Re Yang

IN THE MATTER OF:

The Investment Dealer and Partially Consolidated Rules

and

Sam Hsiao-Tse Yang

2024 CIRO 44

Canadian Investment Regulatory Organization
Hearing Panel (Alberta District)

Heard: March 15, 2024 in Calgary, Alberta (via videoconference)
Decision: March 15, 2024
Reasons for Decision: March 26, 2024

Hearing Panel:
Eric Spink, Chair, Martin Davies, and Jonathan Lund
Appearances:
Tayen Godfrey, Senior Enforcement Counsel
Alexander W. Yiu, for Sam Hsiao-Tse Yang
Sam Hsiao-Tse Yang (present)

REASONS FOR ACCEPTANCE OF SETTLEMENT AGREEMENT

I. INTRODUCTION

¶ 1 This was a settlement hearing to consider a Settlement Agreement between Enforcement Staff of the Canadian Investment Regulatory Organization ("CIRO") and the Respondent, Sam Hsiao-Tse Yang. After hearing the joint submissions of counsel, and reviewing the CIRO Sanction Guidelines and previous decisions, the Hearing Panel accepted the Settlement Agreement, and these are our reasons.

II. THE SETTLEMENT AGREEMENT

¶ 2 The Settlement Agreement is attached as an Appendix. In it, the Respondent admitted the following contraventions of CIRO's requirements:

Contravention 1

Between April 2018 and July 2021, the Respondent engaged in outside business activities by engaging in cryptocurrency trading and carrying on an ongoing business relationship with a cryptocurrency related business, contrary to Dealer Member Rule 18.14.

Contravention 2

Between November 2020 and June 2021, the Respondent engaged in personal financial dealings by selling his personal cryptocurrency assets to three clients, and by borrowing money from a client to finance his cryptocurrency trading, without the knowledge or approval of his Dealer Member, contrary to Dealer Member Rule 43.1.

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

(i) a fine in the amount of $45,000,

(ii) a suspension for a period of nine months,

(iii) a six-month period of close supervision upon registration with CIRO,

(iv) a requirement to rewrite of the Conduct and Practices Handbook ("CPH") exam prior to registration with CIRO, and

(v) costs payable to CIRO in the amount of $5,000.

III. SUMMARY OF FACTS

¶ 4 The facts are set out in the Settlement Agreement, and this section summarizes some of the facts that the Panel considered particularly significant.

¶ 5 The Respondent has worked in the industry since 2014 and has no prior history of regulatory violations.

¶ 6 The conduct in question took place while the Respondent was a Registered Representative with RBC Dominion Securities Inc. ("RBC-DS") from April 2018 to November 2021.

¶ 7 The Respondent engaged in crypto-trading-related activities throughout his time at RBC-DS. It was the Respondent's understanding that he did not need to disclose his personal crypto trading activity when he began working at RBC-DS, but in July 2019, the Respondent was directed to formally disclose this activity. The Respondent then described his activity as "crypto arbitrage" and noted he had online crypto accounts. That activity was approved by RBC-DS with the following conditions:

a) He must forward monthly statements of his trading,

b) He must not solicit clients,

c) He must keep RBC-DS informed of any changes to his activities, and

d) He meets with management of RBC-DS periodically for review.

¶ 8 However, the Respondent's disclosure did not encompass all his crypto-related activities, nor did he adhere to the conditions imposed by RBC-DS.

¶ 9 The Respondent failed to disclose that, since 2016, he had been involved in helping develop a crypto-trading-related business with a friend, which was incorporated as Heartbeat Capital Ltd. in 2020. The Respondent was a founding investor in that business and provided consulting services. He was involved in board meetings and provided advice on certain business strategies. The Respondent had a profit-sharing arrangement whereby he was allocated business points. The Respondent funded approximately $500,000 USD for this business endeavor. During his time employed with RBC-DS he made approximately $90,000 USD in profit from his involvement. At no time did the Respondent disclose this outside business activity to RBC-DS.

¶ 10 The Respondent also breached the conditions imposed by RBC-DS by:

(a) failing to provide statements of account,

(b) failing to advise his firm when his activities expanded to involve borrowing money and selling his own crypto assets, and

(c) involving clients in his crypto activities.

¶ 11 RBC-DS commenced an investigation in August 2021 because its anti-money-laundering unit became concerned over large transactions moving through the Respondent's personal RBC banking account. Between November 2020 and June 2021, third parties deposited $1,045,000 and the Respondent wired $1,060,000 to the crypto trading firm Alameda Research Ltd. That investigation subsequently revealed the Respondent:

(a) was selling his personal crypto holdings to friends, three of whom were clients, to assist them in getting started with their own crypto trading (the Respondent received approximately $134,000 for these transactions),

(b) borrowed approximately $400,000 from a client, who was a Related Person under the Income Tax Act, to finance his own personal crypto trading (the loans were repaid with interest),

(c) had an ongoing business relationship with Heartbeat Capital Ltd., and

(d) had approximately eight crypto trading accounts on various platforms, through which he invested approximately $500,000 USD between December 2019 and March 2022.

¶ 12 The Respondent was terminated by RBC-DS on November 18, 2021 and is not currently working in a registered capacity with a CIRO Dealer Member.

IV. TEST TO BE APPLIED

¶ 13 Counsel referred to *Re Smith* 2019 IIROC 13 and *Re Dai* 2024 CIRO 33, which describe the "public interest" test to be applied by panels when deciding whether to accept or reject a proposed settlement agreement.

¶ 14 As described in detail in *Re Dai*, 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, and a duty to ask questions if it has significant concerns about missing facts.[1] In this case, the Hearing Panel had no such concerns, and proceeded on the assumption that the Settlement Agreement included all relevant facts.[2]

¶ 15 The public interest test requires panels to approach settlement agreements from a position of restraint, and not to reject a proposed settlement unless acceptance would bring the administration of justice into disrepute or is otherwise contrary to the public interest.[3]

¶ 16 In applying the public interest test, the Hearing Panel agreed with the following description of the relevant considerations from *Re Donnelly* 2016 IIROC 23 (at para. 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.

V. GUIDELINES AND KEY FACTORS IN DETERMINING SANCTIONS

¶ 17 Counsel referred to the CIRO Sanction Guidelines ("Guidelines") which became effective February 1, 2024. The Guidelines describe their purpose as follows (at p. 2):

> The Sanction Guidelines are intended to promote consistency, fairness, and transparency by providing a framework to guide the exercise of discretion in determining sanctions which meet the general sanctioning objectives.
>
> The Sanction Guidelines are intended to assist:
>
> - CIRO Enforcement Staff and respondents in negotiating settlement agreements,
> - hearing panels in determining whether to accept settlement agreements, and in the fair and

[1] See *Re Dai* at paras. 42, 57 and 66.
[2] See *Re Dai* at paras. 54, 61 and 68.
[3] See *Re Dai* at paras. 54, 59, 61, 66 and 68-70.

efficient imposition of sanctions in disciplinary proceedings.

The determination of the appropriate sanction is discretionary and depends on the facts of the particular case. The Sanction Guidelines are not binding and hearing panels retain discretion to impose appropriate sanctions. The Sanction Guidelines are intended to provide a summary of the principles and key factors upon which that discretion may be exercised consistently and fairly.

The principles and key factors are not exhaustive, and hearing panels may consider other applicable principles, determine the relevant aggravating and mitigating factors, and rely on previous decisions when determining what sanctions should be imposed.

¶ 18 Counsel referred particularly to the following Sanction Principles from the Guidelines:

1. Sanctions are preventative in nature and should protect the public, strengthen market integrity, and improve business standards

The purpose of sanctions in a regulatory proceeding is to protect the public interest by deterring future conduct that may harm the capital markets. In order to achieve this, sanctions should be significant enough to prevent and discourage future misconduct by the respondent (specific deterrence) and to discourage others from engaging in similar misconduct (general deterrence).

4. For multiple violations, the total or cumulative sanction should appropriately reflect the totality of the misconduct

Where there are multiple violations, the overall sanction imposed should not be excessive or disproportionate to the gravity of the total misconduct. For this reason, a global approach to sanctioning may be appropriate where the imposition of a sanction for each contravention would have the effect of imposing on the respondent a cumulative sanction that is excessive.

¶ 19 Counsel also reviewed the Key Factors in Determining Sanctions in the Guidelines and noted the following factors in this case:

(a) The aggravating factors are: the scope of the Respondent's misconduct (the significant amounts of money involved); the three-year pattern of disregard for the rules; the failure to disclose in response to his firm's specific direction in July 2019; and his subsequent breaches of the conditions imposed by his firm.

(b) The mitigating factors are: the lack of any client losses or harm; the fact that the clients involved were friends and family of the Respondent; the absence of any disciplinary history; the significant impact of having been terminated by RBC-DS in November 2021; and the fact that the Respondent has accepted responsibility for his actions by entering into the Settlement Agreement.

VI. PREVIOUS DECISIONS

¶ 20 Counsel referred to three previous decisions approving settlement agreements that involved similar contraventions: *Re Gordon* 2022 IIROC 11; *Re Nyquvest* 2021 IIROC 36; and *Re Malic* 2021 IIROC 10.

¶ 21 In *Re Gordon*, the respondent engaged in undisclosed outside business activities over a 4-year period, during which he signed declarations that he had not engaged in such activities. The respondent received $670,000 from those activities. The panel accepted a settlement agreement imposing a fine of $80,000 and costs of $20,000. The respondent had retired from the industry at the time of the settlement hearing.

¶ 22 In *Re Nyquvest*, the respondent engaged in undisclosed outside business activities and personal financial dealings, and facilitating off-book investments, in a manner that avoided detection by his firm. The misconduct involved the respondent's friends and family. The panel accepted a settlement agreement imposing a fine of $34,000, a six-month suspension from registration, a 12-month period of close supervision, a requirement to successfully rewrite of the CPH examination upon return and costs of $5,000.

¶ 23 In *Re Malic*, the respondent engaged in undisclosed outside business activities over a 4-year period, during which he misled his firm about those activities. The activities involved large investments by two clients, which were ultimately lost. The panel accepted a settlement agreement imposing a fine of $75,000, a six-month suspension from registration, a 6-month period of close supervision upon registration, a requirement to successfully rewrite of the CPH examination upon return and costs of $5,000. The panel noted that the suspension would have a greater impact upon the respondent because of his age, and that the fine was significant because the respondent had sustained major financial losses.

¶ 24 In *Re Malic*, the panel noted the seriousness of this type of contravention and agreed with the following statement in *Re Rudensky* 2018 IIROC 38, at para. 8:

> Because firms are required to address existing or potential conflicts of interest, it is essential that a registrant's answers to their queries are true and complete. This is particularly the case where a registrant solely possesses information about existing or potential conflicts of interest. The failure to provide true and complete disclosure prevents a firm from being able to fulfil its obligation to respond to existing or potential conflicts of interest, thereby exposing the firm to potential damages.

VII. CONCLUSION

¶ 25 The Hearing Panel concluded that the agreed sanctions in the proposed Settlement Agreement are fair and reasonable, having regard to the seriousness of the contraventions and previous decisions, and that they are sufficient to achieve both specific and general deterrence. The Hearing Panel therefore accepted the Settlement Agreement.

DATED at Calgary, Alberta this 26 day of March 2024.

"Eric Spink"
Eric Spink, Chair

"Martin Davies"
Martin Davis

"Jonathan Lund"
Johnthan Lund

Appendix "A"
Settlement Agreement

IN THE MATTER OF
THE INVESTMENT DEALER AND PARTIALLY CONSOLIDATED RULES AND THE DEALER MEMBER RULES
AND
SAM HSIAO-TSE YANG

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 Sam Hsiao-Tse Yang (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.

Overview

¶ 4 The Respondent engaged in undisclosed outside business activities and personal financial dealings related to his cryptocurrency ("crypto") trading. This includes his own personal crypto trading, borrowing money from a client to finance this trading, selling his personal crypto holdings to clients, and engaging in an ongoing business relationship with a crypto trading related business. These activities involve significant amounts of money.

Registration History

¶ 5 The Respondent has worked in the industry since 2014 and has no prior history of regulatory violations. The conduct in question took place while he was with RBC Dominion Securities Inc. ("RBC-DS"), where he was a Registered Representative from April 2018 to November 2021. The Respondent is not currently working in a registered capacity with a CIRO Dealer Member.

Background and Facts

¶ 6 The Respondent engaged in crypto trading related activities throughout his time at RBC-DS. This includes outside business activities the Respondent failed to disclose and personal financial dealings with clients.

¶ 7 It was the Respondent's understanding that he did not need to disclose his personal crypto trading activity when he began working at RBC-DS in April 2018. However, in July 2019 the Respondent was directed to formally disclose this activity. In that disclosure the Respondent described the activity as "crypto arbitrage" and noted he had online crypto accounts.

¶ 8 The Respondent's business activity was approved by RBC-DS with the following conditions:

(a) He must forward monthly statements of his trading;

(b) He must not solicit clients; and

(c) He must keep RBC-DS informed of any changes to his activities; and

(d) He meets with management of RBC-DS periodically for review.

¶ 9 However, this disclosure did not encompass all the Respondent's crypto related activities. He failed to disclose that was involved in helping develop a crypto trading related business with a friend. This would eventually lead to the establishment of Heartbeat Capital Ltd. ("Heartbeat Capital") in September 2020, which the Respondent had no ownership in. He remained involved with Heartbeat Capital throughout his employment with RBC-DS.

¶ 10 In August 2021, RBC's anti-money-laundering unit became concerned over large transactions moving through the Respondent's personal RBC banking account. Between November 2020 and June 2021, a total of $1,045,000 was deposited into his personal account by third parties. During that same time-period he wired approximately $1,060,000 to the crypto trading firm Alameda Research Ltd.

¶ 11 RBC-DS commenced an investigation which subsequently revealed the Respondent:

(a) Was selling his personal crypto holdings to friends, three of whom were clients, to assist them in getting started with their own crypto trading;

(b) Borrowed money from a client who is a Related Person to finance his own personal crypto trading; and

(c) Had an ongoing business relationship with Heartbeat Capital.

¶ 12 The Respondent was terminated by RBC-DS on November 18, 2021.

Business Relationship with Heartbeat Capital Ltd.

¶ 13 During the entirety of his employment with RBC-DS, the Respondent failed to disclose an outside business activity that included the development of Heartbeat Capital, and his continued involvement with the business. Heartbeat Capital provides a market-making role in the crypto markets on multiple exchanges. It was founded and wholly owned by the Respondent's friend.

¶ 14 The Respondent's involvement began in November of 2016, before the company was incorporated in September of 2020 and before he was registered at RBC-DS. The Respondent continued his involvement with the business after Heartbeat Capital was established. This business relationship carried on through his employment at RBC-DS and after he was terminated by the firm.

¶ 15 The Respondent was a founding investor in the business, and he provided consulting services. He was involved in board meetings and provided advice on certain business strategies. The Respondent had a profit-sharing arrangement whereby he was allocated business points. The Respondent funded approximately $500,000 USD for this business endeavor. During his time employed with RBC-DS he made approximately $90,000 USD in profit from his involvement.

¶ 16 At no time did the Respondent disclose to RBC-DS his involvement with Heartbeat Capital and its development. RBC-DS only became aware of the outside business activity in August 2021 as a result of an internal investigation.

Personal Crypto Trading

¶ 17 The Respondent began trading in crypto assets before becoming an advisor with RBC-DS in April 2018. The Respondent's understanding was he did not need to disclose this business activity. However, in July 2019 RBC directed him to formally disclose this During this time the Respondent had approximately eight crypto trading accounts, on various crypto trading platforms. Between December 2019 and March 2022, the Respondent invested approximately $500,000 USD in various cryptocurrency strategies.

¶ 18 In July 2019 RBC-DS approved the Respondent's continued personal crypto trading but imposed several conditions. However, the Respondent did not adhere to these conditions. He breached them by:

(a) Failing to provide statements of account;

(b) Failing to advise his firm when his activities expanded to involve borrowing money and selling his own crypto assets; and

(c) Involving clients in his crypto activities.

Loans to Finance Trading

¶ 19 The Respondent failed to disclose and receive approval for a series of loans from a client, which were used to finance crypto trading activity. The loans were to be repaid with interest. The client in question was a related person under the Income Tax Act, however RBC-DS policies and procedures required disclosure and approval of the loans.

¶ 20 Between November 20, 2020, and June 8, 2021, the Respondent obtained seven loans, totaling approximately $400,000. All the cheques were deposited into the Respondent's RBC bank account. The loans were repaid with interest.

Selling Personal Crypto Holdings

¶ 21 The Respondent sold his own personal crypto assets to his clients. The clients in question were all

personal friends of the Respondent whom he was assisting in setting up their own personal crypto trading. All the funds were transferred to the Respondent by way of cheque or electronic transfer, all of which were deposited in the Respondent's RBC bank account.

¶ 22 Between February and June of 2021, the Respondent sold his own crypto to three different clients. The Respondent received approximately $134,000 for these transactions. Specifically:

(a) The Respondent received two payments totaling $75,000 CAD in exchange for his own crypto holdings. The payments received from AW, by way of two cheques, dated March 17, 2021, and June 1, 2021;

(b) The Respondent received payments totaling $20,000 CAD and $20,000 USD, in exchange for his own crypto holdings. The payments were received from BT between February and May 2021 via 13 electronic transfers; and

(c) The Respondent received a payment totaling $19,000 CAD in exchange for his own crypto holdings. The payments received from PH, by way of a cheque, dated March 12, 2021.

PART IV – CONTRAVENTIONS

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

Contravention 1

(i) Between April 2018 and July 2021, the Respondent engaged in outside business activities by engaging in cryptocurrency trading and carrying on an ongoing business relationship with a cryptocurrency related business, contrary to Dealer Member Rule 18.14.

Contravention 2

(ii) Between November 2020 and June 2021, the Respondent engaged in personal financial dealings by selling his personal cryptocurrency assets to three (3) clients, and by borrowing money from a client to finance his cryptocurrency trading, without the knowledge or approval of his Dealer Member, contrary to Dealer Member Rule 43.1.

PART V – TERMS OF SETTLEMENT

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

(i) A fine in the amount of $45,000;

(ii) A suspension for a period of nine months;

(iii) A Six-month period of close supervision upon registration with CIRO;

(iv) A requirement to rewrite of the Conduct and Practices Handbook exam prior to registration with CIRO; and

(v) Costs payable to CIRO in the amount of $5,000.

¶ 25 If this Settlement Agreement is accepted by the hearing panel, the Respondent agrees to pay the amounts referred to above within 90 days of such acceptance unless otherwise agreed between Enforcement Staff and the Respondent.

PART VI – STAFF COMMITMENT

¶ 26 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.

¶ 27 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

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

¶ 29 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.

¶ 30 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.

¶ 31 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.

¶ 32 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.

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

¶ 34 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.

¶ 35 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.

¶ 36 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

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

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

DATED this "14" day of "February", 2024.

"Witness"
Witness

"Sam Hsiao-Tse Yang"
Sam Hsiao-Tse Yang

"Tayen Godfrey"
Tayen Godfrey
Enforcement Counsel on behalf of Enforcement Staff of the
Canadian Investment Regulatory Organization

The Settlement Agreement is hereby accepted this "15" day of "March" 2024 by the following Hearing panel:

Per: "Eric Spink"

Chair

Per: "Jonathan Lund"
Industry Member

Per: "Martin Davies"
Industry Member

[i] 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.