Re Raymond James

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Raymond James Ltd.

2019 IIROC 08

Investment Industry Regulatory Organization of Canada
Hearing Panel (Pacific District)

Heard: December 4, 2018 in Vancouver, British Columbia
Decision: March 26, 2019

Hearing Panel:
Stephen D. Gill, Chair, Douglas Stewart and Brian Field
Appearance:
Paul Smith, Enforcement Counsel
David Di Paolo, Counsel for Raymond James Ltd.

REASONS FOR DECISION

¶ 1 In a closed hearing on December 4th, 2018, the Hearing Panel was asked to accept a Settlement Agreement entered into between the Investment Industry Regulatory Organisation of Canada (IIROC) and the Respondent. A representative of the Respondent, Raymond James Ltd. was present, and they were represented by Counsel Mr. Di Paolo.

¶ 2 Having reviewed the Settlement Agreement and heard the submissions of Counsel, and after adjourning to consider the submissions and the merits, the Hearing Panel gave their decision to accept the Settlement Agreement. These are the Reasons for that decision.

¶ 3 The Agreed Facts are set out in paragraphs 4 to 44 the Settlement Agreement, which is attached to these reasons as Appendix A. The Respondent has admitted the following contravention:

> Between January 2010 and December 2016 the Respondent failed to establish and maintain a system of internal controls and supervision reasonably designed to achieve compliance with IIROC requirements, including to deal fairly with clients with regard to fees, contrary to Dealer Member Rules 38.1 and 2500.

¶ 4 The Parties have agreed to the following sanction and costs:

a) a fine in the amount of $125,000, and

b) costs in the amount of $5,000.

¶ 5 IIROC conducts hearings to ensure compliance with and enforcement of its Rules. Since September 1, 2016, these hearings are authorized by Consolidated Enforcement Rule 8200 "Enforcement Proceedings" which includes Rules 8201-8217.

¶ 6 The procedural rules that govern this hearing are set out in Consolidated Enforcement Rule 8400 "Rules of Practice and Procedure" which includes Rules 8401-8431.

¶ 7 A settlement hearing is governed by Rule 8215. That rule permits IIROC's Enforcement Staff to settle a proceeding against a regulated person with a settlement agreement and impose obligations that are agreed to in the settlement agreement (Rule 8215).

¶ 8 Pursuant to Rule 8215(5), after a settlement hearing, a hearing panel may accept or reject the settlement agreement. When accepted, the settlement agreement becomes effective and binding (Rule 8215 (6)) and the obligations imposed in it become deemed sanctions imposed by Rule 8215.

¶ 9 A Hearing Panel must provide written reasons for its decision to accept or reject a settlement agreement (Rule 8203(7)).

¶ 10 If a settlement agreement is rejected, the parties will follow the procedure pursuant to Rule 8215 (8)(i) and (ii).

¶ 11 The Hearing Panel's role when considering a settlement agreement is well settled. We adopt the rationale set forth in these quotes from IIROC's Outline of Authorities; the excerpts and summaries are as follows:

a) "It is usually in the public interest that matters be settled where possible rather than be determined through contested hearings. The reasons for this are often that an earlier determination of a dispute is better than a later determination. Settlements are usually less expensive than contested litigation, and there is less congestion in the dispute settling system when matters are taken out of the system through settlements. Finally, where both parties agree, the result is often more palatable to the parties and society than in a contested hearing where the winner takes all.

For these reasons, a panel considering the acceptance of a settlement agreement will try to reach a determination of acceptance. It will recognize that settlements are often hotly debated with much compromise and give-and-take between the parties in order to reach an acceptable position agreeable to both parties. Furthermore, the panel will recognize that it is not privy to all the facts and the motivations and considerations that each of the parties have in coming to a solution of the dispute that is agreeable to them.

Re Donnelly, 2016 IIROC 23 at paras 7 & 8

b) Our legal system places a high value on the settlement of legal disputes…. Settlement not only relieves parties of the cost, risk and uncertainty that comes with litigation, but as the product of negotiation and compromise a settlement is more likely to arrive at a fair and balanced resolution of a dispute. A view widely shared by many Hearing Panels (is) that an effective disciplinary regime is one that avoids unnecessary litigation whenever a reasonable outcome can be

otherwise be obtained through settlement.

Re Wood, 2014 IIROC 50 at para 18

c) The disciplinary process can be time-consuming and involve significant costs for both the member and the society. All members have a vested interest in ensuring that matters proceed expeditiously. The burden of proving allegations in some cases can result in a complicated and protracted hearing with the usual risk and vagaries. If the parties negotiating compromise agreements cannot expect their efforts will be respected, there is little incentive to attempt a negotiation.

Rault v. Law Society of Saskatchewan, [2009] SKCA 81 (C.A.) at para 19

d) The task of an IIROC hearing panel considering a Settlement Agreement is not to decide whether, in the same case, the panel would have arrived at the same decision as that reached by the parties. Rather, it's duty is to determine whether the agreed penalty is a reasonable one and that it meets the objectives of the disciplinary process which is to maintain the integrity of the investment industry.

Re Deutsche Bank Securities Ltd., 2013 IIROC 7 para 9

e) The panel should not simply substitute its discretion for that of staff who negotiated the settlement. The panel must be cognizant of the importance of the settlement process and should not interfere lightly in a negotiated settlement.

Re Clark, 1999 IDA 40

¶ 12 With respect to sanctions, the Respondent has agreed to a fine in the amount of $125,000 and costs in the amount of $5,000.

¶ 13 The panel was referred to three other decisions involving settlement agreements, which the panel has reviewed in coming to its decision. Those cases are HSBC Investment Funds (Canada) Inc, and HSBC Private Wealth Services (Canada) Inc, 2016 BCSECOM 185, Scotia Capital Inc, Scotia Securities Inc and Holliswealth Advisory Services Inc., OSC, July 29, 2016 and TD Waterhouse Private Investment Counsel Inc, TD Waterhouse Canada Inc and TD Investment Services Inc, OSC, November 7, 2014.

¶ 14 Significant remedial steps were taken by the Respondent, which are set forth in paragraphs 26 to 39 of the Settlement Agreement. In our view those remedial steps indicate that the Respondent has taken this matter very seriously and has acted appropriately.

¶ 15 There are a number of mitigating factors present, which are set forth in the Settlement Agreement in paragraphs 40 to 44. They are as follows:

a) The Respondent voluntarily developed and implemented the remediation plan outlined in paragraphs 26 to 39 of the Settlement Agreement;

b) None of the Advisor series ETFs or Structured Products which generated trailers in Viridian accounts were manufactured by the Respondent or its affiliates;

c) The Respondent has compensated clients and has made payments to ensure that it receives no profit or benefit from its failure;

d) The Respondent's failure was inadvertent. There is no suggestion that Respondent deliberately

overcharged any client;

e) The Respondent discovered its failure and self-reported it to IIROC.

¶ 16 We note that as of the date of the Settlement Agreement, Raymond James has repaid 98% of the money, including 100% to current clients. Further, Raymond James continues with reasonable efforts to identify and locate any former client who was overcharged more than $25 during the six-year period. Any amount not repaid to former clients will be donated to charity without issuance of a charitable receipt. As such, Raymond James will not benefit from the fees, which were mistakenly charged to client accounts.

¶ 17 In our view, the Settlement Agreement and the sanctions of the agreed fine of $125,000 and costs in the amount of $5,000 meets the objectives of the disciplinary process which is charged with maintaining the integrity of the investment industry.

For these reasons, the Hearing Panel has accepted the Settlement Agreement.

Dated at Vancouver, British Columbia this 26th day of March, 2019.

Stephen D. Gill

Douglas Stewart

Brian Field

APPENDIX A

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Investment Industry Regulatory Organization of Canada ("IIROC") will issue a Notice of Application to announce that it will hold a settlement hearing to consider whether, pursuant to Section 8215 of the Consolidated Enforcement, Examination and Approval Rules of IIROC, a hearing panel ("Hearing Panel") should accept the settlement agreement ("Settlement Agreement") entered into between the staff of IIROC ("Staff") and Raymond James Ltd. ("Respondent").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. 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. In July 2017, the Respondent met with Staff to self-report to IIROC that from 2010 to 2016 it had mistakenly and incorrectly calculated the annual fees charged to some of its clients who had non-discretionary fee based accounts that were commonly known as "Viridian" accounts. Assets held in these accounts, which paid a trailer fee to the Respondent, should have been excluded from the annual asset

calculation, which determined the fee. They were not.

5. In total, the Respondent overcharged more than 6,000 client accounts a total of $2,345,662.

6. The Respondent has made diligent efforts to repay this money to its clients and former clients. As of the date of this Settlement Agreement, the Respondent has repaid $2,299,419 to approximately 6,000 clients, which includes repayment of all current clients of the Respondent.

7. The Respondent will continue with reasonable efforts to locate any former client who was overcharged more than $25 in the aggregate during the 6-year period.

8. Any amount not repaid to former clients will be donated to charity without issuance of a charitable receipt to the Respondent. As such, the Respondent will not benefit from the fees, which were mistakenly charged to Viridian accounts.

The Respondent

9. The Respondent has been a Dealer Member of IIROC, and its predecessor the Investment Dealers' Association, since 2003. The Respondent engages in securities, options, and managed account trading activities. Neither the Respondent nor its affiliates manufacture mutual funds or other structured products for the Canadian market. Its head office is located in Vancouver, British Columbia.

Viridian Accounts and Trailer Fees

10. One of the account types that the Respondent offers clients is a non-discretionary fee-based account program called "Viridian." Instead of paying a fee for each individual transaction made in their account, a client with a Viridian account pays a quarterly or monthly fee that is calculated based on the value of the securities held in the client's account.

11. A trailer fee is a service commission paid by an issuer/manager of a structured product such as a mutual fund or an exchange traded fund. The trailer fee is paid to the representative of a client who holds the product paying such trailer fee for as long as the client holds the product. These fees generally range between 0.25% and 1.00% and are paid out of the product's management expenses. These trailer fees are meant to compensate the representative for providing their client, the purchaser of the fund, with ongoing services such as answering questions about the makeup and performance of the structured product.

12. Since the year 2010, the Viridian account agreement stated that any assets held in a Viridian account that paid a trailer fee would be excluded from the annual fee calculation that would otherwise apply.

13. It was therefore important for the Respondent to ensure that all trailer-paying assets were identified. Failure to do so would mean that clients, to the extent they were paying a trailer fee in addition to the firm-assessed account fee, were being over charged. To that end, the Respondent had instituted controls to ensure that conventional fee-based mutual funds were not included in the calculation of fees on Viridian accounts.

Self-Reporting

14. In 2016, the Respondent became aware through media reports that other investment dealers had identified incidents in which a failure to identify certain securities that paid trailer fees led to overcharging in fee based accounts.

15. In order to ensure that its clients were being treated fairly, the Respondent undertook a review of its own billing procedures related to its Viridian accounts between September and December 2016.

16. In order to ensure the completeness of its review while avoiding any additional charges to its existing clients in 2016 that had a Viridian account, the Respondent commenced its review procedures by focusing on those accounts to make sure that any securities that had an embedded trailer fee were excluded from the November monthly and December quarterly fee calculations. Once this was completed, the Respondent then conducted a review of each security, which had been held in a Viridian account since 2010.

17. The review by the Respondent identified instances where certain exchange-traded products that were held in Viridian accounts and which had embedded trailer fees that were paid to the Respondent, were not excluded from the annual fee calculation for the Viridian accounts.

18. Upon completion of its review and having reached the conclusion that some of its clients had been charged a higher annual fee than they should have been, the Respondent contacted IIROC to self-report its error.

19. In the period between January 2017 and meeting with IIROC Staff in July 2017, the Respondent considered the scope of its findings and how best to resolve the issue to the benefit of its clients. Following consultation with IIROC Staff, the Respondent commenced the remediation plan outlined below under the heading "Remedial Steps Taken by the Respondent".

20. In July 2017, representatives of the Respondent met with IIROC to disclose the findings of its review and to advise of the remedial steps it intended to take.

Control and Supervision Failures

21. There were two types of exchange-traded products for which the Respondent received trailer fees that were not excluded from the annual fee calculation:

    (i) Advisor series Exchange Traded Funds. There were relatively few of these, and where they were held, they had been transferred into the Viridian account, either from a commission based account or from another firm; and

    (ii) "Structured Products" that trade on an exchange.

22. While most fee based mutual funds are identified as Class F and most trailer-paying ETFs usually contain an .A or .B in the stock symbol, it was less obvious which Structured Products paid a trailer fee because the Structured Products traded on an exchange with a standard stock symbol.

23. Less than 1% of the total amount that the Respondent earned in trailer fees from these securities in the 6-year period were paid in respect of units held in Viridian accounts.

24. The Respondent's book of record did not contain any product identifiers that enabled products such as these to be filtered in a way to determine which paid trailer fees.

25. When it received large sum trailer fee payments for multiple securities from management companies, the Respondent did not have a comprehensive procedure in place to check each security to determine if it was held in Viridian accounts, or coded in a way that would exclude them from the account fee calculation.

Remedial Steps Taken by the Respondent

26. Since December 2016, the Respondent has taken steps to ensure that structured products that pay a trailer fee are not included in the annual fee calculation in Viridian accounts.

27. Each trailer paying security is now flagged and a control is in place to systematically prevent the client from being charged a management fee when the security is held in a fee-based account. On a monthly basis, the Respondent reviews all exchange-traded trailer fees received to ensure that no managed account fees would be charged to clients in connection with these trailer fee paying securities

28. Between January and July 2017, the Respondent voluntarily developed and implemented a compensation plan to address the trailer fees that were overcharged.

29. Over the six year period from 2010 until December 2016, the Respondent received $2,345,662 in trailer fees in more than 6,000 Viridian accounts. More than half of these accounts were closed before the error was discovered in December 2016.

30. The Respondent has identified and credited all overcharged amounts to current clients:

    (a) in the Viridian accounts that remained open at Raymond James; and

    (b) owed to owners of closed Viridian accounts who have other accounts open at Raymond James.

31. The Respondent credited these accounts/clients for the $ 1,582,204 in trailer fees they were overcharged.

32. The $763,458 overcharged to the remaining closed accounts required the Respondent to locate the legal account owners. The Respondent limited its effort on locating the owners of accounts that were overcharged more than $25 in the aggregate during the 6-year period. For these accounts, the Respondent:

    (i) sent two separate mailed letters to the last known addresses on file;

    (ii) sent emails to the clients' email addresses on file;

    (iii) telephoned the home and business telephone numbers on file;

    (iv) established a toll-free telephone number for clients to contact the Respondent; and

    (v) if the amount owing was greater than $500, contacted the transfer departments of the IIROC member firms the accounts had subsequently transferred to, and requested the former clients, if still at that firm, to contact the Respondent about funds owed to them.

33. By August 2018, over 97% of the entire overcharged amount had been repaid to clients and former clients.

34. In September 2018, the Respondent retained CBV Collection Services Limited to locate and contact former account owners who were overcharged more than $25 in the aggregate during the 6-year period, to advise them that the Respondent owed them funds and would like to repay them.

35. As of the date of this Settlement Agreement, the Respondent has repaid $2,299,419 of the $ 2,345,662 that was overcharged.

36. The $46,243 that has not yet been repaid includes:

(i) $6,511 that is owed to recently identified owners that the Respondent expects to pay,

(ii) 30,876 that is owed to the owners of 245 closed accounts (an average of $126 per account) that the Respondent has made efforts to locate, and

(iii) $8,856 that was not repaid to owners of closed accounts that were overcharged less than $25 in the aggregate during the 6-year period.

37. The Respondent will continue to reimburse former clients who contact its office after the publication of this Settlement Agreement. It is expected that publication of this Settlement Agreement will encourage former clients who had Viridian accounts from 2010 to 2016, to contact the Respondent. These former clients can telephone the Respondent at its head office to see if their account was one of the accounts that was overcharged.

38. To ensure that it receives no financial benefit from its error, the Respondent will, on December 31, 2018, donate the equal amount of any unreimbursed funds to the Raymond James Canada Foundation, a CRA registered charity which benefits other charities in Canada, without claiming the donation as a tax deduction.

39. Notwithstanding any charitable donation made on December 31, 2018, the Respondent will still repay the owner of any account that was overcharged any amount of money related to this overcharging error.

Mitigating Factors

40. The Respondent voluntarily developed and implemented the remediation plan outlined above in paragraphs 26 to 39.

41. None of the Advisor series ETFs or Structured Products which generated trailers in Viridian accounts were manufactured by the Respondent or its affiliates.

42. The Respondent has compensated clients and has made payments to ensure that it receives no profit or benefit from its failure.

43. The Respondent's failure was inadvertent. There is no suggestion that Respondent deliberately overcharged any client.

44. The Respondent discovered its failure and self-reported it to IIROC.

PART IV – CONTRAVENTIONS

45. By engaging in the conduct described above, the Respondent committed the following contraventions of IIROC's Rules:

(i) Between January 2010 and December 2016, the Respondent failed to establish and maintain a system of internal controls and supervision reasonably designed to achieve compliance with IIROC requirements, including to deal fairly with clients with regard to fees, contrary to Dealer Member Rules 38.1 and 2500.

PART V – TERMS OF SETTLEMENT

46. The Respondent agrees to the following sanction and costs:

a) A fine in the amount of $125,000, and

b) Costs in the amount of $5,000.

47. 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 Staff and the Respondent.

PART VI – STAFF COMMITMENT

48. If the Hearing Panel accepts this 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.

49. 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 Part III of this Settlement Agreement.

PART VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT

50. This Settlement Agreement is conditional on acceptance by the Hearing Panel.

51. This Settlement Agreement shall be presented to a Hearing Panel at a settlement hearing 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.

52. 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.

53. If the Hearing Panel accepts the Settlement Agreement, the Respondent agrees to waive all rights under the IIROC Rules and any applicable legislation to any further hearing, appeal and review.

54. 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 based on the same or related allegations.

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

56. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IIROC will post a full of 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.

57. If this Settlement Agreement is accepted, the Respondent agrees that neither it nor anyone on its behalf will make a public statement inconsistent with this Settlement Agreement.

58. The Settlement Agreement is effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

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

60. A fax or electronic copy of any signature will be treated as an original signature.

DATED this 30th day of November, 2018.

"Witness"	"Raymond James Ltd."
Witness	on behalf of Raymond James Ltd.
"Witness"	"Raymond James Ltd."
Witness	on behalf of Raymond James Ltd.

DATED this 4th day of December, 2018.

"Witness"	"Paul Smith"
Witness	Paul Smith Enforcement Counsel on behalf of Enforcement Staff of the Investment Industry Regulatory Organization of Canada

The Settlement Agreement is hereby accepted this 4th day of December 2018 by the following Hearing Panel:

Per: "Stephen D. Gill"
Stephen D. Gill, Panel Chair

Per: "Douglas Stewart"
Douglas Stewart, Panel Member

Per: "Brian Field"
Brian Field, Panel Member