorized or approved as "discretionary" accounts.

5. In three buy transactions, the Respondent failed to use due diligence to ensure that the trades were within the bounds of good business practice.

6. In three buy transactions, the Respondent did not contact the two clients to communicate the required information about purchases to which deferred sales charges apply.

[31] Rule 8215(8), Enforcement Proceedings.

Registration History

7. The Respondent had been approved as a registered representative by IIROC, as well as its predecessor, the Investment Dealers Association of Canada (the IDA), since April 13, 2000 and was employed with Groupe Option Retraite inc.

8. Following the acquisition of Groupe Option Retraite inc., the Respondent was registered with National Bank Financial Inc. (NBF Inc.) on November 24, 2008 and with National Bank Financial Ltd. (NBF Ltd.), effective July 17, 2009.

9. The Respondent has been on sick leave since July 25, 2016, is no longer a registrant of IIROC and has not been employed with National Bank Financial since November 30, 2016.

Particulars

10. The Respondent and one of his colleagues took charge of the accounts of clients RC and RN as of 2008.

11. In February 2013, following his colleague's retirement, the Respondent was henceforth the only registered representative acting for RC and RN.

12. On or around April 10, 2014, as part of another matter, NBF sent the Respondent a warning letter for having effected a discretionary trade in a client's account.

13. On or around April 14, 2014, Staff of IIROC sent the Respondent a cautionary letter for the same reasons.

14. On or around June 16, 2014, NBF communicated to its representatives, the Respondent among them, a document entitled *Communication conformité – Information à fournir aux clients (2014)*, which concerned, notably, the information to be provided to clients in regard to deferred sales charges.

15. On or around July 17, 2014, following a meeting between the Respondent, RC and RN, it was allegedly agreed to transfer positions held at Franklin Templeton to their accounts at NBF.

16. During this same meeting, according to the Respondent, the possibility of eventually liquidating these positions was also allegedly discussed in the context of implementing a new investment strategy that would be developed later.

17. RC and RN are married and their investment knowledge is described as "limited".

18. RN and RC have the following profiles respectively:

Investor profiles of the complainants RN and RC

RN	
Annual income	$28,000
Liquid assets	$22,125
Fixed assets	$250,000
Investment Knowledge	Limited
Investment Objectives	Cash and cash equivalents 0% - 20%; fixed income securities 30% - 65%; equity securities 30% - 65%; alternative investments 0% - 20%
Risk level	Medium

RC

Annual income	$54,000
Liquid assets	$20,000
Fixed assets	$225,000
Investment Knowledge	Limited
Investment Objectives and risk level	Cash and cash equivalents 0% - 20%; fixed income securities 45% - 80%; equity securities 20% - 45%; alternative investments 0% - 15%
Risk level	Low

19. On or around July 30, 2014, the Respondent exercised discretionary authority to liquidate the positions held in the *Franklin Quotential Balanced Growth Portfolio* (the EFQ fund) in both of RC's accounts.

20. On August 26, 2014, the Respondent exercised discretionary authority to liquidate the position held by RN in the EFQ account.

21. These positions in the EFQ fund held in RC and RN's accounts were, at the time, free of all deferred sales charges.

22. That same day, RN communicated with the Respondent's assistant to point out that she and RC wished to keep their positions in the Templeton Quotential fund.

23. Still on August 26, 2014, the Respondent proceeded to purchase two positions in the EFQ fund for both of client RC's accounts, without having obtained the latter's prior consent.

24. The two positions in the EFQ fund for RC's accounts now carried declining deferred sales charges over a seven-year schedule.

25. On August 28, 2014, the Respondent mistakenly purchased a position in the *Franklin Quotential Balanced Income Portfolio*, rather than the EFQ fund, for his client RN, without having obtained the latter's prior consent.

26. Once again, this position also included declining deferred sales charges over a seven-year schedule.

27. At no time did the Respondent inform his clients RN and RC of the existence of these deferred sales charges for the 3 purchase transactions effected on August 26 and 28, 2014.

28. However, the funds that were the object of the purchase transactions were not in and of themselves unsuitable for the clients RN and RC.

29. The three purchase transactions initially earned the Respondent $2,241 in gross commissions.

30. Following the subsequent cancellation of the trades by NBF, the commissions were reversed with no monetary loss to the clients RC and RN, such that their accounts were restored to their initial state, without any charge to them.

31. The Respondent received no remuneration following the reversal of the transactions in RN and RC's accounts.

32. In 2015, the Respondent retook the Conduct and Practices Handbook course.

33. The allegations of professional misconduct against the Respondent are one of the factors that have impacted his health, which led to an early retirement.

34. To date, a psychologist still closely monitors the Respondent for the treatment of depression.

35. The Respondent has fully cooperated in the investigation by Staff of IIROC.

PART IV – CONTRAVENTIONS

36. By engaging in the above-described conduct, the Respondent contravened IIROC Dealer Member Rules as follows:

COUNT 1

Between July 30 and August 29, 2014, the Respondent effected six discretionary trades in the accounts of two clients, without the accounts having been preauthorized and approved as "discretionary" accounts, contrary to IIROC Dealer Member Rules 1300.4 and 1300.5;

COUNT 2

In three buy transactions effected on August 26 and 28, 2014, the Respondent failed to use due diligence to ensure that the trades were within the bounds of good business practice, contrary to IIROC Dealer Member Rule 1300.1(o); and

COUNT 3

In 3 buy transactions effected on August 26 and 28, 2014, the Respondent did not communicate to the two clients the required information concerning the purchases to which deferred sales charges applied, contrary to IIROC Dealer Member Rule 29.9(1)(b).

PART V - TERMS OF SETTLEMENT

37. The Respondent accepts the following penalties and costs:

a) An aggregate fine in the amount of $20,000, as follows:
   - a $5,000 fine on Count 1;
   - a $10,000 fine on Count 2; and
   - a $5,000 fine on Count 3.

b) In the event of re-registration with IIROC, a period of twelve (12) months of strict supervision;

c) The Respondent agrees to pay IIROC costs in the amount of $1,000.

38. If the Hearing Panel accepts this Settlement Agreement, the Respondent agrees to pay the amounts referred to above within 30 days of such acceptance, unless otherwise agreed between Staff and the Respondent.

PART VI – STAFF COMMITMENT

39. If the Hearing Panel accepts the Settlement Agreement, 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.

40. If the Hearing Panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under 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 – SETTLEMENT ACCEPTANCE PROCEDURE

41. The Settlement Agreement is subject to acceptance by the Hearing Panel;

42. The Settlement Agreement shall be presented to a Hearing Panel at a settlement hearing held in accordance with the procedures described in Sections 8215 and 8428, in addition to any other

procedures that may be agreed upon between the parties.

43. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing, unless the parties agree that additional facts should be submitted at the settlement hearing. If the Respondent does not appear at the settlement hearing, Staff may disclose additional relevant facts, if requested by the Hearing Panel.

44. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his right, under IIROC rules and any applicable legislation, to a disciplinary hearing, review or appeal.

45. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement; or Staff may proceed to a disciplinary hearing in relation to the same allegations or to related allegations.

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

47. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IIROC will post a full copy of this Settlement Agreement on the IIROC website. IIROC will also publish a summary of the facts, contraventions, and the sanctions agreed upon in this Settlement Agreement.

48. 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.

49. The Settlement Agreement shall become effective and binding upon the Respondent and Staff from the date of its acceptance by the Hearing Panel.

PART VIII – SIGNATURE OF THE SETTLEMENT AGREEMENT

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

51. The fax or electronic copy of any signature will be treated as an original signature.

SIGNED this 16th day of February 2018.

(s) Witness	(s) Jean-Claude Lemire
	JEAN-CLAUDE LEMIRE
Witness	Respondent

SIGNED this 2nd day of March, 2018.

(s) Linda Vachet	(s) Francis Larin
Linda Vachet	**Francis Larin**, Senior Enforcement Counsel
Witness	for Staff of IIROC