

Re HSBC Securities

IN THE MATTER OF:

The Investment Dealer and Partially Consolidated Rules

and

HSBC Securities (Canada) Inc.

2024 CIRO 01

Canadian Investment Regulatory Organization
Hearing Panel (Ontario District)

Heard: December 15, 2023, in Toronto, Ontario

Decision: December 15, 2023

Reasons for Decision: January 2, 2024

Hearing Panel:

Barry Bresner, Chair, Debbie Archer and Zahra Bhutani

Appearances:

Michael Mantle, Enforcement Counsel

John Fabelo, for HSBC Securities

Sarah Shody, for HSBC Securities

REASONS FOR DECISION

INTRODUCTION

¶ 1 This hearing was held pursuant to Sections 8215 (Settlements and Settlement Hearings) and 8428 (Settlement Hearings) of the Investment Dealer and Partially Consolidated Rules (the “IDPC Rules”) to consider whether to accept a Settlement Agreement dated November 29, 2023 (the “Settlement Agreement”) negotiated between Enforcement Staff and HSBC Securities (Canada) Inc. (“HSBC Securities”).

¶ 2 A copy of the Settlement Agreement is attached as Appendix A to these Reasons. Part III of the Settlement Agreement recites the facts agreed to by the parties. Pursuant to Section 8428(6) of the IDPC Rules, the agreed facts in the Settlement Agreement were the only facts considered by the Hearing Panel.

¶ 3 In the Settlement Agreement, HSBC Securities admitted that, between October 2018 and December 2022, it failed to establish and maintain a system of controls and supervision to ensure client fee agreements were accurately recorded in its fee management systems and that clients were charged appropriately, contrary to Dealer Member Rules 38.1 and 2500.

¶ 4 The Settlement Agreement provides for an agreed fine of \$52,500 and costs of \$5,000, to be paid by HSBC Securities within 30 days of December 15, 2023.

¶ 5 At the close of the hearing, the Panel advised the parties that it accepted the Settlement Agreement, with reasons for that acceptance to follow. These are those reasons.

ANALYSIS

¶ 6 The underlying facts are set out in detail in the Settlement Agreement. For present purposes, the salient facts are summarized as follows:

- Between October 2018 and December 2022, HSBC Securities charged excess fees to approximately 1,234 clients as a result of inadvertent errors in the classification of clients between different business unit record systems.
- The total of the excess fees was approximately \$198,674.
- The discrepancies were detected in an internal audit in December 2022.
- After an internal investigation to identify the scope of the discrepancies, in March 2023, HSBC Securities voluntarily reported the issue to CIRO. In April 2023, HSBC Securities provided CIRO with a formal letter with particulars of the issue.
- HSBC Securities promptly and in a detailed manner self-identified the issues, volunteered substantial assistance to CIRO staff and voluntarily developed and implemented an appropriate remediation plan.
- HSBC Securities remediated the discrepancies by promptly compensating the clients who were charged excess fees and by implementing new business controls to minimize the possibility of a recurrence of the issue. In addition, HSBC Securities decided not to charge additional fees to clients who were inadvertently undercharged fees as a result of the misclassification.
- HSBC Securities has received no profit or benefit from its inadvertent control deficiency.
- Enforcement Staff agreed to a 30% reduction in the fine it would have otherwise sought in recognition of “the proactive and exceptional cooperation” by HSBC Securities, the remedial measures implemented, and HSBC Securities’ willingness to resolve the matter in a timely manner, all of which led to an early resolution of the matter.

¶ 7 In determining whether to accept the Settlement Agreement, the Hearing Panel considered the agreed facts, the IIROC Sanction Guidelines (the “Guidelines”) and prior decisions which addressed similar contraventions.

¶ 8 The Guidelines set out general principles to be considered in assessing the reasonableness of the Settlement Agreement, including the requirement that the sanction be significant enough to discourage future misconduct by the respondent (specific deterrence) and to deter others from engaging in similar misconduct (general deterrence). In the present matter, HSBC Securities acted appropriately to rectify the situation it had self-identified and specific deterrence is not a particularly significant factor. As regards general deterrence, the Guidelines provide that the goal of general deterrence can be satisfied if the sanction strikes an appropriate balance by addressing the specific misconduct but is also in line with industry expectations.

¶ 9 The Guidelines also list a number of factors to be considered in assessing the proposed sanction. Those factors include the number, size and character of the transactions, the duration of the misconduct, whether there was a pattern of misconduct, whether the conduct was intentional or reckless, the harm to clients or financial benefit to the respondent, the remedial steps taken and the degree of cooperation with CIRO.

¶ 10 While the excess fees were charged over a period of over 4 years and involved a significant number of clients, the overcharging resulted from a single inadvertent error in failing to implement an adequate system to reconcile the client classifications between business units. As noted above, HSBC Securities’ conduct after self-identifying the errors has been above reproach.

¶ 11 As noted above, the principle of general deterrence requires a consideration of industry expectations. While each case turns on its unique facts, prior decisions on the sanctions for similar misconduct can be instructive and shape industry expectations. Two of those prior decisions are particularly relevant: *Re Peak Securities* 2020 IIROC 36 and *Re Worldsource Securities* 2018 IIROC 48.

¶ 12 In the *Peak Securities* matter, one of the allegations involved the charging of excess fees totaling

roughly \$191,500 to almost 500 clients over an extended period due to a lack of adequate controls. The respondent voluntarily reported the issue to IIROC, compensated its clients and did not benefit financially. The approved sanction was a fine of \$50,000. The hearing panel concluded that the fine was sufficiently harsh to meet the need for specific and general deterrence.

¶ 13 Similarly, in the *Worldsource Securities* matter, one of the contraventions involved the charging of excess fees totalling approximately \$148,904 over a period of 7 years to 236 clients. The issue arose because the respondent relied on a manual, rather than an automated, system for advisors communicating fee information to the respondent. While the respondent developed a plan to fix the manual process and to compensate the clients, it was noted that the problem was only identified by IIROC'S Business Conduct Compliance department. In the result, the hearing panel concluded that a fine of \$50,000 was appropriate for the excess fee issue.

CONCLUSION

¶ 14 Section 8215(5) of IDPC Rules provides that a hearing panel may accept or reject a settlement agreement. It is well-established that a hearing panel should not substitute its opinion of an appropriate sanction for that negotiated by the parties and should accept the settlement agreement unless it clearly falls outside of a reasonable range of appropriateness. Having considered the agreed facts, the Guidelines and the prior decisions, the Hearing Panel had no difficulty in concluding that the Settlement Agreement falls comfortably within a reasonable range of appropriateness and that acceptance of the Settlement Agreement is in the public interest.

¶ 15 Accordingly, for the reasons stated above, the Hearing Panel accepted the Settlement Agreement.

Dated at Toronto, Ontario this 2 day of January 2024.

“Barry Bresner” _____

Barry Bresner, Chair

“Debbie Archer” _____

Debbie Archer

“Zahra Bhutani” _____

Zahra Bhutani

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