

# Re MD Management

IN THE MATTER OF:

**The Rules of the Investment Industry Regulatory Organization of Canada**

**and**

**MD Management Limited**

2022 IIROC 25

Investment Industry Regulatory Organization of Canada  
Hearing Panel (Newfoundland and Labrador District)

Heard: September 27, 2022 in St. John's, Newfoundland and Labrador (via videoconference)

Decision: September 27, 2022

Reasons for Decision: October 5, 2022

## Hearing Panel:

David Eaton KC, Chair, and David Acker

## Appearances:

Andrew Werbowski, Enforcement Counsel

David Di Paolo and Amitha Carnadin, Counsel for MD Management Limited

MD Management Limited present and represented by:

Daniel Labonte, President & CEO, MD Financial Management

Pamela Allen, VP Client Value Delivery

James Rudderham, Director, Compliance

Charles Piroli, Director & Senior Legal Counsel

Kristen Riess, Senior Legal Counsel, Litigation, Scotiabank

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## DECISION ON ACCEPTANCE OF SETTLEMENT AGREEMENT

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### INTRODUCTION

¶ 1 This hearing was held to determine whether a settlement agreement (**Settlement Agreement**) entered into between IIROC Enforcement Staff (**Enforcement Counsel**) and MD Management Limited (**MD Management**) would be accepted or rejected in accordance with Rule 8215 of IIROC's *Consolidated Enforcement, Examination and Approval Rules* (**Rules**).

¶ 2 The hearing proceeded with a Hearing Panel of two panel members as the third member was unable to participate due to the widespread power outages resulting from post-tropical storm Fiona which devastated parts of Atlantic Canada a few days before the hearing. The Rules provide that the hearing can proceed with a two-member panel and the parties were satisfied to do so.

¶ 3 At the conclusion of the hearing, having considered the Settlement Agreement, the submissions of

counsel for the parties, and the precedents provided, the Panel advised that the Settlement Agreement was approved and that written reasons would follow. These are the reasons.

¶ 4 The contravention in issue is the following:

Between 2006 and 2019, MD Management Limited did not have adequate internal controls relating to the secure management of cheques made payable to its clients contrary to IIROC Dealer Member Rules 38.1 and 2500.

¶ 5 The Settlement Agreement provides for the payment of a fine of \$200,000 and costs of \$25,000.

¶ 6 The facts are set out in the Settlement Agreement, which is attached to these reasons and need not be fully repeated. However, some facts are necessary to put this matter into appropriate context.

¶ 7 MD Management, an IIROC Dealer Member, employed Joan McCarthy as a registered representative at its St. John's, NL office. Between 2006 and 2019, McCarthy misappropriated nearly \$775,000 of client funds through falsification of documents and forging client signatures on cheques payable to clients and on other internal documents.

¶ 8 As acknowledged in the Settlement Agreement, MD Management's policies and procedures were not adequately applied or enforced, and as a result McCarthy's activities were not prevented or detected for several years.

¶ 9 Upon discovery of McCarthy's activities, MD Management conducted a comprehensive investigation and made changes in its policies and procedures to improve its internal controls to ensure that this type of activity could not occur again in the future.

¶ 10 In addition, MD Management provided compensation to clients totaling \$782,362 for the misappropriated funds and the lost opportunity.

#### **ROLE OF THE HEARING PANEL**

¶ 11 Pursuant to Rule 8215(5), at a settlement hearing, the hearing panel may accept or reject, but not alter, a settlement agreement. It is well established by prior hearing panel decisions that in deciding whether to accept a settlement agreement, there are three considerations:<sup>1</sup>

1. The agreed penalties must be within an acceptable range taking into account similar cases;
2. The agreed penalties must be fair and reasonable; i.e., proportional to the seriousness of the contravention, and considering other relevant circumstances, should appear to be so to members of the public and of the industry; and
3. The agreed penalties should serve the goal of both specifically deterring the respondent from any repetition and generally deterring industry from engaging in similar conduct.

#### **ANALYSIS**

¶ 12 We are satisfied, based upon the precedents provided,<sup>2</sup> that the agreed upon penalty and costs are within the range of similar cases. While none of the cases were identical, the facts in those cases, when put into the appropriate context, provide a sufficient guide for the appropriate range for this case.

¶ 13 We are satisfied that the agreed penalty is fair and reasonable in relation to the circumstances of this

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<sup>1</sup> *Re TD Waterhouse* 2018 IIROC 44, para 11

<sup>2</sup> *Re Canaccord Genuity* 2021 IIROC 35, *Re TD Waterhouse Canada* 2018 IIROC 44, *Re Laurentide Bank Securities* 2017 IIROC 38, *Re Scotia Capital* 2017 IIROC 48, *Re Scotia Capital* 2017 IIROC 15, *Re Edward Jones* 2016 IIROC 42

case. The submissions of Enforcement Counsel, which were fully endorsed by Counsel for MD Management, identified the following factors that are set out in the IIROC Sanction Guidelines:

1. the extent of harm to clients or other market participants;
2. the level of vulnerability of the injured or affected clients;
3. the extent to which the respondent obtained or attempted to obtain a financial benefit from the misconduct;
4. whether the respondent made voluntary acts of compensation, including voluntary disgorgement of commissions, profits, other benefits and/or payment of restitution; and
5. whether an individual respondent or Dealer Member respondent voluntarily employed subsequent corrective measures to revise ad/or specific procedures to avoid recurrence of misconduct.

¶ 14 There is no question that McCarthy's conduct caused significant harms to the vulnerable clients who were defrauded by her actions. However, the conduct of MD Management in issue here was not intentional or reckless. The failures involved were not for the purpose of any expected gain, and MD Management received no benefit from its conduct. The conduct is best described as negligent in that there was a failure to meet appropriate standards. That this took place over many years is a significant aggravating factor as is the fact that the failure permitted a dishonest Registered Representative to engage in fraudulent activity for such a long period of time and cause significant harm to clients.

¶ 15 MD Management's response to the discovery of what had been taking place, in providing compensation early in the process, and in taking corrective action to prevent any recurrence are positive, mitigating factors.

¶ 16 Balancing aggravating and mitigating factors, we conclude that the penalty and costs agreed upon are fair and reasonable when all the circumstances are considered.

¶ 17 We are satisfied that the penalty and costs are sufficient to meet the deterrence goals.

## **CONCLUSION**

¶ 18 For the reasons above we accept the Settlement Agreement and accept that it protects the public interest.

Dated at St. John's, Newfoundland and Labrador this 5 day of October, 2022.

David Eaton

David Acker

## **Appendix**

### **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 IIROC Rules, a hearing panel ("Hearing Panel") should accept the settlement agreement ("Settlement Agreement") entered into between the staff of IIROC ("Staff") and MD Management Limited

("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. This case involves the Respondent's failure to have adequate internal controls regarding the secure management of cheques made payable to its clients.
5. These inadequate internal controls prevented the Respondent from identifying the fact that Joan McCarthy ("McCarthy"), a registered representative employed by the Respondent at its St. John's, Newfoundland and Labrador branch, was misappropriating approximately \$775,000 by forging the signature on over 160 client cheques.
6. Clients have been fully compensated by the Respondent. Remedial measures have been implemented as described below.
7. However, the Respondent's failure to have adequate internal controls related to the supervision of activities of its staff regarding the delivery and safekeeping of client cheques resulted in a failure to promptly detect the fraudulent activity of McCarthy.

### **The Respondent**

8. The Respondent is an IIROC Dealer Member with its head office in Ottawa, Ontario, and branches across Canada, including one in St. John's, Newfoundland and Labrador.

### **McCarthy's Activities**

9. Joan McCarthy was, at all relevant times, a registered representative employed by the Respondent at its St. John's branch.
10. Following a disciplinary hearing held on October 28, 2021, an IIROC Hearing Panel found that McCarthy had, between 2006 and 2019, falsified signatures and appropriated funds from clients' accounts.
11. McCarthy has been permanently barred from receiving registration approval with, or being employed by, an IIROC Dealer Member in any capacity and was fined a total of \$1,000,000.
12. McCarthy appropriated nearly \$775,000 by fraudulently cashing approximately 160 cheques payable to the order of the clients. McCarthy appropriated the funds by obtaining, without client authorization, cheques drawn on their accounts, which she then deposited to her own personal bank account by falsifying their signatures.
13. McCarthy obtained the cheques initially by submitting a cheque requisition to the MD head office, which was responsible for issuing funds from the client accounts. With each requisition, McCarthy would instruct the MD head office to send the cheques directly to the St. John's branch by internal mail.
14. Once the cheques arrived at the branch, McCarthy took possession of them and told the MD staff who

were working on site that she would deliver the cheques to the clients' homes herself as per the clients' request.

15. According to the Respondent's internal procedure in force at that time, cheques were required to be provided to clients. Clients wishing to pick up cheques that were delivered to the branch needed to show photo identification to branch staff and then sign a cheque log before they could collect their cheques.
16. After taking possession of the cheques, McCarthy forged the clients' signature on the cheque log to falsely demonstrate that the clients had picked up and signed for the cheques. McCarthy did not deliver the cheques to the clients but forged the clients' signatures in order to deposit them in her personal bank account.
17. In March 2019, MD launched an internal investigation upon discovering the fraud perpetrated by McCarthy. In addition, a complaint was filed with Newfoundland and Labrador's Provincial Police Service.

### **The Respondent's Internal Policies and Procedures**

#### **Management of cheques by Staff at the St. John's Branch**

18. Between 2006 and 2019, the policies and procedures in force, which applied to all staff working at the branch, were not adequately applied to ensure the secure management of client's cheques.
19. The policies and procedures required the client to pick up the cheque in person and to show government-issued photo identification. The client was also required to sign the cheque log confirming that they had taken possession of the cheque.
20. Despite these policies and procedures, McCarthy was not prevented from taking personal possession of clients' cheques and signing the cheque log.
21. The Respondent acknowledges that its staff at the St. John's branch did not adequately understand and apply the policies and procedures described above.

#### **Cheque Log Reconciliation Between 2006 and 2014**

22. Between 2006 and 2014, there was no internal process in place requiring that the information held by the Respondent's Banking Services department ("Banking Services") concerning cheques sent out from the head office (which is responsible for issuing funds from client accounts) be reconciled with the cheque log filled out by the branch staff.
23. Over this period, the Respondent's internal policy only required the regional office to maintain a cheque log to record that a client's name, signature, and identification had been verified prior to the release of a cheque. The procedure required the designated supervisor ("Designated Supervisor") to review the logs to confirm client verification had occurred in connection with the released cheques.
24. As a result, no cheque reconciliation with Banking Services was carried out over this period.

#### **Cheque Log Reconciliation Between 2015 and 2019**

25. Beginning in 2015, a cheque reconciliation process was formally implemented requiring the Designated Supervisor to verify the Banking Services cheque information against the branch cheque logs on a monthly basis.
26. Between 2015 and 2019, the Designated Supervisor was responsible for cheque reconciliation for the

Atlantic region, which included the branches in Fredericton, Halifax, Moncton, St. John's, Saint John, Stratford and Sydney.

27. Cheque reconciliation was carried out monthly and consisted of validating the information on the cheque logs for each branch in the Atlantic region against the list of cheques delivered to the branches by Banking Services.
28. When there was a discrepancy between information in the cheque logs provided by the branches and the list of cheques sent out to clients from the head office, the manager, regional administration ("Manager, Regional Administration"), would contact the branch staff and ask them to verify the missing information.
29. However, the Manager, Regional Administration, would not follow up further to ensure that the discrepancies between the cheque logs and the list of cheques had in fact been verified by the branch staff.

### **Branch Compliance Examination Reports**

30. Between 2014 and 2018, three (3) internal examinations of the Atlantic region branches were conducted by the Respondent to, among other things, verify that the administrative operations complied with regulatory requirements. For each of these examinations, an internal report was prepared to document needed improvements and to determine the actions to be taken by those performing the supervision.
31. Each of the three (3) internal reports identified similar or repeat findings relating to the non-compliance of the cheque logs and cheque log reconciliation, some of which findings related to the St. John's branch.

### **Other Factors**

32. Upon discovery of McCarthy's activities, the Respondent commenced a comprehensive internal investigation. The Respondent made changes to its policies and procedures and adopted new policies to improve internal controls and ensure that incidents as described above do not occur in the future.
33. For instance, the Respondent has placed limits on the types of cheques that can be issued to branch locations and any such request requires a Letter of Direction from the client.
34. In addition, all cheque requests require multi-level approvals, including management approval.
35. The Respondent has also created procedures which further clarify the storage and release of cheques received within branch locations, updated the branch cheque log to provide clarity for users, and added confirmations to the Designated Supervisor monthly reporting which outlines the steps taken by the supervisor to reconcile and verify information on the cheque log.
36. The Respondent has provided a total of \$782,362 in compensation and lost opportunity costs to clients in connection with McCarthy's conduct.

### **PART IV – CONTRAVENTIONS**

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

Between 2006 and 2019, MD Management Limited did not have adequate internal controls relating to the secure management of cheques made payable to its clients contrary to IIROC Dealer Member Rules 38.1 and 2500.

## **PART V – TERMS OF SETTLEMENT**

38. The Respondent agrees to the following sanctions and costs:
- a) Payment of a fine in the sum of \$200,000; and
  - b) Payment of costs in the sum of \$25,000.
39. 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**

40. 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.
41. 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 IIROC 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**

42. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
43. 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.
44. 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.
45. 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.
46. 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.
47. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
48. 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.
49. 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.
50. 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**

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

**DATED** this 15 day of July, 2022.

(s) Charles Piroli  
Charles Piroli  
Director and Senior Legal Counsel  
MD Financial Management Inc.  
Witness

(s) Daniel Labonté  
Daniel Labonté  
President & CEO  
MD Financial Management Inc.  
For MD Management Limited

**DATED** this 18 day of July, 2022.

(s) Linda Vachet  
Witness

(s) Fanie Dubuc  
Fanie Dubuc  
Enforcement Counsel on  
behalf of Enforcement Staff  
of the Investment Industry Regulatory  
Organization of Canada

The Settlement Agreement is hereby accepted this 27 day of September, 2022 by the following Hearing Panel:

Per: (s) David Eaton  
Panel Chair  
Per: (s) David Acker  
Panel Member

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