CIRO · OCRI
Canadian Investment Regulatory Organization
Organisme canadien de réglementation des investissements

Unofficial English Translation

IN THE MATTER OF

THE INVESTMENT DEALER AND PARTIALLY

CONSOLIDATED RULES AND THE DEALER MEMBER RULES

AND

DESJARDINS SECURITIES INC.

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Canadian Investment Regulatory Organization ("CIRO")[1] will issue a Notice of Application to announce that a settlement hearing will be held before a hearing panel to consider whether, pursuant to sections 8215 and 8428 of the Investment Dealer and Partially Consolidated Rules (the "Investment Dealer Rules"), the hearing panel should accept this Settlement Agreement between Enforcement Staff and Desjardins Securities Inc. (the "Respondent").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Enforcement Staff and the Respondent jointly recommend that the hearing panel accept this Settlement Agreement in accordance with the terms and conditions set out below.

PART III – AGREED FACTS

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

Overview

4. The Respondent's policies and procedures respecting supervision contained shortcomings which permitted:

   a) On three occasions, in 2019, 2020 and 2021, the acceptance of orders received from its representative JV, with the intention of enabling clients residing in Québec to participate in new issues as well as a take-over bid for which they were not eligible, by subscribing to the units through a client in another province who was eligible, in order to resell them to Québec clients by means of OTC cross-trades, before trading the units on the secondary market;

   b) From June 2020 to February 2022, for two clients of its representative MB, the implementation of an active options trading strategy that was not within the bounds of sound business practice, and which, for one of these clients, resulted in options trades that were unsuitable for that client.

Background

5. The Respondent was, at all material times, a dealer member of CIRO (previously IIROC).

Material Facts

a) Supervision of the activities of representative JV

6. At all material times, JV was a registered representative with the Respondent.

7. In February 2021, JV placed orders intended to enable three clients residing in Québec to participate in a new issue for which they were not eligible, by subscribing to these units through a client from another province who was eligible, in order to resell them to the clients in Québec by way of OTC cross-trades, before trading them on the secondary market.

8. In the course of an investigation of the Respondent, Enforcement Staff discovered that these trades had been executed in 2021 by the Respondent's representative and that these trades had been made with the Respondent's knowledge.

9. The trades were executed by JV while under strict supervision by the Respondent.

10. The investigation then revealed that this representative had already used this modus operandi on at least two other occasions in the past, with respect to a new issue in 2019 and a take-over bid in 2020.

11. The Respondent knew that these trades had been executed and had allowed them.

12. The branch manager and the Respondent's Compliance Department were copied on the correspondence sent by representative JV to the Respondent's Trade Entry department with the details of these trades for execution of the relevant orders.

13. The transactions at the time did not trigger any response from the Respondent concerning the prohibition against Québec residents participating in the new issues or the take-over bid, and no measure was therefore taken by the Respondent to prevent these trades or to forbid the representative from circumventing a prohibition.

14. As well, representative JV personally set the prices at which the orders for these OTC trades would be executed, without any verification by the Respondent in this regard to ensure compliance with the prescribed rules in this matter.

15. Not until March 2021 did the Respondent intervene for the first time with representative JV, to question and clarify its expectations regarding OTC transactions, including a specific prohibition against any OTC trading by Québec clients on new issues not eligible in Québec.

16. Towards November 2021, the Respondent decided to put an end to representative JV's business practice of trading new issues on OTC markets.

17. The commissions received by the Respondent on these trades came to $6,188.03, after deduction of the commissions paid to representative JV.

b) Supervision of the activities of representative MB

18. At all material times, MB was a registered representative of the Respondent.

19. Beginning in summer 2020, MB on his own initiative implemented an active options trading strategy with two clients in particular.

20. This trading strategy notably relied on short-term fluctuations in the price of the underlying shares to increase the return on the clients' portfolios.

21. To that effect, MB and the Respondent proceeded to open an options margin account for the two clients, in June and in August 2020.

22. It appears that, for these two clients, the strategy was not guided by any target return and resulted in considerable losses for the clients:

    a) For client GDB, capital losses resulting from these option transactions came to $468,809 for the period from June 2020 to February 2022, even though the client's portfolio generated returns of 27.54% during this period;

    b) As for client FML, capital losses resulting from these options transactions totaled $52,931 for the period from August 2020 to November 2021, even though the client's portfolio generated returns of 0.19% during this period.

The client GDB

23. The client GDB opened a brokerage account with MB and the Respondent in 2010.

24. This client's investor profile, as appears from his KYC and the updates made in 2014 and 2016, indicated that his knowledge of investing was "good" and that his risk tolerance was "medium" and that his investment objectives for this account were exclusively "income securities, growth securities and moderate/high risk investment securities".

25. The client's knowledge of options trading was nil.

26. Up until 2020, this client's portfolio was composed of relatively conservative investments and the latter had not expressed any dissatisfaction regarding this type of investments or the returns they generated.

27. Following the opening of client GDB's options margin account in June 2020, his investment objectives were also updated on or around August 19, 2020:

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

28. However, this update was not intended to truly reflect the risk tolerance or investment objectives of the client GDB, but rather to align the KYC file with the client's portfolio, in line with the options trading strategy now employed by MB.

29. Despite the investor profile and the composition of client GDB's portfolio prior to June 2020, MB recommended to the client that the latter continue with his options trading strategy even after substantial gains might have been realized.

30. Between June 2020 and February 2022, MB executed 379 options trades in client GDB's account, while the total commissions billed by the Respondent came to $1,118,741.76.

31. During this same period, the monthly commissions billed to client GDB exceeded the $1,500 threshold on 17 occasions and the $3,000 threshold on 15 occasions, for a monthly average of $58,880 overall.

32. On or around February 18, 2022, client GDB filed a complaint with the Respondent regarding MB.

33. Pursuant to this complaint, the Respondent and client GDB agreed on a compensation amount in settlement of the matter.

The client FML

34. Client FML's brokerage account was opened with the Respondent in September 2018.

35. The investor profile for this client, as appears from his KYC file, indicated that his knowledge of investing was "good", that his risk tolerance was "medium" and that his investment objectives for this account were exclusively focused on "income securities, growth securities and moderate/higher risk investment securities."

36. This client had no knowledge of options trading.

37. MB took charge of client FML's account with the Respondent in January 2020.

38. Between August 2020 and November 2021, MB executed 101 options trades in client FML's account, for which the total commissions billed by the Respondent rose to $125,491.

39. During this same period, the monthly commissions billed to client FML exceeded the $1,500 threshold on 12 occasions and the $3,000 threshold on 10 occasions, for a monthly average of $7,842 overall.

40. On or around February 14, 2022, client FML filed a complaint with the Respondent regarding MB.

41. Pursuant to this complaint, the Respondent and client FML agreed on a compensation amount in settlement of the matter.

Miscellaneous

42. Subsequent to the alleged facts, the Respondent has issued a directive forbidding the type of trades effected by the representative JV.

43. Representative MB admits having executed numerous discretionary trades in the accounts of clients GDB and FML, even though none of the accounts were previously approved as "discretionary" accounts.

44. From June 2020 to November 2021, representative MB falsely claimed to Respondent that he had discussed the trades with the clients beforehand. He admits having falsified notes reporting on the supposed conversations with clients GDB and FML, notably as regards the options trades executed in a discretionary manner.

45. To that effect, MB further defied certain reminders sent by the Respondent.

46. On or around October 21, 2022, the Respondent imposed the following measures on representative MB:

a) Rewrite and pass the Conduct and Practices Handbook exam (CPH);

b) Twelve (12) months of strict supervision;

c) A fine of $150,000.

47. MB has complied with the first two measures mentioned above, the Respondent having agreed to waive the financial penalty in consideration of the settlement agreement and related sanctions subsequently entered into between CIRO and MB.

Deficiencies in supervision

48. Deficiencies were observed in Respondent's supervision of representative JV from September 2019 to February 2021, notably concerning:

a) Compliance with restrictions applicable to provinces of distribution;

b) The absence of appropriate timely follow-up.

49. Deficiencies were observed in Respondent's supervision of representative MB from June 2020 until February 2022, notably concerning:

a) Tier 1 reviews (monthly gross commissions of at least $1,500);

b) Tier 2 reviews (monthly gross commissions of at least $3,000);

c) Commissions/account value ratios;

d) The profile of the clients concerned as well as the strategy employed;

e) The absence of appropriate timely follow-up.

PART IV – CONTRAVENTION

50. Given the conduct described above, the Respondent acknowledges its liability in the matter of the following contravention of CIRO requirements:

During the material period of September 2019 to February 2022, the Respondent failed to establish and maintain a system that would enable it to adequately

supervise the business activities of at least two of its registered representatives, contrary to Rule 38.1 and Rule 2500 of the Dealer Member Rules (prior to January 1, 2022), and Rule 3900 of The Investment Dealer and Partially Consolidated Rules (after January 1, 2022).

PART V –TERMS OF SETTLEMENT

51. The Respondent agrees to the following sanctions and costs:
    (a) A fine in the amount of $225,000;
    (b) Disgorgement of $623,924.73, representing the commissions received by the Respondent and taking into account the compensation it paid the clients concerned;
    (c) Costs in the amount of $25,000.

52. 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

53. 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.

54. 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

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

56. 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.

57. 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.

58. 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.

59. 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.

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

61. 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.

62. 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.

63. 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

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

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

DATED the __30__th day of the month of August 2024.

(s) Radek Loudin

Witness

Radek Loudin, Chief Compliance Officer
Respondent: Desjardins Securities Inc.

(s) Francis Larin

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

[1] 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 UMIR and (iii) the Mutual Fund Dealer Rules. These rules are largely based on the rules of IIROC and the rules and certain by-laws and policies of the MFDA that were in force immediately prior to amalgamation. Where the rules of IIROC and the rules and by-laws and policies of the MFDA that were in force immediately prior to amalgamation have been incorporated into the Interim Rules, Enforcement Staff have referenced the relevant section of the Interim Rules.

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 who was subject to the jurisdiction of the Investment Industry Regulatory Organization of Canada, just as the latter did.