Re Dai

IN THE MATTER OF:

The Investment Dealer and Partially Consolidated Rule

and

Zhiping (Davis) Dai

2024 CIRO 33

Canadian Investment Regulatory Organization
Hearing Panel (Alberta District)

Heard: August 17 and September 28, 2023, in Calgary, Alberta (via videoconference)
Decision: September 28, 2023
Reasons for Decision: March 3, 2024

Hearing Panel:
Eric Spink, Chair, Bradley Whyte, and Jonathan Lund (absent on September 28, 2023)
Appearances:
April Engelberg, Senior Enforcement Counsel
Andrew Werbowski, Director, Enforcement Litigation
Zhiping (Davis) Dai (present)

REASONS FOR DECISION

1. INTRODUCTION

¶ 1 This was a settlement hearing in which a fundamental question arose about the test to be applied by panels when deciding whether to accept or reject a proposed settlement agreement: does the Supreme Court of Canada decision in *R. v. Anthony-Cook*, 2016 SCC 43 ("*Anthony-Cook*"), and the "public interest" test[1] described in *Anthony-Cook*, apply to CIRO[2] settlement proceedings?

¶ 2 That fundamental question led to several related questions:

- How does the public interest test described in *Anthony-Cook* differ from previous articulations of the test, such as those described in *Re Milewski* [1999] IDACD No. 17[3] or *Re Donnelly* 2016 IIROC

[1] *Anthony-Cook* generally describes "the legal test trial judges should apply in deciding whether it is appropriate in a particular case to depart from a joint submission" in criminal proceedings. At paras. 29-31, it describes how the "public interest" test was developed in the *Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions* (1993) (the "Martin Committee Report"), widely applied, and why that test "as amplified in these reasons" is the proper test. The public interest test is summarized at para. 32: "Under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest." The Court goes on to describe the public interest test at some length (paras. 32-45), why other criminal-law tests should be rejected (paras. 46-48), and "guidance for trial judges on the approach they should follow when they are troubled by a joint submission on sentence" (paras 49-60).
[2] CIRO refers to the Canadian Investment Regulatory Organization and, when the context requires, its predecessors: the Investment Dealers Association of Canada (IDA); the Mutual Fund Dealers Association of Canada (MFDA); and the Investment Industry Regulatory Organization of Canada (IIROC).
[3] *Re Milewski* at p. 10:

23[4]?

- Do CIRO enforcement counsel (or "Staff") have an obligation to include all relevant facts in settlement agreements, comparable to the obligation on prosecutors described in *Anthony-Cook*?
- How should a panel approach the facts in settlement agreements, and how should a panel proceed if it has concerns about missing facts?

Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.

[4] *Re Donnelly* at paras. 5, 7-13 and 29:

¶ 5 The panel determined that it had to be satisfied regarding three considerations before it could accept the settlement agreement. First, the agreed penalties had to be within an acceptable range taking into account similar cases. Secondly, the agreed penalties had to be fair and reasonable (i.e. proportional to the seriousness of the contravention and taking into consideration other relevant circumstances) and should appear to be so to members of the public and industry. Thirdly, the agreed penalties should serve as a deterrent to the respondent and to industry. To be satisfied on these three considerations required an understanding of the particular facts of the case, the circumstances of the respondent, and the impact on him of the agreed penalties. [...]

¶ 7 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.

¶ 8 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.

¶ 9 A panel considering whether to accept a settlement agreement and its agreed penalties is in a different position than a panel determining an appropriate penalty in a contested hearing.

¶ 10 Each needs to consider precedents and the law and, most importantly, the particular facts and circumstances of the case, including the particular circumstances of the specific respondent.

¶ 11 However, unlike a panel in a contested hearing that must set the actual penalties that appear appropriate to it, a panel in a hearing to consider a settlement agreement has only two options under IIROC rules: to accept the agreed settlement with its penalties because the panel agrees that the penalties are acceptable, or to reject the agreed settlement because the agreed penalties are not acceptable or because the panel has not been given enough information for it to come to a determination that the agreed penalties are acceptable.

¶ 12 A panel considering whether to accept a settlement agreement cannot substitute for the agreed penalties those penalties that it might prefer to have in the circumstances. However, the parties can always be invited by the panel to provide additional information that the panel believes it needs in order to come to a favourable decision; and the parties may choose to provide it. Or indeed, the parties may agree to changes in the agreed penalties to meet what the panel believes is required for an acceptance, in order to avoid a rejection by the panel. But the panel cannot impose a change unilaterally.

¶ 13 In the final analysis, a panel will accept a settlement agreement where it is in the public interest to do so, as will almost always be the case where the panel is satisfied regarding the three considerations mentioned above under "Issues considered by the panel". [...]

¶ 29 What is fair and reasonable will depend to a large degree on the particular facts and circumstances of a matter. Where both parties to a settlement agreement are represented by counsel, and have the means to undergo a contested hearing, but have reached a settlement, it is unlikely that a panel would ever conclude that the settlement was unfair and not reasonable.

¶ 3 During the course of hearing submissions on those questions on September 28, 2023, it became clear that, in this particular case, the Panel had all the relevant facts and that the proposed Settlement Agreement met every articulation of the test. The Panel therefore accepted the Settlement Agreement at that point, in order to conclude the matter from the Respondent's perspective, without deciding the questions.

¶ 4 The Panel then continued to hear oral submissions on the questions, and subsequently received additional written submissions from CIRO Staff on November 16, 2023. On December 5, 2023, the Panel consulted with four other CIRO Hearing Committee members on the questions.

¶ 5 These are the Panel's reasons for accepting the Settlement Agreement and its conclusions on the questions.

¶ 6 One member of the original Panel was unavailable on September 28, 2023. The hearing continued with the remaining Panel members, with the consent of all parties, pursuant to Rule 8408(10).[5]

2. THE SETTLEMENT AGREEMENT

¶ 7 The Settlement Agreement is attached as an Appendix. In it, Zhiping (Davis) Dai ("the Respondent") admitted the following contravention of CIRO requirements:

> Between April 2021 and February 2022, the Respondent engaged in personal financial dealings with two clients, contrary to Dealer Member Rule 43.

¶ 8 The Respondent agreed to the following sanctions and costs:

(i) a fine of $21,000; and

(ii) costs of $3,000.

a. Facts

¶ 9 The facts are set out in the Settlement Agreement, except for the fact that the Respondent has no previous disciplinary history. In response to a question from the Panel, that fact was disclosed with the consent of the parties in accordance with Rule 8428(6).

¶ 10 The Respondent was a Registered Representative with Edward Jones from October 2009 until his termination in April 2022.

¶ 11 The contravention occurred when the Respondent made arrangements enabling two clients to move money in and out of China, which involved the Respondent depositing his personal funds into the clients' accounts. When the Respondent's Branch Office Administrator noticed the Respondent's name on a bank draft and refused to deposit it in the client's account, the Respondent asked whether the deposit could be made if his name was obscured. That incident was reported, and the Respondent was later terminated.

¶ 12 The transactions involved a total amount of $109,070 CAD. There were no client losses or client harm.

¶ 13 The Respondent successfully completed the Conduct and Practices Handbook exam in March 2023.

¶ 14 The Respondent admitted the misconduct and accepted Enforcement Staff's Early Resolution Offer, which granted a 30% reduction on the fine that would otherwise have been sought.

b. Guidelines, Key Factors in Determining Sanctions, and Previous Decisions

¶ 15 CIRO Enforcement Counsel referred to the Key Factors in Determining Sanctions in the 2015 IIROC Sanction Guidelines, and noted that the key mitigating factor in this case was that there were no client losses or client harm.

¶ 16 The Panel was also referred to the IIROC Staff Policy Statement, Resolution Offers, which says:

> Early Resolution Offers are intended to increase the granting of credit for cooperation and encourage Dealers to implement timely compensation and remedial measures, which benefits investors and improves overall business standards and practices.

[5] "Rule" refers to the Investment Dealer and Partially Consolidated Rules of CIRO.

¶ 17 CIRO Enforcement Counsel referred the Panel to the following decisions approving settlements in which sanctions were imposed for contraventions of Dealer Member Rule 43: *Re Prusky* 2017 IIROC 43; *Re Small* 2021 IIROC 28; *Re Callaway* 2022 IIROC 13; and *Re Fairclough* 2022 IIROC 20. The facts in those decisions were comparable enough to the present case to satisfy the Panel that the sanctions in the Settlement Agreement were fair, reasonable and sufficient to achieve both specific and general deterrence.

c. Acceptance of Settlement Agreement

¶ 18 Because the Panel had all the relevant facts in this case, and the Settlement Agreement met every articulation of the test, it was not necessary to resolve the questions in order for the Panel to accept the Settlement Agreement, which the Panel did on September 28, 2023. The Panel then heard additional submissions on the questions.

3. THE QUESTIONS – INTRODUCTION AND SUMMARY

¶ 19 The Panel was confronted with two irreconcilable lines of cases bearing on the fundamental question: does *Anthony-Cook*, and the public interest test, apply to CIRO settlement proceedings?

¶ 20 One line of cases, which CIRO Enforcement Counsel urged the Panel to follow, holds that *Anthony-Cook* does not apply to CIRO settlement proceedings, based on the reasoning in *Re Jacob* 2017 IIROC 17.[6] Some

[6] *Re Jacob* 2017 IIROC 17 at paras. 24-30:

> ¶ 24 Counsel for IIROC included in the Book of Authorities a unanimous 2016 Supreme Court of Canada case, *R. v. Anthony-Cook* [2016] S.C.J. No. 43, which severely restricts a trial judge's ability in criminal matters to deviate from a negotiated agreement between the Crown and defence. The test that was adopted by the Supreme Court (paragraph 34) was that a rejection by a trial judge of a joint submission would occur only when it is in the public interest in the sense that the proposed submission is "so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the im promoting certainty in resolution discussions, to believe that the proper functioning of the justice system has broken down." The court went on to say: "This is an undeniably high threshold."
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> ¶ 25 That test may well be appropriate in the criminal law context, but is it the right test for an IIROC Panel? Unlike the procedure under the Criminal Code, there is a detailed procedure for Settlement Agreements outlined in the IIROC Rule 8215. A Panel, for example, cannot vary a Settlement Agreement, but must either accept or reject it. If it is rejected, the Settlement Agreement can come before another Panel. It is arguable that the process permits Panels more scope for rejecting Settlement Agreements than appears possible under the *Anthony-Cook* test.
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> ¶ 26 Few Settlement Agreements are, in fact, rejected by IIROC or MFDA Panels, but the possibility of doing so tends to put some pressure on the parties to come up with reasonable settlements in the eyes of the members of the Panel and, in particular, in the eyes of the two experienced industry members on each Panel. Industry expectations are important for a self-regulatory body and are, in fact, specifically mentioned in the recently revised IIROC Sanction Guidelines (February 2, 2015), which state, citing the well known case of *Re Mills* [2001] I.D.A.C.D No. 7 at page 3:
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> > "General deterrence can be achieved if a sanction strikes an appropriate balance by addressing a Regulated Person's specific misconduct but is also in line with industry expectations. Any sanction imposed must be proportionate to the conduct at issue and should be similar to sanctions imposed on respondents for similar contraventions in similar circumstances."
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> It is not surprising that comparable cases are routinely set out by counsel for IIROC in Settlement Agreement hearings.
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> ¶ 27 So the *Milewski* test may be a better test in the IIROC context than the *Anthony-Cook* test because it helps bring about reasonable settlements. A recent IIROC decision, *Re Cavalaris* 2017 IIROC 04, which relied heavily on the *Anthony-Cook* case, was also included in the material. We have not included it in our reasons because we believe it is unnecessary in Settlement Agreement hearings and might create problems if relied on as the test. It is unnecessary because for almost 20 years the *Milewski* jurisprudence has been relied on by IIROC and MFDA Panels, without serious difficulties. If the *Milewski* test is unsatisfactory, it can easily be clarified or changed by the regulatory body. To introduce the *Anthony-Cook* test might create needless problems. Supreme Court decisions in criminal matters are often difficult to interpret and frequently require further elaboration by the courts. So the test would require Panels – not normally very knowledgeable about criminal law issues – to understand and keep up

cases in the *Re Jacob* line[7] suggest that there is a significant difference between the public interest test and the "*Milewski test*".[8]

¶ 21 The other line of cases, applying *Anthony-Cook*, began with *Re Cavalaris* 2017 IIROC 04,[9] which was

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with the evolving criminal law jurisprudence. And it would necessitate determining whether the new test was the same or stricter than the *Milewski* test.

¶ 28 Moreover, the contexts with respect to the regulatory process and the criminal process are different. The Supreme Court of Canada was trying to solve a serious and difficult problem of congested courts and unreasonable delay in the criminal justice system, which can and does result in the dismissal of charges under the Charter of Rights and Freedoms. The issue has proven to be hard to solve legislatively or administratively, in part because of the many participants in various levels of government that have an interest in the process. The Supreme Court's recent case of *R v. Jordan* 2016 SCC 27, dealing with time limits for trials, can be seen as a companion attempt to deal effectively with the issue of congestion and delay in the criminal justice system in Canada.

¶ 29 Those same issues are not being faced to the same extent by the regulatory process in the field of securities regulation. Moreover, there are significant differences between the regulatory process and the criminal process, such as the potential penalties, the quantum and burden of proof, the right to be protected from self incrimination, the right to counsel, the use of closed hearings, the use of sanction guidelines, and the use of industry representatives on the Panels, to mention some of the differences.

[7] The *Re Jacob* line of cases includes: *Re Milne* 2018 IIROC 02; *Re St-John* 2018 IIROC 04; *Re Ho* 2018 CanLii 11774 (CA MFDAC); *Re M Partners and Isenberg* 2018 IIROC 25; *Re Crane* 2019 IIROC 14; *Re Barreca* 2020 IIROC 1; *Re Small* 2021 IIROC 28; and *Re Fairclough* 2022 IIROC 20. See also *Dennis Wing (Re)* 2018 ONSEC 25, which applied *Re Jacob* to settlement proceedings under the *Ontario Securities Commission Rules of Procedure and Forms* (2017).

[8] *Re Jacob* at para 25: "It is arguable that the [IIROC] process permits Panels more scope for rejecting Settlement Agreements than appears possible under the *Anthony-Cook* test."

Re St-John 2018 IIROC 04 at para. 29:

¶ 29 For the reasons set out by the panel in *Re Jacob* 2017 IIROC 17, we have used this well-known *Milewski* test – does the agreed penalty clearly fall outside a reasonable range of appropriateness? – and not the *R. v. Anthony-Cook* ([2016] S.C.J. No. 43) test, also cited by counsel, of whether the proposed submission is "so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system has broken down." The Supreme Court of Canada test, may well be applicable to crowded criminal courts where serious cases are being thrown out because of delay, but not to IIROC hearings where the process is differently structured, where there are two experienced industry members on each panel and where IIROC recently revised its sanctions guidelines. The word 'unhinged' used in the criminal law context suggests that Settlement Agreements would, except in bizarre agreements, always be rubber-stamped.

Re Fairclough 2022 IIROC 20 at para. 20, fn. 22 [after citing *Re Milewski*]:

[...] In view of the requirement in Rule 8215 that a settlement agreement be conditioned on and is only effective upon acceptance by a hearing panel, the participation of industry members in hearing panels, and the responsibility of a hearing panel to consider the public interest, this is a less stringent standard than the one required to reject a plea bargain in criminal proceedings; see *R. v. Anthony-Cook*, 2016 SCC 43, paras. 30-31; see also *Re Jacob*, 2017 IIROC 17, paras. 24-30; *Re M Partners Inc. and Isenberg*, 2018 IIROC 25, paras. 20-27; *Re Crane*, 2019 IIROC 14, para. 36; *Re Small*, note 8 above, paras. 8-14; and see *Re Wing*, 2018 ONSEC 25, paras. 5-12.

[9] *Re Cavalaris* 2017 IIROC 04 at paras 15-19:

¶ 15 In deciding whether to accept a Settlement Agreement, a panel is required to determine whether the proposed resolution satisfies the public interest test. That test was recently confirmed as the appropriate one by the Supreme Court of Canada in *R. v. Anthony-Cook* 2016 SCC 43 in the context of the test to be applied by a trial judge in deciding whether to depart from a joint submission on a criminal sentence.

¶ 16 The principles of joint submissions in criminal sentencing are relevant to joint submissions in the administrative law context. See *Rault v. Law Society of Saskatchewan*, [2009] SKCA 81 cited at para 6 of *Re Higgs*, [2010] IIROC No. 3.

¶ 17 In *Anthony-Cook*, Moldaver J., speaking for the court, endorsed the public interest test explaining that such a test asks "whether the proposed sentence would bring the administration of justice into disrepute, or would otherwise be contrary to the public interest." (paras 5, 31 and 32). He observes that joint submissions are both "commonplace and vitally important to the well-being of our criminal justice system, as well as our justice system

specifically rejected by *Re Jacob*.[10] The *Re Cavalaris* line of cases[11] does not contrast the tests but treats them as consistent, applying the public interest test as a fuller, and authoritative, articulation of the same principles described in *Re Milewski*, *Re Donnelly*, and other previous decisions.[12]

¶ 22 The conflict between these two lines of cases has not been previously addressed,[13] and it was evident that, to some extent, the two lines developed in isolation. The Panel Chair noted that, until he saw the authorities cited in this case, he was unaware of the *Re Jacob* line of cases, and that he was involved in previous settlement hearings where panels were referred to, and followed, *Anthony-Cook* and decisions in the *Re Cavalaris* line. CIRO Enforcement Counsel referred the Panel to the decision in Re Crane which said "[t]he law seems to be settled that the *Milewski* test should be applied by an IIROC panel in deciding whether to approve a settlement agreement rather than the test set out in *R. v. Anthony-Cook*"[14], but did not refer to any decisions in the *Re Cavalaris* line. The Panel was advised by the one of the consulting Hearing Committee members that *Anthony-Cook* had not been cited in any settlement hearing in which she was involved.

¶ 23 The fundamental question is whether *Anthony-Cook* and the public interest test apply to CIRO settlement proceedings? As discussed below, the Panel concluded that they apply.

¶ 24 How does the public interest test differ from previous articulations of the test, such as those described in *Re Milewski* or *Re Donnelly*? The Panel found it impossible to fully answer that question, and unnecessary because the Panel agreed with the *Re Cavalaris* line of cases, which treat the tests as consistent.[15]

¶ 25 Do CIRO Staff have an obligation to include all relevant facts in settlement agreements, comparable to the obligation on prosecutors described in *Anthony-Cook*? The Panel concluded that CIRO Staff have the same

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at large" and that, as such, they are readily approved by trial judges. (para 25) He observes, as a general rule, that the Crown and the defence counsel are "highly knowledgeable" about the relevant circumstances and capable of arriving at fair resolutions consistent with the public interest. (para 44) He also notes the importance of joint submissions to all participants in the justice system, including the advantage of certainty to the parties, as well as the benefit that joint submissions bring in conserving the resources of the justice system. (para 40)

¶ 18 At para 34, Moldaver J. explains that the rejection of a joint submission by a trial judge would occur only when it is in the public interest in the sense that the proposed submission is "so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system has broken down."

¶ 19 The public interest test is the one applied by a Hearing Panel in the regulatory context. In Re Bereskin, [2010] IIROC 37, the Hearing Panel accepted the statement in Re *Milewski*, [1999] IDACD No. 17 concerning the public interest benefits of the settlement process. In *Milewski* at p. 13, the Hearing Panel explained that a penalty in a "settlement agreement is likely to be at the low end of the spectrum to avoid the costs of a contested hearing and [to guarantee] a favourable result." As that decision points out, this is why the Panel accepts or rejects rather than approves a settlement agreement. Settlements are to be supported as a means of encouraging negotiation and compromise to arrive at an expeditious resolution of appropriate disciplinary proceedings. Accordingly, a joint submission in the regulatory context would be rejected only where the proposal, if accepted, would lead to the conclusion that the regulatory scheme had broken down or was otherwise not in the public interest.

[10] See *Re Jacob* note 6, above, at para. 27.

[11] The *Re Cavalaris* line of cases includes: *Re Desautel* 2017 IIROC 21; *Re Fauth* 2017 CanLii 12358 (CA MFDAC); *Re Iturralde* 2017 CanLii 26922 (CA MFDAC); *Re Walker and Foster & Associates* 2017 IIROC 24; **Re Laurentian Bank Securities* 2017 IIROC 38; *Re Dunlop* 2017 CanLii 52993 (CA MFDAC); *Re Scotia Capital Inc.* 2017 IIROC 48; *Re Poggione* 2017 CanLii 74511 (CA MFDAC); *Re Hashmi* 2017 IIROC 41; *Re Proulx* 2017 IIROC 47; *Re Rutledge* 2017 IIROC 50; *Re Kirkland* 2017 IIROC 56; *Re Bazilinsky* 2018 IIROC 13; **Re National Bank Financial* 2018 IIROC 9; **Re Côté & Côté* 2018 IIROC 23; *Re Golzay* 2018 CanLii 152691 (CA MFDAC); **Re Lemire* 2018 IIROC 24; *Re Smith* 2019 IIROC 13; **Re Laurentian Bank Securities* 2020 IIROC 24; **Re Workun* 2020 IIROC 31; *Re PEAK Securities* 2020 IIROC 36; *Re Malic* 2021 IIROC 10; *Re Shen* 2021 CanLii 147876 (CA MFDAC); **Re IA Private Wealth* 2021 IIROC 22; *Re Ber* 2022 IIROC 8; *Re Harvey* 2022 IIROC 33; *Re Morrison* 2022 IIROC 33; *Re Arnold* 2023 CIRO 01; *Re Hunter* 2023 CIRO 06; and *Re Reyes* 2023 CIRO 09. The decisions marked * refer to *Re Cavalaris*, and all the decisions apply *Anthony-Cook* to some extent.

[12] As discussed at para. 32 of these Reasons, below.

[13] The conflict was recognized but not addressed in *Re PEAK Securities* 2020 IIROC 36 at paras. 15-20.

[14] *Re Crane* 2019 IIROC 14 at para. 36.

[15] As discussed at para. 32 of these Reasons, below.

obligation as prosecutors to disclose all relevant facts.

¶ 26 How should a panel approach the facts in settlement agreements, and how should a panel proceed if it has concerns about missing facts? The Panel concluded that:

a) panels must approach settlement agreements from a position of restraint;

b) panels have a duty to start from the assumption that settlement agreements include all relevant facts;

c) panels must not assume or imply any fact not included in settlement agreements;

d) if a panel has significant concerns about missing facts, it has a duty to ask questions and give the parties an opportunity to address those concerns using Rule 8428(6);

e) the duty to exhibit restraint does not override a panel's duty to ensure that it has sufficient facts to properly assess the proposed settlement;

f) normally, the panel's duty to start from the assumption that all relevant facts have been disclosed means that panels should also assume that matters not included in the settlement agreement were not included for a valid reason; and

g) the panel's duty to exhibit restraint will vary according to the particular facts and circumstances of each case.

¶ 27 What follows are the Panel's reasons for its conclusions.

4. DOES *ANTHONY-COOK* AND THE PUBLIC INTEREST TEST APPLY TO CIRO SETTLEMENT PROCEEDINGS?

¶ 28 The Panel concluded that the *Re Cavalaris* line of cases reflects the correct approach, and that *Anthony-Cook* applies to CIRO settlement proceedings in the same way that it applies to other disciplinary bodies in Canada. The Panel followed the reasoning of the Ontario Superior Court of Justice, Divisional Court, in *Bradley v. Ontario College of Teachers*, 2021 ONSC 2303, which addressed the application of *Anthony-Cook* to the Discipline Committee of the Ontario College of Teachers. The Court said:

> [9] The governing authority on this issue is the Supreme Court of Canada's decision in *R. Anthony-Cook*, 2016 SCC 43. While decided in the criminal law context, *Anthony-Cook* has been applied by disciplinary bodies in Ontario, including by the Discipline Committee of the College of Teachers: *Ontario College of Teachers v. Sadaka*, 2019 ONOCT 60. See also: *Law Society of Upper Canada v. Archambault*, 2017 ONLSTH 86, para. 14; *Ontario (College Pharmacists) v. Mikhael*, 2017 ONCPDC 25, para. 28; *Ontario (College of Physicians and Surgeons of Ontario) v. Cameron*, 2018 ONCPSD 25; *Ontario (College of Massage Therapists of Ontario) v. Tang*, 2018 ONCMTO 26; and *College of Nurses of Ontario v. Lopes*, 2017 CanLII 50755 (ON CNO). [...]
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> [14] The public interest test in *Anthony-Cook* applies to disciplinary bodies. Any disciplinary body that rejects a joint submission on penalty must apply the public interest test and must show why the proposed penalty is so "unhinged" from the circumstances of the case that it must be rejected.

¶ 29 The Panel was unable to accept CIRO Staff's submission that "it is neither necessary nor desirable to import the *Anthony-Cook* analysis into CIRO settlement proceedings". That submission was based on the reasoning in the *Re Jacob* line of cases which, basically, assert that differences between criminal and administrative procedures preclude the application of the same test. That reasoning is patently incorrect, having been contradicted by the multitude of decisions that have applied *Anthony-Cook* to settlement proceedings of disciplinary bodies across Canada (including CIRO), notwithstanding that each body has unique procedures which differ from the criminal process.

¶ 30 The Panel concluded that procedural differences, like the ones described in *Re Jacob*[16], do not significantly alter the public interest test, which focuses on the accept-or-reject decision that is essentially the same in all disciplinary settlement proceedings. For example, *Re Milewski* was decided at a time when panels had certain powers to impose different penalties, yet its articulation of the test continued to be applied after the introduction of the accept-or-reject process in 2004.[17] Put another way, there is nothing so remarkable about CIRO's settlement procedures as to make CIRO an island among disciplinary tribunals in Canada in terms of the application of the public interest test.

5. HOW DOES THE PUBLIC INTEREST TEST DIFFER FROM PREVIOUS ARTICULATIONS?

¶ 31 The Panel found it impossible to fully answer this question because we do not have access to reasons for rejecting settlement agreements,[18] which are the only meaningful articulations of the threshold between acceptance and rejection. Reasons for acceptance cannot clearly illustrate that threshold because they describe only agreements on one side of it, which often (like the one in this case) meet every articulation of the test and so provide no insight into the threshold itself. The only clear – and comparable – illustrations of the threshold are reasons for rejection, describing why particular facts or circumstances caused the panel to reject. Although we cannot know whether previous agreements have been rejected due to the application of an incorrect test, it is now clear that the proper test is the public interest test, and that future rejections should provide "clear and cogent reasons"[19] why that test was not met.

¶ 32 Although the public interest test is clearly more stringent than the other criminal-law tests described in *Anthony-Cook*, it is not clearly more stringent than previous CIRO articulations of the test (the "*pre-Anthony-Cook test*"). The Panel agreed with the *Re Cavalaris* line of cases, which does not contrast the tests and treats the public interest test as a fuller, and authoritative, articulation of the same principles described in *Re Milewski*, *Re Donnell*y and other previous decisions, frequently referring to them together.[20] The Panel agreed

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[16] See *Re Jacob* at para. 25 (referring to the differences between CIRO's strictly binary accept-or-reject process vs. the criminal process which permits the court to impose an alternative sentence); and at para. 29 (referring to "the potential penalties, the quantum and burden of proof, the right to be protected from self-incrimination, the right to counsel, the use of closed hearings, the use of sanction guidelines, and the use of industry representatives on the Panels, to mention some of the differences."

[17] *Re Milewski* referred to IDA By-law 20.26:

> 20.26. Such settlement shall, on the recommendation of (i) any of the President, an Executive Vice-President, a Vice-President or any other officer or employee of the Association designated by the Board of Directors, and (ii) the Regional Director for the applicable District, be referred to the applicable District Council which shall (i) accept the settlement agreement, (ii) reject it, (iii) amend it by imposing a lesser penalty or terms less onerous to the individual or Member than those contained in the settlement agreement as negotiated or (iv) amend it with the consent of the individual involved by imposing a penalty or terms more onerous than those contained in the settlement agreement as negotiated. A settlement agreement shall only become binding in accordance with its terms upon such acceptance or imposition of such lesser penalty or less onerous terms and, in such event, the individual or Member shall be deemed to have been penalized by the applicable District Council for the purpose of giving notice thereof.

The IDA By-law was amended in 2004 and 20.26 was replaced by:

> 20.36 Hearing Panel Powers
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> (1) Upon conclusion of a settlement hearing, the Hearing Panel may either:
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> (a) accept the Settlement Agreement; or (b) reject the Settlement Agreement.

[18] Rule 8215(8)(ii): "If a settlement agreement is rejected by a hearing panel ...the hearing panel's reasons for rejecting the settlement agreement... must not be made public or referred to in a subsequent disciplinary hearing."

[19] *Anthony-Cook* at para. 60.

[20] See for example: *Re Cavalaris* 2017 IIROC 04 at para. 19 (referring to *Re Milewski*); *Re Kirkland* 2017 IIROC 56 at paras. 11-13 (referring to *Re Milewski*; *Re Donnelly*; *Re Faber* 2014 IIROC 14; *Re Melville* 2014 IIROC 51; *Re Johnson* 2012 IIROC 19; *Re Jiwa and Hoffar* 2012 IIROC 9; *Re Trapeze Capital* 2012 IIROC 25; and *Re Rotstein and Zacheim* 2012 IIROC 27); *Re Hashmi* 2017 IIROC 41 at para. 5 (referring to *Re Ast* 2012 IIROC 38; *Re MacEachern* 2014 IIROC 37; and *Re Bugden* 2017 IIROC 30); *Re Scotia Capital Inc.* 2017 IIROC 48 at paras. 7-8 (referring to *Re Milewski* and *Re Bugden* 2017 IIROC 30); *Re Rutledge* 2017 IIROC 50 at paras. 6-7 (referring to *Re Milewski; Re Donnelly;* and *Re Portfolio Strategic Securities Inc.* 2012 IIROC 36); *Re Côté & Côté* 2018 IIROC 23 at paras. 39-41 (referring to *Re Milewski; Re Bereskin* 2010 IIROC 37; *Re BMO*

with the conclusion in *Re Scotia Capital* that the tests are "so close as to be in substance identical".[21]

¶ 33 It follows that the Panel rejected the approach taken by the *Re Jacob* line of cases. The Panel noted that the decision in *Re Jacob* did not actually compare the tests, nor did it reach any conclusion on whether they were different. Rather, it assumed the tests were different and rejected the "new test" on that basis, by claiming that its introduction "might create needless problems", such as requiring panels "to understand and keep up with the evolving criminal law jurisprudence", and "determining whether the new test was the same or stricter than the *Milewski* test".[22] That assumption and supporting arguments are patently incorrect, having been contradicted by the multitude of decisions applying *Anthony-Cook* to administrative proceedings, and by the *Re Cavalaris* line of cases, which treat the tests as consistent.[23]

¶ 34 The Panel disagreed with the description of the "*Milewski test*" in the *Re Jacob* line of cases[24] because it is simplistic.[25] There is no single "*Milewski test*" because, over the years, a great many decisions either added to what was said in *Re Milewski* or restated the test. For example: from the beginning *Re Milewski* has often been applied together with *Re Clark* [1999] I.D.A.C.D. No. 40;[26] by 2010, *Re Milewski* was described as being the first part of a two-part test, in which the second part applied "principles applicable to joint submissions on sentencing in criminal cases";[27] in 2016 (before *Anthony-Cook*), the test was restated entirely by *Re Donnelly*,[28] which did not refer to *Re Milewski*; and there are countless other previous articulations of the test.[29] The Panel found that those previous articulations were, largely, aimed at expanding upon the "public interest benefits of

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Nesbitt Burns 2012 IIROC 21; and *Re Kloda* 2016 IIROC 50); *Re Laurentian Bank Securities* 2020 IIROC 24 at paras. 88-90 (referring to *Re Milewski; Re Graydon Elliot Capital Corporation* 2007 I.D.A.C. No. 43; *Re Bereskin* 2010 IIROC 37; *Re Rao* 2011 IIROC 12; *Re BMO Nesbitt Burns* 2012 IIROC 21; *Re Groome* 2013 IIROC 28; and *Re Jitney Trade* 2017 IIROC 25); *Re Malic* 2021 IIROC 10 at para. 17 (referring to *Re Milewski*); *Re IA Private Wealth* 2021 IIROC 22 at paras. 57-60 (referring to *Re Milewski; Re Richardson GMP & Pytak* 2020 IIROC 41; and *Re Bereskin* 2010 IIROC 37); and *Re Ber* 2022 IIROC 8 at para. 8 (referring to *Re Milewski*).

[21] *Re Scotia Capital Inc.* 2017 IIROC 48 at paras. 7-12.

[22] *Re Jacob* note 6, above, at para. 27.

[23] See note 20, above.

[24] The term "*Milewski* test" was coined by *Re Jacob* and referred to by the following decisions: *Re St-John* 2018 IIROC 04; *Re Ho* 2018 CanLii 11774 (CA MFDAC); *Re M Partners and Isenberg* 2018 IIROC 25; *Re Crane* 2019 IIROC 14; *Re PEAK Securities* 2020 IIROC 36.

[25] The clearest example of this is *Re St-John* at para. 29 (reproduced at note 8, above), which summarizes both tests in a single sentence, and contrasts particular phrases from those summaries.

[26] *Re Clark* [1999] I.D.A.C.D. No. 40 said at p. 3:

It was submitted by staff and accepted by the panel that its role under By-law 20.26 is not the same as its role under By-law 20.10 following a hearing. In considering a settlement under By-law 20.26 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. In our view, as a result, panels must also be careful in using previous settlements as precedent. The settlement process is one of negotiation and compromise and the penalty imposed following a settlement will often be less onerous than one imposed following a hearing where similar findings are made.

[27] *Re Higgs* 2010 IIROC 3, where the panel said (footnotes omitted):

> ¶ 4 There are two broad related principles that apply in connection with a decision to accept or reject a settlement.
>
> ¶ 5 The first is succinctly stated in the following passage from the decision in *Re Milewski*: A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.
>
> ¶ 6 Secondly, in the recent decision of the Saskatchewan Court of Appeal in Rault v. Law Society of Saskatchewan, the court cited with approval and applied to an administrative tribunal the principles applicable to joint submissions on sentencing in criminal cases described by the Alberta Court of Appeal in R. v. G.W.C., namely, that there is an obligation on the tribunal to give serious consideration to a joint submission on sentencing agreed upon by counsel unless the sentence is unfit or unreasonable; or contrary to the public interest; and, it should not be departed from unless there are good or cogent reasons for doing so.

[28] Reproduced at note 4, above.

[29] Such as those referred to by the *Re Cavalaris* line of cases in note 20, above.

the settlement process" mentioned in *Re Milewski*, and they comprise what the Panel will refer to as the "public-interest component" of the pre-*Anthony-Cook* test.

¶ 35 The decisions in *Re Jacob* and *Re St-John* acknowledged the existence of the public-interest component of the pre-*Anthony-Cook* test,[30] but did not recognize the significant parallels between that component and the "new test". The Panel agreed with the *Re Cavalaris* line of cases which recognize the congruence between that component and the public interest test, frequently applying the articulations together.[31]

¶ 36 *Re Fairclough* described the standard in *Re Milewski* as "the reasonableness standard" and contrasted it with the *Anthony-Cook* standard.[32] The Panel disagreed with that contrast because, as described in *Anthony-Cook*, a "reasonableness" test can be "essentially the same" as the public interest test if the language is used interchangeably, saying:[33]

> "Perhaps the best example of this is found in *Douglas*, an oft-cited decision of the Québec Court of Appeal in which Fish J.A. (as he then was) said:
>
> In my view, a reasonable joint submission cannot be said to "bring the administration of justice into disrepute". An unreasonable joint submission, on the other hand, is surely "contrary to the public interest". Accordingly, though it is purposively framed in striking and evocative terms, I do not believe that the [public interest test] departs substantially from the test of reasonableness articulated by other courts, including our own. Their shared conceptual foundation is that the interests of justice are well served by the acceptance of a joint submission on sentence accompanied by a negotiated plea of guilty — provided, of course, that the sentence jointly proposed falls within the acceptable range and the plea is warranted by the facts admitted.

The language is used interchangeably in many cases describing the public-interest component of the pre-*Anthony-Cook* test.[34]

¶ 37 Because we viewed the various articulations of the tests as consistent, the Panel was unable to imagine a settlement agreement that would be acceptable under the public interest test but unacceptable under the pre-*Anthony-Cook* test. Since we cannot know whether such an agreement ever existed, questions about the difference between the tests are hypothetical, and now irrelevant because the proper test is clearly the public interest test.

6. DO CIRO STAFF HAVE AN OBLIGATION TO INCLUDE ALL RELEVANT FACTS IN SETTLEMENT AGREEMENTS, COMPARABLE TO THE OBLIGATION ON PROSECUTORS DESCRIBED IN *ANTHONY-COOK*?

¶ 38 This question stems from the fundamental question, arising from the obligation described in Anthony-Cook as follows:

> [54] Counsel should, of course, provide the court with a full account of the circumstances of the offender, the offence, and the joint submission without waiting for a specific request from the trial judge. As trial judges are obliged to depart only rarely from joint submissions, there is a "corollary obligation upon counsel" to ensure that they "amply justify their position on the facts of the case as presented in open court" (Martin Committee Report, at p. 329). Sentencing – including sentencing based on a joint submission – cannot be done in the dark. The Crown and the defence must "provide the trial judge not only with the proposed sentence, but with a full description of the facts relevant to the offender and the offence", in order to give the judge "a proper basis upon which to determine whether [the joint submission] should be accepted" (DeSousa, at para. 15; see also Sinclair, at para. 14).

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[30] *Re Jacob* at note 6, above (at paras. 20-23) and *Re St-John* at note 8, above (at paras. 25-28) refer to the following decisions, which describe the public-interest component of the pre-*Anthony-Cook* test: *Re Johnson* 2012 IIROC 19; *Re Taggart* 2013 IIROC 24; *Re Scotia Capital* 2013 IIROC 38; *Re Jiwa and Hoffar* 2012 IIROC 9; *Re Rotstein and Zackheim* 2012 IIROC 27; *Re Portfolio Strategies Securities Inc.* 2012 IIROC 36; *Re Ast* 2012 IIROC 38; and *Re Donnelly*.

[31] See note 20, above.

[32] *Re Fairclough* at paras. 20-21.

[33] *Anthony-Cook* at para. 30.

[34] Such as those referred to by the *Re Cavalaris* line of cases in note 20, above.

> [55] This is not to say that counsel must inform the trial judge of "their negotiating positions or the substance of their discussions leading to the agreement" (*R. v. Tkachuk*, 2001 ABCA 243, 293 A.R. 171, at para. 34). But counsel must be able to inform the trial judge why the proposed sentence would not bring the administration of justice into disrepute or otherwise be contrary to the public interest. If they do not, they run the risk that the trial judge will reject the joint submission.
>
> [56] There may, of course, be cases where it is not possible to put the main considerations underlying a joint submission on the public record because of safety or privacy concerns, or the risk of jeopardizing ongoing criminal investigations (see Martin Committee Report, at p. 317). In such cases, counsel must find alternative means of communicating these considerations to the trial judge in order to ensure that the judge is apprised of the relevant considerations and that a proper record is created for appeal purposes.
>
> [57] A thorough justification of the joint submission also has an important public perception component. Unless counsel put the considerations underlying the joint submission on the record, "though justice may be done, it may not have the appearance of being done; the public may suspect, rightly or wrongly, that an impropriety has occurred" (C. C. Ruby, G. J. Chan and N. R. Hasan, *Sentencing* (8th ed. 2012), at p. 73).

¶ 39 This obligation was specifically addressed in *Re Scotia Capital* 2017 IIROC 48, where the panel referred to para. 54 of *Anthony-Cook* and said:

> ¶ 15 The obligation on Staff in an IIROC case is the same as owed by any lawyer in a prosecutorial role: that is that he or she must make full disclosure to the tribunal of all material facts which bear on the case before it. In terms specific to the present circumstances, Staff must ensure that the hearing panel charged with whether or not to accept a joint settlement has all the facts in Staff's possession which might reasonably be expected to be material to that decision.
>
> ¶ 16 Clearly, Staff has the express power to withhold facts and, if it does so, it is open to the hearing panel to refuse to accept the joint settlement. But to do so, it has to know what information has been withheld. If the facts withheld are material but their nature is unknown, there is a serious breakdown in the administration of justice. Thus the role of Staff is crucial in ensuring that the hearing panel has the facts necessary to decide whether to accept a settlement agreement. The right of Staff to withhold facts is unchallenged except to the extent it prevents a hearing panel from having facts material to the exercise of its discretion.
>
> ¶ 17 In the course of the hearing in this matter, the Hearing Panel sought further information from the parties, particularly in reference to the book of business affected by the New Issues Strategy. Following a polite discourse between the members of the Hearing Panel and counsel, some information was provided and some was not. After considering the matter, we concluded that the withheld information must not have been material or we would have been given it and therefore we proceeded to accept the joint settlement.

¶ 40 CIRO Enforcement Counsel submitted that the first sentence of para. 15 of *Re Scotia Capital* is incorrect, and that "[t]here is no requirement of Staff to provide the Hearing Panel with all relevant facts in a settlement agreement". For the reasons below, the Panel disagreed with that submission and agreed with *Re Scotia Capital* that CIRO Staff have the same obligation as prosecutors to disclose all relevant facts in settlement agreements.

a. What is a relevant fact?

¶ 41 A relevant fact is the type of fact described in para. 54 of *Anthony-Cook* as part of the "corollary obligation upon counsel" to "amply justify their position on the facts of the case as presented in open court", and to provide "a full description of the facts relevant to the offender and the offence" in order to give the judge "a proper basis upon which to determine whether [the joint submission] should be accepted". The Court also said: "Sentencing – including sentencing based on a joint submission – cannot be done in the dark."

¶ 42 A fact is therefore relevant if withholding it would leave the panel "in the dark", and without "a proper

basis" upon which to determine acceptability. Panels have a threshold duty to reject a settlement if the facts are insufficient to enable the panel to properly assess the adequacy of the proposed sanctions.[35]

¶ 43 The relevance of a fact will normally correspond to how it is described in the 2015 IIROC Sanction Guidelines ("Guidelines"), which provide "a framework to guide the exercise of discretion in determining sanctions".[36] That was the approach taken by the panel in *Re National Bank Financial* with respect to what the Guidelines refer to as the "[e]xtent of harm to clients".[37] In this case, the Panel found that the respondent's disciplinary history was relevant, and necessary to a proper assessment, because it is listed among the Key Factors in Determining Sanctions and General Principle No. 2 describes precisely why it is material to the exercise of the panel's discretion.[38]

¶ 44 The term "material fact", which is used in *Re Scotia Capital*[39] and some other decisions,[40] is synonymous with "relevant fact" in this context.

b. Distinguishing between facts and allegations (or non-facts)

¶ 45 The Panel distinguished between facts and allegations (or non-facts). Facts are either not in dispute or are clearly provable – allegations are disputed or uncertain, for evidentiary or other reasons. Allegations are not facts if there is genuine dispute or uncertainty about them, and determining whether the evidence of an allegation is enough to make it a fact is a matter of prosecutorial discretion.

¶ 46 CIRO Enforcement Counsel submitted:

> The reasoning behind the potential omission of facts is for the sake of the public interest to achieve a settlement. A settlement is achieved by thorough negotiations between the parties. During these negotiations, a respondent may argue that a particular fact is not relevant or may suggest that the available evidence is not sufficiently clear to concede a specific fact and should therefore not be included in a settlement agreement. Staff may conclude that having a contested hearing to determine a specific fact is neither a good use of scarce regulatory resources nor required in the public interest to

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[35] See for example the following decisions describing a panel's obligation to reject for insufficient facts: *Re Donnelly* at para. 9 (referring to rejection "because the panel has not been given enough information for it to come to a determination that the agreed penalties are acceptable"; *Re Lynch* 2016 IIROC 52 at para. 9, "[W]ithout having critical missing facts, we would not be able to form the positive conclusion required, and would have to refuse to accept the settlement agreement."; *Re National Bank Financial Inc.* at para. 10, "[...] the factual background, as presented, was insufficient to allow [the panel] to determine whether the terms of settlement agreed between the parties were reasonable." and at para. 21, "In the current case, the facts as presented in the Settlement Agreement are not, according to the Hearing Panel, sufficient to allow it to appreciate the nature and context of the misconduct, in order to confirm that the terms of agreement between the parties are reasonable and satisfy the public interest test."; *Re Scotia Capital* 2017 IIROC 48 at para. 16, "[i]f the facts withheld are material but their nature is unknown, there is a serious breakdown in the administration of justice. Thus the role of Staff is critical in ensuring that the hearing panel has the facts necessary to decide whether to accept a settlement agreement."; *Re RBC Dominion Securities & Benson 2021* IIROC 30 at para. 13, "[t]he major issue for the Panel was whether there were sufficient objective facts upon which to base a decision to accept the Settlement Agreements proffered by the parties."; and *Re Fairclough* 2022 IIROC 20 at para. 5, "[i]f the parties do not disclose facts that a hearing panel considers necessary to determine the acceptability of the settlement agreement, the panel may have no alternative but rejection."

[36] Guidelines at p. 2.

[37] See *Re National Bank Financial* at paras. 20 and 32.

[38] Guidelines at p. 4:

> **2. Disciplinary sanctions should be more severe for respondents with prior disciplinary records.**
> A respondent's prior disciplinary record is an aggravating factor and may warrant a harsher sanction than would be required had this been the respondent's first disciplinary contravention.

A prior disciplinary record for a similar or identical contravention strongly suggests that the prior sanction was not a sufficient deterrent, thereby necessitating an increased sanction in order to address specific deterrence. However, a prior record where the misconduct is different may nonetheless be a factor to consider and it may demonstrate a respondent's general disregard for compliance with regulatory requirements, the investing public or market integrity in general. A prior disciplinary record generally becomes less relevant as it becomes more dated.

[39] Reproduced at para. 39 of these Reasons, above.

[40] See for example: *Re Proulx* 2017 IIROC 47 at para. 37; and *Re Côté & Côté* at para. 32.

arrive at an appropriate regulatory sanction.

> The public interest does not require all facts to become public. It simply requires that respondents are appropriately disciplined for their conduct. In some situations, it is more efficient to do so by omitting some relevant facts. Compromises are the essence of negotiated resolutions and hearing panels have recognized and paid deference to this principle in hundreds of accepted settlements.

¶ 47 To the extent those submissions refer to omitting facts which are disputed or uncertain, the Panel agrees that Staff have no obligation to include allegations in settlement agreements.

¶ 48 The distinction between facts and non-facts is illustrated by two decisions in which panels considered rejecting proposed settlements unless they were provided with more information about client losses resulting from the contraventions. In *Re RBC Dominion Securities & Benson* 2021 IIROC 30, the panel asked for additional information but was informed, and ultimately accepted, that the information did not exist in that case because it was disputed and uncertain – it was a non-fact.[41] In *Re National Bank Financial Inc.* 2018 IIROC 09, some facts existed and were provided, which enabled the panel to accept the proposed settlement.[42]

¶ 49 The Panel recognized that, in most settlements, some "facts" are disputed or uncertain and, therefore, properly not included in the settlement agreement. Although it is possible to describe that as omitting or withholding those "facts", it is more accurate to recognize that they are not included because they are non-facts. The corollary obligation applies only to facts that are not in dispute or are clearly provable.

¶ 50 The Panel agreed with the statement in *Re Scotia Capital Inc.* at para. 16: "The right of Staff to withhold facts is unchallenged except to the extent it prevents a hearing panel from having facts material to the exercise of its discretion." In our view, that statement correctly recognizes that Staff are not obligated to disclose non-facts, or facts that are not relevant, but Staff are obligated to disclose all relevant facts.[43]

c. The rationale for the corollary obligation

¶ 51 The corollary obligation to disclose all relevant facts is an integral part of the public interest test adopted from the 1993 Martin Committee Report.[44] The rationale for the obligation is explained in the context of recommendation 57 of the Martin Committee Report, which says: "it is improper for the Crown to withhold from the Court any relevant information in order to facilitate a guilty plea".[45]

¶ 52 The Martin Committee Report goes on to say:

> It follows from the Committee's recommendation that it is inappropriate for counsel, in private discussions, to tailor the facts of an event for purposes of achieving the plea or sentence that appears to counsel to be desirable. This is treating the Court with less than the full candour which counsel's professional obligations require, and may even be said to bear some considerable resemblance to manipulating the Court.[46]

and:

> Counsel should not try to justify a resolution agreement by rewriting the facts of an event that has already occurred and which neither counsel has observed.[47]

¶ 53 Recommendation 58 in the Martin Committee Report was the public interest test itself, and the corollary

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[41] See *Re RBC Dominion Securities & Benson* at paras. 8-16 and para. 29.
[42] See *Re National Bank Financial Inc.* at paras. 21-36.
[43] Relevant facts may be redacted from settlement agreements under Rule 8203(5)(iii) if certain criteria are met. See *Re Workun* 2020 IIROC 31 at para. 6 (redacting details of payments made by the respondent to the complainant) and *Re Rha* 2021 IIROC 12 at paras. 4-6 (describing the criteria for redaction). See also *Anthony-Cook* at para. 56 (reproduced in para. 38 of these Reasons, above).
[44] *Anthony-Cook* at para. 54 and at para. 29: "The third test, commonly referred to as the "public interest" test, was developed in the *Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions* (1993) (the "Martin Committee Report")."
[45] Martin Committee Report at p. 323.
[46] *Ibid* at p. 325.
[47] *Ibid* at p. 326.

nature of the obligation was explained in that context:

> In *R. v. Wood, supra*, at 574, the Ontario Court of Appeal noted that serious consideration should be given to recommendations of Crown counsel "where the facts outlined, following a guilty plea, are sparse." The Court went on to observe that the sentencing Court "has to recognize that Crown counsel is more familiar than itself with the extenuating or aggravating circumstances of the offence which may not be fully disclosed in the summary of the facts." The Committee wishes to emphasize that it is not making the present recommendation in order to increase such reliance by the Court upon counsel's bare recommendation as to sentence. The Committee is of the view that the record created in sentencing proceedings should not be sparse, but, rather, must always fully support the submissions made. The Committee so recommends below, where the issue is discussed in greater detail. In encouraging the sentencing judge to place appropriate emphasis upon a joint submission, the Committee is thereby placing a corollary obligation upon counsel to amply justify their position on the facts of the case as presented in open court.[48]

¶ 54 Based on the above, the Panel disagreed with Staff's submission that the only application of A*nthony-Cook* to CIRO proceedings was that "it is vitally important to be deferential to the settlement process". The Panel found that the public interest test necessarily imposes the corollary obligation on Staff to disclose all relevant facts, because that obligation is what justifies the panel's duty "to approach joint submissions from a position of restraint"[49], which is what distinguishes the public interest test from the previous tests rejected by *Anthony-Cook*.[50] The Panel agreed with the cases in the *Re Cavalaris* line that recognize the obligation on panels to exhibit restraint.[51] The Panel noted that, although only two of those cases refer explicitly to the corollary obligation on Staff to disclose all relevant facts,[52] all of those decisions appear to reflect the panels' assumption that they had all the relevant facts. In this case, both Panel members recognized, upon reflection, that they had been operating on that assumption in the previous settlement hearings in which they were involved.

d. Rule 8428(6)

¶ 55 CIRO Enforcement Counsel also referred to Rule 8428(6):

> 8428. Settlement hearings
>
> (6) At a settlement hearing, facts that are not contained in the settlement agreement must not be disclosed to the hearing panel without the consent of all parties, unless the respondent does not appear, in which case Enforcement Staff may disclose additional relevant facts, if requested by the hearing panel.

and submitted:

> The Rules expressly contemplate situations in which Staff and the Respondent negotiate a settlement agreement that does not include all relevant facts. Staff is expressly forbidden from disclosing relevant facts to the hearing panel that are not included in the settlement agreement without consent from the respondent. As such, it follows that Staff cannot have the obligation to disclose all relevant facts when the Rules forbid it in certain circumstances.

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[48] *Ibid* at p. 329.

[49] See *Anthony-Cook* at paras. 42 and 46.

[50] *Ibid* at paras. 46-48.

[51] The following decisions in the *Re Cavalaris* line refer to the panel's duty to exhibit restraint: *Re Desautel* 2017 IIROC 21 at paras. 7-10 (referring also to *Re Milewski*); *Re Iturralde* 2017 CanLii 26922 (CA MFDAC) at para. 14; *Re Scotia Capital Inc.* 2017 IIROC 48 at para. 9; *Re Poggione* 2017 CanLii 74511 (CA MFDAC) at para. 14; *Re Proulx* 2017 IIROC 47 at para. 14; *Re Kirkland* 2017 IIROC 56 at paras. 14-15 (referring also to *Re Donnelly*); *Re National Bank Financial* 2018 IIROC 9 at para. 29; *Re Lemire* 2018 IIROC 24 at para. 26; *Re Smith* 2019 IIROC 13 at para. 22; *Re PEAK Securities* 2020 IIROC 36 at para. 17; *Re Malic* 2021 IIROC 10 at para. 18; *Re Ber* 2022 IIROC 08 at paras. 14-15; *Re Harvey* 2022 IIROC 33 at para. 11; *Re Morrison* 2022 IIROC 33 at para. 10; *Re Arnold* 2023 CIRO 01 at para. 14; and *Re Hunter* 2023 CIRO 06 at para. 13.

[52] See *Re Scotia Capital Inc.* at paras. 15-17 (reproduced at para. 39 of these Reasons, above); and *Re Kirkland* 2017 IIROC 56 at para. 15.

¶ 56 The Panel found that Rule 8428(6), as a procedural rule, is neutral to the substantive question of whether CIRO Staff have a corollary obligation to disclose all relevant facts, which is part of the public interest test. Rule 8428(6) merely recognizes the possibility that additional relevant information may be disclosed and sets out the procedure[53] to be followed when that occurs, without implying anything about whether that information should have been in the original settlement agreement.

¶ 57 For example, in this case, Rule 8428(6) was used to disclose whether the Respondent had any disciplinary history. CIRO Enforcement Counsel acknowledged that disciplinary history is always a relevant fact and that its omission from the original settlement agreement was an oversight. However, when pressed on the question of whether CIRO Staff could properly withhold a respondent's disciplinary history from a panel, the answer was "theoretically, yes", but it was emphasized that, in practice, that is not done. The Panel found that Staff have a substantive obligation to disclose a respondent's disciplinary history, which is evidently recognized in practice. Although it is procedurally possible to withhold disciplinary records, doing so would put the panel "in the dark" and without "a proper basis" upon which to determine acceptability, [54]triggering the panel's threshold duty to reject the settlement due to insufficient facts.[55] The Panel found that, if withholding a fact would trigger that threshold duty, then Staff have a substantive obligation to disclose that fact.

¶ 58 The Panel agreed with several of CIRO Enforcement Counsel's submissions on this "very nuanced point": that Staff generally do include all relevant facts in settlement agreements, but that there is often room for reasonable disagreement on things like: whether something is a fact; whether a fact is relevant; or whether the facts are sufficient to enable a proper assessment; and that the "check and balance built into the settlement acceptance framework" is Rule 8428(6), which provides an iterative process for addressing those disagreements. How panels should approach that check-and-balance process is discussed below.

7. HOW SHOULD A PANEL APPROACH THE FACTS IN SETTLEMENT AGREEMENTS, AND HOW SHOULD A PANEL PROCEED IF IT HAS CONCERNS ABOUT MISSING FACTS?

¶ 59 The public interest test imposes two interrelated duties: the panel's duty to approach settlement agreements from a position of restraint, and Staff's duty to disclose all relevant facts. Together, these duties largely define how a panel should approach the facts in settlement agreements, and how it should proceed if it has concerns about missing facts.

¶ 60 This was illustrated in the present case when the Panel proceeded, temporarily, on the premise that Staff had no duty to disclose all relevant facts. The Panel asked whether Staff was aware of any relevant facts that had not been disclosed. The answer was "no" (which enabled the Panel to consider and accept the Settlement Agreement), but if the answer had been "yes", then the Panel would have had a duty to continue investigating. That incorrect premise forced the Panel into an investigative role that clearly conflicted with the obligations imposed on panels by the public interest test.

¶ 61 The public interest test requires panels to approach settlement agreements from a position of restraint, which is predicated on the corollary obligation on Staff to disclose all relevant facts "without waiting for a specific request".[56] We concluded that, in order to properly apply the public interest test, panels have a duty to start from the assumption that Staff have disclosed all relevant facts in the settlement agreement.

¶ 62 Most settlement agreements are not contentious and are readily accepted by panels without difficulty. The following describes the procedure to be followed in exceptional cases where a panel has concerns about missing facts.

¶ 63 The Panel agreed with Staff's submission that: "Hearing Panels should not assume or infer any fact that

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[53] Failure to follow that procedure is an error in law: see *Re Application 20211028*, 2023 BCSECCOM 313 at para. 58:

> We conclude that IIROC hearing panel erred by: (a) considering facts that were not contained in the Settlement Agreement, without obtaining the consent of the parties as required by Procedural Rule 8428(6).

See also *Re Reyes* 2023 CIRO 09 at paras. 3-14 (describing "the need to avoid inadvertently disclosing additional facts to the Panel".

[54] See *Anthony-Cook* at para. 54.

[55] See para. 42 of these Reasons, above.

[56] *Anthony-Cook* at para. 54.

is not explicitly included in a settlement agreement."[57]

¶ 64 If a panel has questions about the facts, Rule 8428(6) permits a dialogue with the parties and the introduction of additional facts. Sometimes, questions seek minor clarifications of the facts, which are readily provided or otherwise resolved.[58]

¶ 65 If a panel has significant concerns about missing facts, it has a duty to express them fully, and to give the parties an opportunity to respond, comparable to the duty on a trial judge who has concerns with a joint submission.[59] The Panel agreed with CIRO Staff's description of the process:

> The hearing panel is not required to engage in its own independent investigation and should not do so. It should ensure that any additional facts being sought are required in order to answer the sole question it must decide: is the agreement reasonable and in the public interest? If the Hearing Panel determines that the facts it seeks are critical to making its determination, and the parties have not consented to the disclosure of the additional facts, the panel should advise the parties that, absent those facts, the panel is inclined to reject the settlement agreement and invite any further submissions from the parties. The parties are then fully aware of the panel's inclination and may respond accordingly.

¶ 66 The duty to exhibit restraint does not override a panel's threshold duty to ensure that it has sufficient facts to properly assess the proposed settlement.[60] In this case, for example, the Panel had a duty to ask about the Respondent's disciplinary history because it was a relevant fact and, if that information had not been disclosed, the Panel would have had a duty to reject the settlement because the facts were insufficient to enable a proper assessment.[61]

¶ 67 In other cases, panels have expressed a willingness to reject settlements unless additional facts were provided describing client losses,[62] and whether misconduct was intentional, willfully blind, or reckless.[63] In most of those cases, additional relevant facts were provided which enabled the panels to accept the proposed settlements, and it was clear that those facts should have been included in the original settlement agreements

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[57] See also *Re Reyes* 2023 CIRO 09 at para 10, "[...] the Panel has a positive duty not to infer or imply any fact, minor or otherwise, when considering a settlement agreement."

[58] See for example *Re Malic* at para. 5; *Re Scotia Capital* at para. 17.

[59] See *Anthony-Cook* at para. 58:

> Fourth, if the trial judge is not satisfied with the sentence proposed by counsel, "fundamental fairness dictates that an opportunity be afforded to counsel to make further submissions in an attempt to address the . . . judge's concerns before the sentence is imposed" (*G.W.C.*, at para. 26).

See also: *Re Lemire* at paras. 25-30 and *Re PEAK Securities* at paras. 15-20 (recognizing a duty on panels to inform counsel of its "concerns" to allow for the possibility of "[m]odulating the agreement so that it can be ratified"); and the decisions cited in notes 62 and 63, below.

[60] See *Re National Bank Financial* at para. 29:

> ¶ 29 The Supreme Court of Canada also recognized, in the *Anthony-Cook* ruling cited above, that certainty concerning the outcome of the settlement agreement must yield when its acceptance would tend to bring the administration of justice into disrepute:
>
> > "42. Hence, the importance of trial judges exhibiting restraint, rejecting joint submissions only where the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system. A lower threshold than this would cast the efficacy of resolution agreements into too great a degree of uncertainty. The public interest test ensures that these resolution agreements are afforded a high degree of certainty.
> >
> > 43. At the same time, this test also recognizes that certainty of outcome is not 'the ultimate goal of the sentencing process. Certainty must yield where the harm caused by accepting the joint submission is beyond the value gained by promoting certainty of result'." [Reference omitted]

[61] See para. 42 of these Reasons, above.

[62] See *Re National Bank Financial Inc.* 2017 IIROC 09 at paras. 21-34; *Re RBC Dominion Securities & Benson* 2021 IIROC 30 at paras. 12-15.

[63] See *Re Lynch* 2016 IIROC 52 at paras. 17-18; *Re Lilly* 2020 IIROC 21 at para. 30; *Re Fairclough* 2022 IIROC 20 at para. 31.

because they were necessary to the exercise of the panels' discretion.[64] However, unlike disciplinary history (which is always a fact), there will be situations where client losses, or the respondent's intentions, are non-facts because they are disputed or uncertain and, therefore, not included in a settlement agreement. If a panel asks questions about non-facts, the parties may explain why they are non-facts, and the panel must then decide whether that triggers the threshold duty to reject the settlement agreement due to insufficient facts, or to proceed to consider its acceptability based on the facts provided.[65]

¶ 68 Normally, the panel's duty to start from the assumption that all relevant facts have been disclosed means that panels should also assume that matters not included in the settlement agreement were not included for a valid reason. The Panel agreed with the description of the duty in *Re Ber* at paras. 14-15:

> ¶ 14 In *Anthony-Cook*, the Supreme Court said that the high threshold for departing from joint submissions is appropriate because the Crown and defence counsel are "well placed to arrive at a joint submission that reflects the interests of both the public and the accused" (para. 44). In the Panel's view, the same considerations apply in these proceedings: Enforcement Counsel is charged with representing the public interest (as articulated in Consolidated Rule 1400 and, especially s. 1402(1)); Respondent's counsel has a duty to act in his client's best interests; both counsel, as a rule, are highly knowledgeable about the circumstances and the strengths and weaknesses of their respective positions; and both are bound professionally and ethically not to mislead the panel; so, "[i]n short, they are entirely capable of arriving at resolutions that are fair and consistent with the public interest" (para. 44). The Panel is thus obligated to approach the Settlement Agreement "from a position of restraint" (para. 46).
>
> ¶ 15 That restraint requires the Panel to consider the Settlement Agreement "within the four corners of the Agreed Facts" (as IIROC Counsel put it). As is common with settlement agreements, the Agreed Facts in this case are brief, so that careful consideration leads inevitably to curiosity about facts that are not included, which the Panel is obliged to resist. Although s. 8428(6) of the Consolidated Rules permits the disclosure of additional relevant facts in certain circumstances, that is merely a procedural exception to the general rule stated in s. 8215(5), which gives panels only the binary power to accept or reject a settlement agreement – not the power to modify. Panels should particularly avoid seeking additional facts in cases like this, where the Settlement Agreement was negotiated between counsel, because doing so would fundamentally undermine the negotiation process and negate the public-interest benefits described in *Anthony-Cook*.

¶ 69 The Panel also agreed with the pre-*Anthony-Cook* description of the duty to exhibit restraint in *Re Donnelly* at para. 8:

> 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.

¶ 70 The panel's duty to exhibit restraint will vary according to the particular facts and circumstances of each case. For example, panels may exhibit less restraint where the respondent is self-represented because there may be a power imbalance in those situations,[66] and more restraint where the respondent is represented

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[64] See for example *Re Lilly* at para. 27:
However, the additional information provided to the Panel, which unfortunately was not included in the Settlement Agreement despite the importance of the information and its centrality to our determination that the financial penalties alone were sufficient and adequate to serve as a deterrent, ultimately satisfied us that the financial penalties were acceptable in the particular circumstances.

[65] As occurred in *Re Dominion Securities & Benson*, described at para. 48 of these Reasons, above.

[66] *Anthony-Cook* at para. 52:
In addition, in assessing whether the severity of a joint submission would offend the public interest, trial judges should be mindful of the power imbalance that may exist between the Crown and defence, particularly where the accused is self-represented or in custody at the time of sentencing.

by counsel.[67]

¶ 71 Due to the infinite variety of facts and circumstances, it is impossible to prescribe in advance when panels should, or should not, seek additional facts in settlement hearings. However, it seems clear that, if panels apply the public interest test and Staff comply with the corollary obligation to provide all relevant facts, there should normally be no need to seek additional facts.

8. CONCLUSION

¶ 72 The Panel accepted the Settlement Agreement and reached the following conclusions on the questions:

- *Anthony-Cook* and the public interest test apply to CIRO settlement proceedings.
- It is impossible to know precisely how the public interest test differs from previous articulations of the test. The public interest test is properly understood as a fuller, and authoritative, articulation of the same principles described in *Re Milewski*, *Re Donnelly*, and other previous cases.
- CIRO Staff have an obligation to include all relevant facts in settlement agreements, comparable to the obligation on prosecutors described in *Anthony-Cook*.
- Panels must approach settlement agreements from a position of restraint.
- Panels have a duty to start from the assumption that settlement agreements include all relevant facts.
- Panels must not assume or imply any fact not included in settlement agreements.
- If a panel has significant concerns about missing facts, it has a duty to ask questions and give the parties an opportunity to address those concerns using Rule 8428(6).
- The duty to exhibit restraint does not override a panel's duty to ensure that it has sufficient facts to properly assess the proposed settlement.
- Normally, the panel's duty to start from the assumption that all relevant facts have been disclosed means that panels should also assume that matters not included in the settlement agreement were not included for a valid reason.
- The panel's duty to exhibit restraint will vary according to the particular facts and circumstances of each case.

DATED at Calgary, Alberta this 3rd day of March 2024.

"Eric Spink"

Eric Spink, Chair

"Bradley White"

Bradley White

Appendix "A"
Settlement Agreement

IN THE MATTER OF:

[67] See for example: *Re Ber* at paras. 14-15 (reproduced at para. 68 of these Reasons, above); and *Re Donnelly* at para. 29: What is fair and reasonable will depend to a large degree on the particular facts and circumstances of a matter. Where both parties to a settlement agreement are represented by counsel, and have the means to undergo a contested hearing, but have reached a settlement, it is unlikely that a panel would ever conclude that the settlement was unfair and not reasonable.

The Investment Dealer and Partially Consolidated Rule

and

Zhiping (Davis) Dai

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

¶ 1 The Canadian Investment Regulatory Organization ("CIRO")[i] will issue a Notice of Application to announce a settlement hearing pursuant to sections 8215 and 8428 of the Investment Dealer and Partially Consolidated Rules (the "Investment Dealer Rules") to consider whether a hearing panel should accept this Settlement Agreement between Enforcement Staff and Zhiping (Davis) Dai (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.

Background

¶ 4 The Respondent was a Registered Representative with Edward Jones from October 2009 until his termination in April 2022. He has been working as a Registered Representative with Leede Jones Gable Inc. since June 2022.

Personal Financial Dealings with Client WC

¶ 5 The Respondent had a longstanding friendship with his client WC. WC had a bank account in China holding Chinese Yuan. The Respondent explained to Staff that (1) WC needed to move her money to Canada; and (2) he personally owed his sister in China money and needed to send funds to her. The Respondent further explained that money movement in and out of China is risky, so he made an arrangement involving himself, WC and the Respondent's sister.

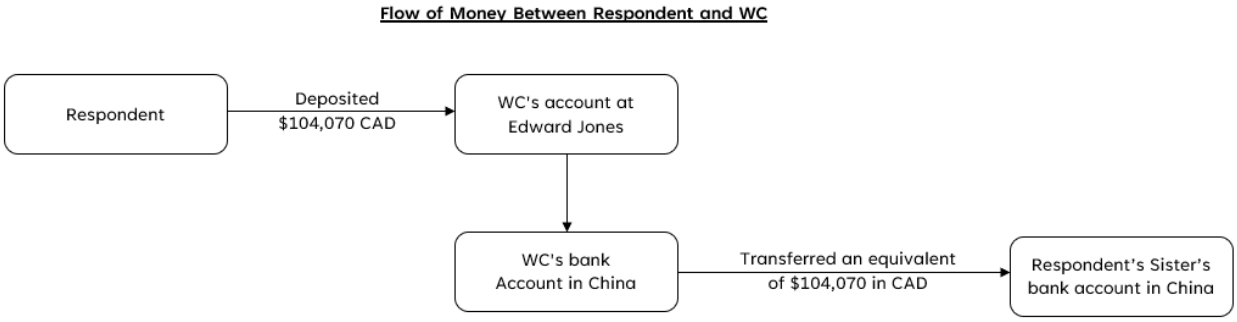
¶ 6 The Respondent deposited his own CAD from his Canadian bank accounts into WC's trading account at Edward Jones via four bank drafts. The Respondent handed his Branch Office Administrator ("BOA") each bank draft with a request to deposit the draft into WC's Edward Jones trading account.

¶ 7 Between April 9, 2021, and August 16, 2021, the Respondent deposited a total of $104,070 CAD into his client WC's trading account at Edward Jones as follows:

Respondent bought the following bank drafts:	**Dai then made the following deposits into his client WC's account at Edward Jones**
April 7, 2021: $30,000 CAD from Respondent's TD bank account	April 9, 2021: $30,000 CAD was deposited into WC's account
April 9, 2021: $8,241 CAD from Respondent's CIBC bank account	April 9, 2021: $8,241 CAD was deposited into WC's account
April 19, 2021: $37,644 CAD from Respondent's CIBC bank account	April 19, 2021: $37,644 CDN was deposited into WC's account
August 16, 2021: $28,185 CAD from Respondent's CIBC bank account	August 16, 2021 – $28,185 CDN was deposited into WC's account

¶ 8 The Respondent arranged to have WC transfer Chinese Yuan (at the exchange rate equivalent of $104,070 CAD) from her bank in China to the Respondent's sister's bank in China.

¶ 9 The flow of money is explained in this chart:



Personal Financial Dealings with Client LC

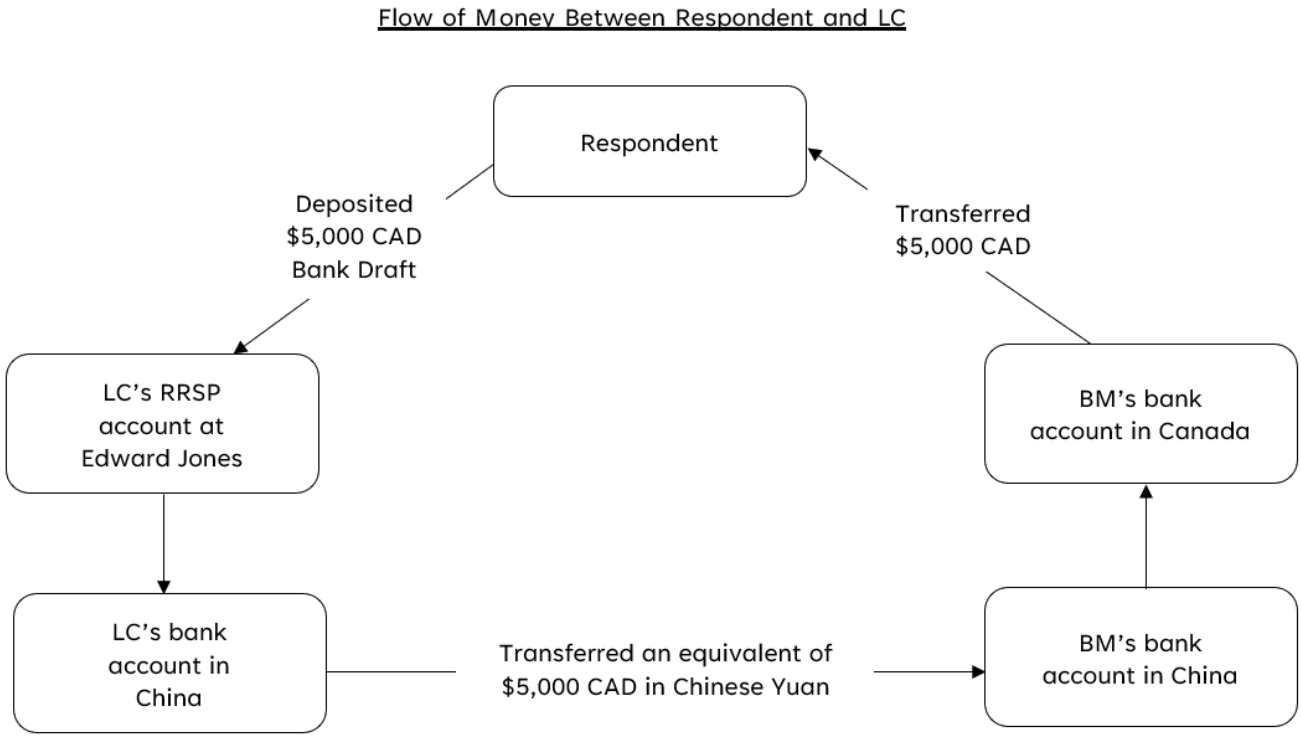
¶ 10 The Respondent explained to Staff that his client LC wanted to make an RRSP contribution of $5,000 CAD. The Respondent further explained that (1) LC did not have $5,000 CAD but instead had the equivalent in Chinese Yuan in a bank in China; and (2) the Respondent's acquaintance BM needed Chinese Yuan. The Respondent further explained that money movement in and out of China is risky so he made an arrangement involving himself, his client LC and BM.

¶ 11 LC sent BM the equivalent of $5,000 CAD in Chinese Yuan from her bank account in China to BM's bank account in China.

¶ 12 BM then sent the Respondent $5,000 CAD to his personal bank account at CIBC.

¶ 13 On February 17, 2022, the Respondent handed his BOA a $5,000 CAD bank draft with a request to deposit the draft into a newly opened RRSP account for his client LC. The BOA noticed that the Respondent was the remitter named in the bank draft. The BOA advised the Respondent that she could not deposit the draft since financial advisers are prohibited from depositing personal funds into client accounts. The Respondent asked the BOA if she could obscure his name using white out and then make the deposit. The BOA declined the Respondent's request and reported the incident.

¶ 14 The flow of money is explained in this chart:



Edward Jones Investigated Incident and Terminated Respondent

¶ 15 After reporting the incident with LC, the BOA was able to recall and locate the bank drafts involving the Respondent and WC.

¶ 16 The Respondent was terminated from Edward Jones for the conduct described above.

Mitigating Factors and Early Resolution Offer

¶ 17 There was no specific client harm or client losses. The Respondent successfully completed the Conduct Practices Handbook exam in March 2023.

¶ 18 The Respondent has admitted the misconduct described above reducing the length of time required to investigate this matter and agreed to resolve this matter in a timely manner. The Respondent accepted Enforcement Staff's Early Resolution Offer which granted a 30% reduction on the fine Enforcement Staff otherwise would have sought.

PART IV – CONTRAVENTIONS

¶ 19 By engaging in the conduct described above, the Respondent committed the following contravention of CIRO requirements:

(i) Between April 2021 and February 2022, the Respondent engaged in personal financial dealings with two clients, contrary to Dealer Member Rule 43.

PART V – TERMS OF SETTLEMENT

¶ 20 The Respondent agrees to the following sanctions and costs:

(i) A fine of $21,000; and

(ii) Costs of $3,000.

¶ 21 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

¶ 22 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.

¶ 23 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

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

¶ 25 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.

¶ 26 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.

¶ 27 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.

¶ 28 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.

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

¶ 30 This Settlement Agreement will become available to the public upon its acceptance by the hearing panel and CIRO will post a 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.

¶ 31 If this Settlement Agreement is accepted, the Respondent agrees that neither they nor anyone on their behalf, will make a public statement inconsistent with this Settlement Agreement.

¶ 32 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

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

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

DATED this "20th" day of July 2023.

"AC"
Witness

"Zhiping Dai"
Zhiping (Davis) Dai

"April Engelberg"
April Engelberg
Senior Enforcement Counsel on behalf of the
Canadian Investment Regulatory Organization

The Settlement Agreement is hereby accepted this "28" day of "September", 2023 by the following Hearing panel:

Per: "Eric Spink"
Chair

Per: "Bradley Whyte"
Industry Member

Per: "Jonathan Lund"
Industry Member

[i] 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-law, 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 subject to the jurisdiction of the Investment Industry Regulatory Organization of Canada that was formerly conducted by the Investment Industry Regulatory Organization of Canada.