

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

**THE DEALER MEMBER RULES OF THE
INVESTMENT INDUSTRY REGULATORY
ORGANIZATION OF CANADA**

AND

**THE BY-LAWS OF THE INVESTMENT DEALERS
ASSOCIATION OF CANADA**

AND

RBC DOMINION SECURITIES INC.

AND

JEAN-PIERRE MÉNARD

AND

SERGE LECLAIRE

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. Enforcement staff of the Investment Industry Regulatory Organization of Canada ("**IIROC**") and the Respondents, RBC Dominion Securities Inc. ("**RBC DS**"), Jean-Pierre Ménard ("**Ménard**") and Serge Leclaire ("**Leclaire**") (together the "**Respondents**"), consent and agree to the settlement of this matter by way of this agreement (the "**Settlement Agreement**").
2. IIROC's Enforcement Department has conducted an investigation (the "Investigation") into the Respondents' conduct.
3. The Investigation discloses matters for which the Respondents may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C (the "**Hearing Panel**").

II. JOINT SETTLEMENT RECOMMENDATION

4. IIROC staff (the “**Staff**”) and the Respondents jointly recommend that the Hearing Panel accept this Settlement Agreement.
5. The Respondents admit to the following contraventions of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:
 - (i) RBC DS, Ménard and Leclaire admit that from August 2003 to December 31, 2008, they failed to adequately perform their roles as gatekeepers to the capital markets by:
 - a. allowing Earl Jones to hold multiple trading authorizations for multiple unrelated clients; and
 - b. by not questioning some withdrawals in some accounts for which Earl Jones had trading authorization.

contrary to Dealer Member Rule 29.1 [IDA by-law 29.1 prior to June 1st 2008];
6. Staff and the Respondents agree to the following terms of settlement:
 - (a) Ménard and Leclaire shall each be suspended from any registered capacity with IIROC for a period of six (6) months, the two (2) periods of suspension to be served consecutively;
 - (b) Ménard and Leclaire shall each pay IIROC a fine in the amount of \$100,000; and
 - (c) RBC DS shall pay IIROC a fine in the amount of \$500,000.
7. The Respondents agree to pay IIROC the sum of \$20,000 in total to reflect the costs that Staff incurred in connection with this matter.

III. STATEMENT OF FACTS

(i) Acknowledgement

8. Staff and the Respondents agree with the facts set out in this Section III and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts.

(ii) The Respondents and RBC DS

9. At all material times, Ménard and Leclaire were (and are to this day) Registered Representatives and employed as Investment Advisors at the Montréal Place Ville Marie branch of RBC DS.

10. Ménard is 67 years old. Prior to joining RBC DS in August 2003, he was an investment advisor at Scotia McLeod and its predecessors from 1976 to August 2003.
11. Leclaire is 60 years old. Prior to joining RBC DS in August 2003, he exercised different functions at Scotia McLeod from 1995 to August 2003, including five years as a Regional Manager. In October 2000, he joined Ménard as a Registered Representative to form the team of Ménard, Leclaire.
12. On April 30, 2004, Leclaire was registered as an Associate Portfolio Manager and in May 2006, he was registered as a Portfolio Manager.
13. On April 6, 2008, Ménard was registered as an Associate Portfolio Manager.
14. Ménard and Leclaire's business consists of more than 400 client accounts with assets valued at approximately \$350 million, with more than \$200 million being managed on a discretionary basis.

(iii) Factual Background

A. Introduction - Earl Jones

15. Earl Jones is a convicted criminal who has never been registered with IIROC or the *Autorité des Marchés Financiers*.
16. In 2010, Earl Jones pleaded guilty to two charges of fraud in relation to a *Ponzi* scheme that he masterminded and perpetrated from 1982 to 2009, whereby he defrauded more than 100 of his clients of more than \$50 million. Earl Jones was sentenced to 11 years in prison.
17. Ménard met Earl Jones at Montréal Trust where they both worked in 1960s.
18. In the late 1970s, Ménard encountered Earl Jones again. Earl Jones had set up a business offering estate administration and related services to his clients. Ménard knew that Earl Jones was not registered and could not offer investment advice to his clients.
19. In the 1980s, Earl Jones began to refer clients to Ménard, then at Scotia McLeod. Most of the clients referred by Earl Jones to Ménard granted a trading authorization on their accounts to Earl Jones.
20. In October 2000, Leclaire joined Ménard as a Registered Representative to form the team of Ménard and Leclaire. From October 2000 onwards, Leclaire became the primary contact with Earl Jones and handled the day-to-day administration of most of the accounts of the clients referred by Earl Jones. However, both Menard and Leclaire, as partners, were jointly responsible for their client accounts.

B. Transfer of Ménard and Leclaire to RBC DS

21. In August 2003, Ménard and Leclaire joined RBC DS.
22. Approximately 39 clients that had been referred by Earl Jones to Ménard and Leclaire while at ScotiaMcLeod, with assets totalling approximately \$21 million, transferred to RBC DS. Each of those clients had granted a trading authorization to Earl Jones.
23. Because of the transfer, RBC DS Account Opening Application Form, Know Your Client Form and Trading Authorization Form needed to be completed in a short period time.
24. Ménard and Leclaire relied on Earl Jones to provide the information required to complete these documents for some of the clients.
25. Notwithstanding that the said clients had previously granted a trading authorization to Earl Jones during the time that their accounts were at ScotiaMcLeod, since these documents bore the name of Earl Jones and needed to be reviewed and approved by the Respondents during a short period of time, Earl Jones significant role in multiple clients' accounts should have been questioned by the Respondents.
26. The circumstances surrounding the transfer of these multiple accounts should have prompted further inquiry from the Respondents for the following reasons:
 - a. Earl Jones held trading authorizations for a significant number of client accounts;
 - b. Earl Jones obtained trading authorizations from numerous individuals who were apparently unrelated, therefore excluding the possibility that he could be a close friend or relation of all these clients;
 - c. Earl Jones was operating a business, raising questions regarding the financial interest or role he might have in the clients' accounts;
27. Notwithstanding the foregoing, Ménard and Leclaire did not question the role of Earl Jones and did not contact some of the clients nor did RBC DS put in place specific supervisory procedures for the accounts of those clients;

C. Transfer into discretionary accounts

28. In August 2004, as it was becoming increasingly difficult to speak to or meet with Earl Jones to make investment recommendations respecting the clients for which he had a trading authorization, Leclaire began to contact some of

the said clients directly in order to offer them the opportunity to convert their accounts to discretionary accounts.

29. Between August 2004 and December 31, 2008, the accounts of 16 of the clients referred by Earl Jones were converted to discretionary accounts.
30. As at December 31, 2007, the total value of the assets in the accounts of the clients referred by Earl Jones was \$25,812,413. Of that amount, \$22,705,797 was managed by Ménard and Leclaire on a discretionary basis, without any interaction with or involvement of Earl Jones.
31. However, during the same period, some of the clients were not contacted by Ménard or Leclaire to be offered to convert their accounts to discretionary.
32. Some of the client accounts that were not converted to discretionary accounts continued to be subject to a trading authority in favour of Earl Jones without any intervention or inquiry on the part of Ménard, Leclaire or RBC DS.

D. Withdrawals

33. Between January 2004 and December 2007, a total of approximately \$3,674,862.20 was withdrawn from the accounts of 16 clients referred by Earl Jones.
34. Each of these withdrawals was preceded by a letter of authorization signed by the client which included directions as to whom and where to deliver the cheque to be issued.
35. In respect of each of the aforementioned withdrawals, the cheques were issued by RBC DS payable to the client and some were delivered to Earl Jones' office.
36. One of the assistants of Ménard and Leclaire verified the signature of the client on the letter of authorization, and called Earl Jones' office to confirm the withdrawal and delivery instructions.
37. Paragraph 18 of the RBC DS Account Agreement relating to the accounts of all clients of RBC DS, including the clients referred by Earl Jones, at the relevant time provided that:

"18. Trading authorization

You can give another person authorization to trade securities in your account, including buying and selling on margin or short selling, by completing the appropriate trading authorization form. We will act on this person's instructions without conducting any inquiries or investigations into the propriety of such instructions. If you

give authorization to more than one person, each person can deal independently with us without the consent of the others. This trading authorization will not survive your death or incapacity.

This person may withdraw money or securities from your account if the money is payable to you or the securities are registered in your name.

If you want to end another person's trading authorization on your account, you must send a notice in writing to this effect by registered mail to:

Manager Compliance Department
RBC Dominion Securities Inc.
Royal Bank Plaza, North Tower
200 Bay Street
Toronto, ON M5J 2W7

The notice will be effective on the day after the business day we receive it. We may act on any instructions that we received from this person before the notice became effective.

You assume the risk on all transactions involving a trading authorization on your account. You agree to indemnify us from all debts, costs, damages and losses, including legal costs, we may incur from a transaction involving a trading authorization on your account.”

38. Notwithstanding the foregoing and further notwithstanding that some of the withdrawals:
- (i) were for large amounts;
 - (ii) resulted in the deregistration of some of the registered accounts, which would trigger tax consequences;
 - (iii) resulted in the liquidation of the accounts;
 - (iv) in all cases were in respect of accounts for which Earl Jones had a trading authorization;
 - (v) were made within a short timeframe or concomitant with other withdrawals for other clients for whom Earl Jones held a trading authorization; and
 - (vi) were accompanied by a request to deliver the cheques payable to the clients to Earl Jones or to one of his employees,

neither RBC DS, Ménard or Leclaire: questioned these withdrawals, contacted any of the 16 clients to inquire about the withdrawals, obtain their verbal confirmation of the withdrawals and delivery instructions.

39. The majority of the said clients acknowledged to IIROC Staff during the investigation that they were aware of the withdrawals and that the cheques payable to the clients were being delivered to Earl Jones, so that the sums could be invested by Earl Jones in a special trust account that he had set up at RBC, which would purportedly generate a guaranteed return of 8% or more.
40. As a result of Ménard and Leclaire's infrequent contact with the 16 clients, they were unaware that Earl Jones was withdrawing their money to put it into a special trust account outside of RBC DS.
41. Earl Jones defrauded the 16 clients of the amounts that were withdrawn from their accounts. RBC DS, Ménard and Leclaire were unaware of and not complicit in this fraud.
42. From 2003 to 2009, the gross commissions generated from the accounts for which Earl Jones held trading authorizations amounted to approximately \$390,000. The gross commissions generated from the accounts of the aforementioned 16 clients with whom the Respondents had infrequent contacts amounted to \$86,046.

F. Failure to act as Gatekeeper

43. In light of the foregoing, RBC DS, Ménard and Leclaire failed to adequately perform their role as gatekeepers by:
 - a. allowing one individual to hold a significant number of trading authorizations for a significant number of unrelated clients; and
 - b. allowing one individual holding a significant number of trading authorizations to make numerous withdrawals in the accounts of 16 clients without questioning those transactions or contacting the clients

IV. MITIGATING FACTORS

44. Notwithstanding the failure of RBC DS, Ménard and Leclaire to meet the required standard in their role as gatekeepers, there are the following mitigating factors.

45. Notwithstanding that all of the clients referred by Earl Jones received a copy of the account agreement including the trading authorization, account statements and trade confirmations, at no time during the relevant period did a single client referred to Ménard and Leclaire by Earl Jones ever complain to the Respondents.
46. At no time did RBC DS, Ménard or Leclaire compensate Earl Jones in any way for any client referred to them.
47. At all times, all of the investment recommendations relating to all of the clients referred by Earl Jones were made by Ménard or Leclaire. At no time did Ménard or Leclaire accept or act upon an investment recommendation made by Earl Jones. At no time did anyone complain about the suitability of the investments made by Ménard and Leclaire.
48. On December 8, 2008, one of the clients referred by Earl Jones (HL) instructed the Respondents to liquidate her RRIF account. Leclaire contacted the client (HL) and discovered that Earl Jones was purportedly giving investment advice to this client in that he recommended to her to liquidate her account at RBC DS and invest the proceeds in a “tax shelter”. Leclaire dissuaded HL from liquidating her account and withdrawing any sums to remit to Earl Jones to be invested in a “tax shelter”.
49. For Ménard or Leclaire it was an indication that Earl Jones was potentially engaged in an illegal activity namely, he apparently was giving investment advice to his clients (but they did not suspect that Earl Jones was engaged in fraudulent conduct). Leclaire immediately reported the foregoing to his branch manager.
50. The Respondents have cooperated with Staff throughout the course of the Investigation.
51. Ménard and Leclaire have no disciplinary or regulatory history over lengthy careers.
52. RBC DS’s Compliance Policies and Procedures relating to gatekeeping and supervision of accounts were in accordance with regulatory requirements.
53. The Royal Bank of Canada paid \$17 million to settle the class action brought on behalf of the victims of Earl Jones’ fraudulent conduct.

V. TERMS OF SETTLEMENT

54. This settlement is agreed upon in accordance with IIROC Dealer Member Rules 20.35 to 20.40 inclusive, and Rule 15 of the Dealer Member Rules of Practice and Procedure.
55. The Settlement Agreement is subject to acceptance by the Hearing Panel.

56. The Settlement Agreement shall become effective and binding upon the Respondents and Staff as of the date of its acceptance by the Hearing Panel.
57. The Settlement Agreement will be presented to the Hearing Panel at a hearing (the "**Settlement Hearing**") for approval. Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.
58. The Respondents hereby waive their rights under IROC rules and any applicable legislation to a disciplinary hearing, review or appeal in the event that the Hearing Panel accepts the Settlement Agreement.
59. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondents may enter into another settlement agreement, or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.
60. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
61. Staff and the Respondents agree that if the Hearing Panel accepts the Settlement Agreement, they, or anyone on their behalf, will not make any public statements inconsistent with the Settlement Agreement.
62. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondents are payable within thirty (30) days of the effective date of the Settlement Agreement.
63. Unless otherwise stated, the first of the suspensions to be served consecutively and other terms of the Settlement Agreement shall commence within thirty (30) days of the effective date of the Settlement Agreement.
64. This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument.

AGREED TO by the Respondent RBC Dominion Securities Inc., at the City of _____, in the Province of _____, this _____ day of June, 2012.

RBC DOMINION SECURITIES INC.

"Witness signature"

per: "RBC Dominion Securities"

Witness

AGREED TO by the Respondent Jean-Pierre Ménard at the City of Montréal, in the Province of Québec, this 11th day of June, 2012.

JEAN-PIERRE MÉNARD

“Witness signature”

“Jean- Pierre Menard”

Witness

AGREED TO by the Respondent Serge Leclaire at the City of Montréal, in the Province of Québec, this 11th day of June, 2012.

“SERGE LECLAIRE”

“Witness signature”

Witness

AGREED TO by Staff at the City of Montréal, Province of Québec, this _____ day of June, 2012.

**INVESTMENT INDUSTRY REGULATORY
ORGANIZATION OF CANADA**

“Witness signature”

Per: “Carmen Crepin”

Witness

Carmen Crépin,
Vice President, Québec

ACCEPTED at the City of Montréal, in the Province of Québec, this _____ day of June, 2012, by the following Hearing Panel:

Mtre. Michele Rivet

Mr. Yves Julien

Ms. Danielle Le May

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