

IN THE MATTER OF:

THE RULES OF THE INVESTMENT INDUSTRY REGULATORY

ORGANIZATION OF CANADA

AND

MACKIE RESEARCH CAPITAL CORPORATION

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 Mackie Research Capital Corporation (“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. At all material times, the Respondent Mackie Research Capital Corporation (“Mackie”) failed to properly supervise the portfolio management activities of Darryl Yasinowski (“Yasinowski”), a Registered Representative (“RR”) and Portfolio Manager (“PM”), in Regina, Saskatchewan as it related to five clients that Yasinowski acted for as a PM.
5. Yasinowski was sanctioned by IIROC in June, 2018.
6. Yasinowski’s investment strategy included, among other things, covered and uncovered option writing. He wrote put options on large cap stocks in circumstances where he wished to acquire the underlying companies and wrote defensive call options against positions held in the clients’ accounts. He also purchased leveraged and inverse ETFs and held them beyond their intended short term period (although in most cases this trading did not result in a loss to clients) and other high risk positions. In addition, he employed extensive use of margin in some of the clients’ accounts.
7. The Yasinowski investment strategy departed from the investment strategies utilized by the majority of PMs at Mackie.
8. Mackie supervisors ought to have identified that the investment objective and risk tolerance information on the NCAFs for the five clients was insufficient for them to properly evaluate whether the investment strategy being employed by Yasinowski was suitable for those clients. Taken with the nature of the trading in the Clients’ accounts, the supervisors failed to adequately discharge their supervisory obligations.

Background

9. Mackie is a Dealer Member with its head office in Toronto, and branch offices located across Canada, including a branch office in Regina.

Yasinowski – Disciplinary Action

10. In June, 2018, an IIROC Hearing Panel accepted a Settlement Agreement between IIROC Staff and Yasinowski in which he admitted that he contravened IIROC Rules with respect to five complainant clients (the “Clients”).
11. Yasinowski did spend a considerable amount of time with the Clients, and developed personal relationships with them. Yasinowski believed he was acting in the best interests of the clients.
12. Despite that, Yasinowski admitted that he failed to meet the necessary “know your client” standard and failed to use due diligence to ensure that his investment recommendations were suitable for the Clients when he pursued an investment strategy which involved the use of options (covered and uncovered) and leveraged and inverse ETFs. In addition, he increased leverage by the use of margin in some of the Clients’ accounts.
13. The Clients’ accounts were all managed, fee-based accounts over which Yasinowski was authorized to exercise discretionary authority. In addition, all of the Clients’ account forms contained investment objectives of “growth”, which permitted up to 100% high risk holdings.
14. The Clients sustained losses of between 32% and 56% of their portfolios.
15. The 2011 market correction had a significant impact on the clients’ accounts. The market decline combined with the Yasinowski investment strategy left the clients with limited opportunity to recover the loss of their investment capital.

16. On June 25, 2018, an IROC Hearing Panel accepted a sanction for Yasinowski consisting of a suspension from registration in any capacity for 6 months, close supervision for 18 months upon return to the industry, a \$90,000 fine, and \$10,000 in costs.

Supervision Structure

17. At all material times, Yasinowski was supervised by a Tier 1 Branch Manager (“BM”) in his branch office, and Tier 2 supervisors in Toronto comprised of compliance officers and options supervisors (the “Mackie Supervisors”).
18. Yasinowski was the only Portfolio Manager in the branch office which consisted of fewer than six employees. The BM also maintained his own clients.
19. Tier 1 supervision duties performed by the BM of Yasinowski consisted of the review and approval of new client application forms (“NCAF’s”), and the review of daily trade reports.
20. Tier 2 supervision of Yasinowski was conducted out of the Toronto head office by Compliance Officers, who conducted a quarterly suitability review of all managed accounts (excluding options). Options supervision of Yasinowski was conducted by other individual supervisors at the head office who were responsible for the more specialized supervision of options account approval and trading. The credit department was responsible for a review of margin levels and concentration.
21. The purpose of daily and quarterly trade review and surveillance was to identify issues such as suitability, concentration and other compliance concerns.

Supervision Failures

22. The investment strategy employed by Yasinowski in the Clients’ accounts ought to have raised red flags for the supervisors, including the following:
 - a. The Clients stated investment knowledge was described as “limited” or “poor”;
 - b. The stated investment objective on the Clients’ NCAF simply indicated “growth” as the objective and did not provide enough information about the Clients’ risk

tolerance or asset allocation to allow the supervisors to make a reasonable assessment of whether the investments in the Clients' portfolios were suitable;

- c. The Clients were approved for Level 4 options trading, the highest risk level for retail options trading, despite their lack of investment knowledge and experience; and
 - d. Yasinowski employed the use of margin in the Clients' accounts.
23. Despite the presence of red flags, Mackie Supervisors failed to take the necessary action to supervise Yasinowski's investment strategy in managing the Clients accounts. In particular, various compliance officers:
- a. Failed to question whether the Clients' stated investment objective of "growth" was consistent with their true financial situation, investment objectives and risk tolerances;
 - b. Failed to question the Yasinowski trading activity in the accounts and whether the trades and holdings were suitable for the Clients;
 - c. Failed to give due regard to the risks to the Clients, and allowed Yasinowski to pursue a strategy which was not suitable for the Clients; and
 - d. Failed to adequately monitor levels of sector and individual security concentration in the Clients accounts.
24. In failing to adequately question the account activity in light of the above noted red flags, Mackie, through the actions of its supervisors, failed to adequately discharge its obligations to conduct supervision, contrary to Dealer Member Rules 38.1 and 2500.
25. The failure to adequately supervise the Clients at issue related to one PM, Yasinowski, and a limited number of Clients.
26. Prior to the commencement of the investigation respecting Yasinowski, the Mackie NCAF was changed in August 2014 to separate the account objectives and risk tolerance.

Greater clarity around how Mackie interprets different risk tolerance categories into expectations for asset allocations was also provided. This change enhanced the ability of Mackie supervisors to monitor client accounts operated by PMs such as Yasinowski. These changes demonstrate Mackie's commitment to a strong supervisory structure and are a mitigating factor.

27. In addition, Mackie settled with the Clients by paying approximately \$115,000 to the Clients.
28. By settling, Mackie has saved the need for a lengthy and costly hearing. It has also indicated Mackie's acceptance of its responsibilities.

PART IV – CONTRAVENTIONS

Between approximately May, 2010 and October, 2014, the Respondent, Mackie Research Capital Corporation, failed to adequately supervise a Registered Representative and certain of his client accounts, contrary to Dealer Member Rules 38.1 and 2500.

PART V – TERMS OF SETTLEMENT

29. The Respondent agrees to the following sanctions and costs:
 - a. A fine in the amount of \$75,000
 - b. Costs in the amount of \$10,000.
30. 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

31. 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.
32. 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

33. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
34. 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.
35. 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.
36. 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.
37. 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.
38. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.

- 39. 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.
- 40. 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.
- 41. 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

- 42. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.
- 43. A fax or electronic copy of any signature will be treated as an original signature.

DATED this 30th day of October, 2020.

“Witness”

Witness

“Mackie Research Capital Corporation”

Mackie Research Capital Corporation

“Witness”

Witness

“David McLellan”

David McLellan

Enforcement Counsel on behalf of
Enforcement Staff of the Investment
Industry Regulatory Organization of
Canada

The Settlement Agreement is hereby accepted this 12th day of November, 2020 by the following
Hearing Panel:

Per: “Barry Bresner”
Panel Chair

Per: “Nick Pallotta”
Panel Member

Per: “Stuart Livingston”
Panel Member