

Re Pan

IN THE MATTER OF:

**The Dealer Member Rules of the Investment Industry Regulatory
Organization of Canada (IIROC)**

and

The By-Laws of the Investment Dealers Association of Canada (IDA)

and

Sammy Shieh Lung Pan

2012 IIROC 22

Investment Industry Regulatory Organization of Canada
Hearing Panel (Pacific District Council)

Heard: February 29, 2012

Decision: April 27, 2012

Hearing Panel:

John Rogers (Chair), Brian Field, Michael Johnson

Appearance:

Paul Smith, Enforcement Counsel, for the Investment Industry Regulatory Organization of Canada

DECISION

¶ 1 A Hearing Panel of the Investment Industry Regulatory Organization of Canada (“IIROC”) was convened on February 29, 2012 pursuant to Part 10 of Rule 20 of IIROC’s Dealer Member Rules, Rule 13 of IIROC’s Rules of Practice and Procedure, and Section 1.9 of Schedule C.1 to Transition Rule No. 1 of IIROC’s Transitional Rules dated June 1, 2008 in response to a Notice of Hearing (“Notice of Hearing”) dated February 9, 2012.

¶ 2 The Notice of Hearing alleges that Sammy Shieh Lung Pan (the “Respondent”) committed the following breaches of IIROC’s Dealer Member Rules (the “Dealer Member Rules”), formerly the by-laws and regulations of the Investment Dealers Association of Canada (the “IDA”).

Count 1

¶ 3 Between October 2007 and November 2008 the Respondent engaged in personal financial dealings with a client contrary to IDA By-law 29.1 and IIROC Dealer Member Rule 29.1 in that, on as many as nine occasions, he loaned money, totaling as much as \$761,000 to the client without the consent of his firm.

Count 2

¶ 4 Between April 2008 and June 2009 the Respondent failed to make diligent inquiries regarding the source or destination of funds being deposited to, or withdrawn from a client’s account contrary to IDA Regulation 1300.1(a) and IIROC Dealer Member Rule 1300.1(a).

Count 3

¶ 5 In August 2008 the Respondent made a misrepresentation to his firm's compliance staff contrary to IIROC Dealer Member Rule 29.1 about the source of funds deposited to a client's account, to conceal the fact that he had personally purchased and deposited a bank draft to the client's account.

Count 4

¶ 6 In July 2009 the Respondent made a misrepresentation to his firm's compliance staff contrary to IIROC Dealer Member Rule 29.1 when he responded to their questions about the source of funds deposited to a client's account with a statement that concealed the fact that he, himself, was one of the sources funding the client's account.

Respondent's Decision Not to Participate

¶ 7 Upon the commencement of the Hearing, IIROC Staff counsel advised the Hearing Panel that the Respondent would not be participating in the Hearing.

¶ 8 Staff counsel advised the Hearing Panel that the Respondent had participated in and was represented by counsel during the investigation by IIROC Staff which lead to the issuance of the Notice of Hearing. However, upon the issuance and serving of the Notice of Hearing, Staff counsel advised that he had been informed by Respondent's counsel that Respondent's counsel's retainer had been terminated by the Respondent and that the Respondent did not intend to participate further in the IIROC disciplinary process.

¶ 9 IIROC Staff counsel filed with the Hearing Panel correspondence between Staff counsel and Respondent's counsel prior to termination of his retainer. This correspondence confirmed that Respondent's counsel was authorized to accept service of the Notice of Hearing, that the Respondent waived the requirement to serve the Notice of Hearing forty five days prior to the commencement of this Hearing, and that the Respondent did not intend to participate in the IIROC hearing process.

¶ 10 Based upon this communication, IIROC Staff counsel requested that the Hearing Panel proceed with this Hearing pursuant to Rules 7.2 and 13.5 of IIROC's Rules of Practice and Procedure.

¶ 11 Rule 7.2 provides:

7.2 Failure to Serve Response

If a Respondent served with a Notice of Hearing fails to serve a Response in accordance with Rule 7.1:

(a) the Organization may proceed with the hearing of the matter as set out in the Notice of Hearing without further notice to and in the absence of the Respondent; and

(b) the Hearing Panel may, accept as proven the facts and violations alleged by the Organization in the Notice of Hearing, and may impose penalties and costs pursuant to Dealer Member Rules 20.33, 20.34 and 20.49.

¶ 12 Rule 13.5 provides:

13.5 Where Respondent Fails to Attend Disciplinary Hearing

Where a Respondent, having been served with a Notice of Hearing, fails to attend a disciplinary hearing, the Hearing Panel may proceed in the absence of the Respondent and may accept as proven the facts and violations alleged by the Organization in the Notice of Hearing.

Upon making a finding of the violations as alleged in the Notice of Hearing, the Hearing Panel may immediately hear submissions of the Organization regarding an appropriate penalty and may impose such penalty, as it deems appropriate, pursuant to Dealer Member Rule 20.33 and 20.34.

¶ 13 The Hearing Panel observed that:

1. the Respondent with the assistance of counsel had participated in the IIROC disciplinary process to the date of service of the Notice of Hearing;
2. the Respondent was clearly aware of the allegations made against him by IIROC Staff in the

Notice of Hearing and yet has chosen not to file a Response in accordance with Rule 7.1 of IIROC's Rules of Practice and Procedure; and

3. the Respondent was aware that this Hearing was proceeding and yet has chosen not to attend and participate.

¶ 14 The Hearing Panel thereupon determined that it should proceed with the Hearing in accordance with the provisions of Rules 7.2 and 13.5.

Facts

¶ 15 In support of the particulars contained in the Notice of Hearing, IIROC counsel introduced into evidence the transcript (the "Transcript") of the interview (the "Interview") of the Respondent by IIROC Staff given under oath by the Respondent on December 15, 2010 in accordance with IIROC Dealer Member Rule 19. At this interview, the Respondent was represented by counsel.

¶ 16 Based upon the Notice of Hearing and the Transcript, the following facts are alleged by IIROC Staff:

The Respondent was first registered as a Registered Representative at PI Financial Corp. ("PI") in 1998 and spent almost his entire career with PI until his resignation in October 2009. The Respondent is currently not registered in the investment industry.

Skyline Telecom ("STL") was a corporate client of the Respondent. STL's principal and sole beneficial owner was Mr. Robert Castano. STL had been Respondent's client for approximately seven years prior to October 2007.

During the twenty-two month period commencing October 2007 and extending to August 2009 (the "Relevant Period"), STL was the Respondent's largest client in terms of gross commissions, generating gross commissions during this time of approximately \$350,000 in US Dollars and \$100,000 in Canadian Dollars.

The New Client Application Form ("NCAF") for the STL account ("STL Account") dated September 20, 2007 indicated:

- STL was in the business of cell phone sales;
- STL's investment objectives for trading securities in the account was 100% short term trading and the risk tolerance was 100% high risk;
- STL's liquid assets were approximately \$800,000;
- STL's fixed assets were \$250,000;
- STL's annual income was approximately \$1,500,000.

The NCAF for Mr. Castano's personal account indicated:

- His liquid assets were approximately \$250,000;
- His fixed assets were approximately \$850,000;
- His annual income was approximately \$120,000.

The NCAF for Mr. Castano's spouse indicated:

- Her liquid assets were approximately \$30,000;
- Her fixed assets were approximately \$300,000;
- Her annual income was approximately \$45,000.

Trading Activity in the STL Account During the Relevant Period

The trading activity in the STL account during the Relevant Period was generally unsolicited and consisted of aggressive and active short-term trading which utilized margin.

On October 22, 2007, PI's compliance staff notified the Respondent that the STL Account was overly concentrated in one security and exposed to margin. Two days later, on October 24, 2007, PI's

Compliance Senior Vice President, after discussing the matter with the Respondent, wrote STL observing that the securities in the STL Account consisted almost exclusively of common shares of one company having a market value of \$1,337,000 against which \$860,000 was borrowed on margin. STL was required to sign a copy of this letter to acknowledge that it was cognizant of the concentration and the exposure to margin in its account and to confirm the appropriateness of the trading activity and holdings in this account.

In August of 2009, almost two years after the date of this letter, trading in the STL Account was restricted. At the time of this restriction, the cumulative losses in the STL Account amounted to close to \$3,000,000.

Respondent's Loans

On October 25, 2007, the Respondent made his first loan to Mr. Castano in the amount of \$25,000. On November 2, 2007, the Respondent loaned Mr. Castano an additional \$100,000.

On May 2, 2008, even though the previous loans of \$125,000 remained outstanding, the Respondent loaned Mr. Castano an additional \$50,000. On May 23, 2008, Mr. Castano repaid \$50,300 of the \$175,000 outstanding loan.

On June 27, 2008, the Respondent advanced another \$50,000 to Mr. Castano and an additional \$80,000 on August 12, 2008. Then on each of October 8, 2008, October 10, 2008, and October 15, 2008, the Respondent advanced to Mr. Castano loans of \$50,000, \$200,000, and \$140,000, respectively. The Respondent made his final advance to Mr. Castano on November 13, 2008 in the amount of \$66,000.

Following the initial loan repayment of \$50,300 on May 23, 2008, Mr. Castano made repayments of \$8,334 on each of August 1, 2008, September 2, 2008, October 6, 2008, and November 3, 2008 and a repayment of \$200,000 on November 6, 2008.

In summary, the Respondent made a total of nine advances totalling \$761,000 to Mr. Castano over the Relevant Period and received six repayments totalling \$283,636 against these advances. None of the advances or repayment transactions were made known to or approved by PI.

Funds Flowing Through the STL Account

In the ninety day period prior to the commencement of the Relevant Period there were seven deposits and four withdrawals made to the STL Account. The deposits totalled \$270,000 and the withdrawals totalled \$130,000.

The Relevant Period commenced in October of 2007, concurrently with the advance of the first loan by the Respondent. Following this first loan and during the first six months of the Relevant Period, including the Respondent's loans, there were twelve deposits to the STL Account totalling \$843,000 and four withdrawals from this account totalling \$220,000. At least part of the \$843,000 deposited into the STL Account was to satisfy a \$190,000 margin call on April 18, 2008.

During the next six months of the Relevant Period, from May 1, 2008 until November 13, 2008, including loans made by the Respondent to Mr. Castano, there were twenty-seven deposits to the STL Account totalling \$3,187,000. During this same period, including loan repayments to the Respondent, there were twenty-one withdrawals from this account totalling \$2,881,636.

Respondent's Knowledge During the Relevant Period

The Respondent knew that the money he was loaning to Mr. Castano was being transferred to the STL Account, and, as referred to above, did not inform his employer of these loans nor did he seek PI's permission to make these loans.

The Respondent believed that the trading in the STL Account was unreasonable. During the Interview he called it "crazy". Yet the Respondent continued to accept all of the orders for the STL Account in the hope that this trading in the STL Account would generate trading profits so that Mr. Castano would be

in a position to repay his debt to the Respondent.

During the Relevant Period the Respondent failed to make reasonable inquiries to determine the source of the monies deposited to the STL Account or to determine the destination for the monies withdrawn from the STL Account. There is no evidence that the Respondent inquired of Mr. Castano as to why all or some of these withdrawals were not being used to repay Mr. Castano's obligations to the Respondent.

Respondent's Dealings with PI

At no time did the Respondent get PI's permission as the Respondent's employer to make the loans to Mr. Castano.

In an email dated August 13, 2008, the Respondent misrepresented to PI's compliance staff that the \$80,000 deposit made by the Respondent to the STL Account the previous day was a bank draft arranged by Mr. Castano through his bank, when in fact the monies were a loan made by the Respondent to Mr. Castano.

On December 4, 2008, the Respondent's branch manager asked the Respondent about the source of funds in the STL Account. The Respondent did not advise his branch manager about the \$761,000 in advances the Respondent had made to Mr. Castano which were used to augment the trading in the STL Account.

On July 14, 2009, a Director of PI and PI's Compliance Senior Vice President each independently asked the Respondent if Mr. Castano was borrowing money to fund the trading in the STL Account. The Respondent again did not mention his loans to Mr. Castano and misrepresented to these parties that Mr. Castano was relying on family money to fund this trading activity.

On July 16, 2009, Mr. Castano endorsed on behalf of STL a risk acknowledgement letter to confirm to PI that the STL Account was not being funded with borrowed money. The Respondent was aware of this letter and the misrepresentation that Mr. Castano and STL were making to PI but the Respondent did not alert his employer to the misrepresentation or to the fact that some of the monies funding the trading in the STL Account were monies borrowed by Mr. Castano from the Respondent.

PI did not become aware of the loans made by the Respondent to Mr. Castano until the Respondent admitted their existence in an interview the Respondent had with the British Columbia Securities Commission in January of 2010.

On January 22, 2010, the Respondent advised PI's Compliance Senior Vice President by telephone that the Respondent had made two or three loans to Mr. Castano totalling in excess of \$300,000.

On January 25, 2010, PI's Compliance Senior Vice President met with the Respondent. It was at this meeting that the Respondent finally advised that the total monies advanced by the Respondent to Mr. Castano during the Relevant Period was close to \$750,000, of which approximately \$500,000 had not been repaid to the Respondent.

Decision

¶ 17 Pursuant to Dealer Member Rule 7.2 (b) we accepted as proven the facts alleged by IIROC Staff in the Notice of Hearing.

Count 1

¶ 18 We find that between October 2007 and November 2008 the Respondent engaged in personal financial dealings with a client contrary to IDA By-law 29.1 and IIROC Dealer Member Rule 29.1 in that on as many as nine occasions he loaned money to a client without the consent of his firm.

Count 2

¶ 19 We find that between April 2008 and June 2009 the Respondent failed to make diligent inquiries

regarding the source or destination of funds being deposited to or withdrawn from a client's account contrary to IDA Regulation 1300.1(a) and IROC Dealer Member Rule 1300.1(a).

Count 3

¶ 20 We find that in August 2008 contrary to IROC Dealer Member Rule 29.1 the Respondent made a misrepresentation to his firm's compliance staff about the source of funds deposited to a client's account in order to conceal the fact that he had personally purchased and deposited a bank draft to the client's account.

Count 4

¶ 21 We find that in July 2009 contrary to IROC Dealer Member Rule 29.1 the Respondent made a misrepresentation to his firm's compliance staff when he responded to their questions about the source of funds deposited to a client's account with a statement that concealed the fact that the Respondent was one of the sources funding the client's account.

Reasons

¶ 22 Under the heading "**BUSINESS CONDUCT**", Dealer Member Rule 29.1 states:

29.1. Dealer Members and each partner, Director, Officer, Supervisor, Registered Representative, Investment Representative and employee of a Dealer Member (i) shall observe high standards of ethics and conduct in the transaction of their business, (ii) shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest, and (iii) shall be of such character and business repute and have such experience and training as is consistent with the standards described in clauses (i) and (ii) or as may be prescribed by the Board.

¶ 23 Under the heading "**SUPERVISION OF ACCOUNTS**" and the sub-heading "**Identity and Creditworthiness**", Dealer Member Rule 1300.1(a) states:

(a) Each Dealer Member shall use due diligence to learn and remain informed of the essential facts relative to every customer and to every order or account accepted.

¶ 24 The Transcript suggests that Mr. Castano still owes the Respondent almost \$500,000. A sum that it appears the Respondent will be hard pressed to recover. Consequently, through his involvement with the STL Account and Mr. Castano, not only has the Respondent severely damaged his professional career, but he has also lost a great deal of money. Nevertheless, as the Respondent was the author of his own misfortune, we believe he merits little sympathy.

¶ 25 The Respondent permitted himself to be drawn into a relationship with a difficult client who was acting recklessly. He ignored his responsibility as a professional and lost control of the situation. He made loans to Mr. Castano which he knew he was not permitted to make and, when questioned about the funding in the STL Account, on numerous occasions covered up his activities.

¶ 26 The Respondent in breaching the rules and then covering up his actions put himself in harm's way and is now facing the consequences. Moreover, he completely abdicated his role as gatekeeper in that not only did he permit to occur the extremely aggressive trading activity in the STL Account which led to substantial trading losses, but by his direct actions, including the nine loan advances to Mr. Castano, he facilitated this trading. If gatekeepers such as the Respondent cannot be counted upon to protect the integrity of the capital markets, the public will lose all confidence in them.

¶ 27 In October of 2007 when PI observing the concentration in the STL Account and being concerned about the risk involved took action with a letter to STL highlighting this activity, the Respondent should have recognized this as a warning sign. As a registrant, the Respondent had a specific responsibility to STL, his client, and a general responsibility to maintain fair and efficient capital markets. With the advent of this letter, the Respondent should have taken action to ensure that the aggressive trading in the STL Account ceased, either by causing Mr. Castano to mend his ways, or, if Mr. Castano refused to do so, by refusing to accept further orders in the STL Account.

¶ 28 Rather than accepting this responsibility, the Respondent became a party to Mr. Castano's actions. Portions of the Transcript show how the Respondent became more and more involved with Mr. Castano's affairs and the extremely aggressive trading in the STL Account. This involvement got to the point where the Respondent counted upon this aggressive trading to generate profits to enable Mr. Castano to repay to the Respondent the considerable sums lent by the Respondent to Mr. Castano.

¶ 29 During the Interview, the Respondent was asked why he loaned the money to Mr. Castano. The Respondent answered "I trusted him and he was my biggest client and I made a mistake walking down that slippery road and it got worse and worse".

"... he [Mr. Castano] pressured me saying, I'm your best client. I give you so much business, you make a lot of commission from me. And so, I caved in and lent him the [money]"

"I was just watching the way his position was going down in equity, I was pretty worried that way. And, I mean, he's so stubborn he won't liquidate his position. I was thinking how much I lent him, it bothered me a lot. I mean, I lost a lot of sleep and I didn't even know how to get myself out of, you know, the situation that started out in the beginning".

"You know, the fact is towards the latter part of the year, I really worried. Really worried, and I was stressed from this kind of crazy trading this guy was doing already. I kept warning and in my mind I was hoping he would make big bucks and I would also get my money back....And like I said, me advancing the money was trying to rescue him and rescue myself. Like I said, that slippery slope became a big hill and I just went crashing down myself".

¶ 30 These extracts from the Interview clearly demonstrate that the Respondent failed in his professional responsibility on many occasions during the Relevant Period. He clearly permitted his personal interests to conflict with his professional obligations to his client thereby denying his role as gatekeeper.

¶ 31 The extremely aggressive trading in the STL Account which over the Relevant Period resulted in cumulative losses of almost \$3,000,000 was facilitated by the Respondent.

¶ 32 Without the permission of his employer, PI, the Respondent loaned money on nine occasions to his client, Mr. Castano.

¶ 33 When his employer became concerned about trading with borrowed funds in the STL Account, the Respondent neglected to advise his employer of his loans to Mr. Castano. Indeed, his employer did not learn of these loans until advised of them by the British Columbia Securities Commission, over a year after the Respondent had resigned his employment with PI.

¶ 34 Even then, the Respondent did not disclose the full extent of the loans when initially questioned by PI's Compliance Senior Vice President on the telephone. It took a face to face meeting between the Respondent and PI's Compliance Senior Vice President in January 2010 for the Respondent to make full disclosure to his employer, well over 2 years after the date of the initial warning letter expressing concern as to the trading pattern in the STL Account.

¶ 35 There were many times during this two year period when the Respondent could have faced the reality of what was happening in the STL Account and how his relationship with Mr. Castano was adversely affecting them both. At any point during this time, the Respondent could have recognized his obligation as a professional, reported the truth of what was happening to his employer, and thereby possibly preventing some of the losses that subsequently occurred and the resulting severe damage to the Respondent's career and reputation. The Respondent chose not to take such action. Indeed, as noted above, the Respondent facilitated the trading activity and it was not until well after he had left the industry and was queried by regulatory authorities that he admitted his involvement, and only then begrudgingly.

¶ 36 We, therefore, have no difficulty in finding that IIROC Staff have provided clear, cogent and convincing evidence that the Respondent has breached IIROC Dealer Member Rules 29.1 and 1300.1(a) as alleged by IIROC Staff in Counts 1 through 4.

Penalty and Costs

¶ 37 As above set out, where a respondent has chosen not to participate in IIROC's disciplinary process, Rules 7.2 and 13.5 of IIROC's Rules of Practice and Procedure authorize a Hearing Panel, once a finding of liability has been made, to proceed to impose such penalties and costs on the Respondent as the Hearing Panel deems fit. Having found the Respondent liable for the breaches of IIROC Dealer Member Rules as alleged by IIROC Staff in the Notice of Hearing, we invited IIROC Staff counsel to make submissions on penalty and costs.

¶ 38 In his submissions on penalty, IIROC Staff counsel recommended for all four counts:

1. A collective fine of \$50,000;
2. A two year suspension; and
3. Upon readmission to the industry, the Respondent would be required to:
 - a. Write and successfully pass the *Conduct and Practices Handbook* course; and
 - b. Undergo one year of close supervision.

¶ 39 As for costs, IIROC Staff counsel submitted a Bill of Costs reflecting investigative and prosecution costs in this matter of between \$16,947 and \$21,085, and recommended an award of costs against the Respondent in the amount of \$15,000.

¶ 40 Although we acknowledge that Counts 1 and 2 are related, as are Counts 3 and 4, we disagree with IIROC Staff counsel's recommendation as to an appropriate penalty.

¶ 41 In *Re: Wenman 2012 IIROC 3*, where the respondent admitted that without his employer's consent he had made three short term loans to a client to enable the client to make trades while his account was under margin, the Hearing Panel accepted a settlement agreement which imposed a fine of \$10,000, a one year period of close supervision, and the requirement to write and successfully pass the *Conduct and Practices Handbook* course.

¶ 42 We consider the matter before us much more egregious than that in *Wenman*. Even taking into account the fact that *Wenman* was a settlement agreement, the loans made by the respondent in *Wenman* were over a six month period, each of the loans was repaid before a new advance was made, and there was no evidence of misrepresentation by Mr. Wenman to his employer.

¶ 43 Of more assistance to us are IIROC's Dealer Member Disciplinary Sanction Guidelines, March 2009 (the "Guidelines").

Undisclosed Personal Business

¶ 44 Section 2.5 of the Guidelines headed "Undisclosed Personal Business with a Client (includes borrowing from a client without firm knowledge or consent) – Dealer Member Rule 29.1" includes the following paragraphs in its introduction:

The registrant is bound not only to carry out his client's instructions, but also has a duty to act in the client's best interest *and is not permitted to allow personal interest to conflict with the interests of the client* (emphasis added).

Personal business dealings with clients should be avoided as they create a potential for the registrant to place his interests above those of his client. When such dealings are not objectionable, such as in cases of a pre-existing relationship or a family relationship between the client and the registrant, the consent of both the client and the registrant's firm should be sought and obtained.

¶ 45 In the matter at hand, it is quite clear that without his employer's consent the Registrant commingled his personal interests with those of Mr. Castano and the trading in the STL Account with extremely unfortunate consequences for all involved.

¶ 46 Section 2.5 of the Guidelines recommend that the items a Hearing Panel might take into consideration when assessing a penalty involving such undisclosed personal business include:

1. *Was the activity disclosed to the firm and its consent obtained?* The Respondent at no time disclosed to his employer, PI, his involvement in lending funds to Mr. Castano or his involvement in the trading in the STL Account. Nor did the Respondent seek his employer's consent to this activity.
2. *Was the activity an isolated incident or part of a larger pattern of conduct involving multiple clients?* Although there was only one client involved, the activity continued over a period of almost two years and involved nine advances totalling \$761,000.
3. *Did the Respondent conceal or attempt to conceal his activity from the client and/or the firm?* The Respondent deliberately concealed from his employer his involvement with Mr. Castano and the trading in the STL Account for over two years. Moreover, during that time period the Respondent took deliberate steps to mislead his employer as to the true state of affairs of the STL Account.
4. *Was the client harmed by the activity and if so to what extent?* As a result of the trading in the STL Account, losses of almost \$3,000,000 were incurred.
5. *Did the Respondent profit from the activity?* Mr. Castano and the STL Account represented the Respondent's largest client and generated almost \$450,000 in gross commissions over less than a two year period. However, unfortunately, rather than profit from his advances to Mr. Castano, it would appear that the Respondent has lost almost \$500,000. During the Interview, the Respondent suggested that he was to receive interest on the monies advanced to Mr. Castano and to therefore profit from this aspect of his dealings with Mr. Castano.

¶ 47 This section of the Guidelines recommends a minimum fine of \$10,000 and registration suspensions including permanent prohibition in egregious cases.

¶ 48 In the matter at hand, the Respondent made nine advances to Mr. Castano. Based upon this Section 2.5 of the Guidelines, we believe that a fine of \$10,000 for each of the nine loans is appropriate for a total fine under this Guideline of \$90,000. In addition, we believe that the Respondent's continuous efforts to deceive his employer, PI, clearly makes this an egregious case and leads to a determination that the Respondent be permanently banned from the industry.

Failure to Know Your Client

¶ 49 Section 3.2 of the Guidelines, entitled "Failure to Know Your Client – Dealer Member Rule 1300.1(a) and (b)" includes the following sentences in its introduction:

All registrants must make diligent and business-like efforts to learn and record the essential financial and personal circumstances, and the investment objectives of each client. Knowing your client is a fundamental ongoing obligation that a registrant is required to meet in order to be able to act in the best interests of his/her clients.

¶ 50 In the matter at hand, during the Relevant Period there were 39 deposits totalling \$4,030,000 and 25 withdrawals totalling \$3,101,636. There is no evidence that the Respondent attempted to learn and record the source of or destination of these funds, especially given the fact that Mr. Castano was indebted to the Respondent at the time that the majority of these transactions were occurring.

¶ 51 This Section 3.2 of the Guidelines recommends a minimum fine of \$10,000 which we believe appropriate to this breach of the Dealer Member Rules by the Respondent.

Misrepresentations

¶ 52 Section 5.5 of the Guidelines is entitled "Misrepresentations – Dealer Member Rule 29.1". It includes the following considerations to be taken into account by a Hearing Panel when deciding upon an appropriate

penalty:

1. *Was the misrepresentation intentional or negligent?* The action of the Respondent in not disclosing to his employer, PI, his business relationship with Mr. Castano and the STL Account was clearly intentional.
2. *To whom was the misrepresentation made?* There were a number of misrepresentations made by the Respondent to PI both before and following the termination of his employment. However, the evidence before us is clear that the Respondent on two distinct occasions deliberately misrepresented the situation with respect to his relationship with Mr. Castano and the trading in the STL Account. Firstly, in an email dated August 13, 2008, the Respondent misrepresented to PI's compliance staff that the \$80,000 deposit made by the Respondent to the STL Account the previous day was a bank draft arranged by Mr. Castano through his bank, when in fact the monies were a loan made by the Respondent to Mr. Castano. And, secondly, on July 14, 2009 when a Director of PI and PI's Compliance Senior Vice President, each on separate occasions, asked the Respondent whether Mr. Castano was borrowing money to fund the trading in the STL Account, the Respondent deliberately failed to advise these representatives of his employer of his loans to Mr. Castano. Indeed, the Respondent misrepresented to these parties that Mr. Castano was relying on family money to fund this trading activity.
3. *Did anyone rely on the misrepresentation?* The Respondent's employer, PI, clearly relied upon the Respondent's misrepresentations.
4. *Was the misrepresentation corrected subsequently?* It was only after the termination of his employment with PI and following an interview with the British Columbia Securities Commission that the Respondent corrected the misrepresentations he had previously made to PI.
5. *Did the Respondent benefit in any way from the misrepresentation?* The Respondent clearly benefited from the misrepresentations in that he generated approximately \$450,000 in gross commissions from the trading in the STL Account during the Relevant Period until trading in the STL Account was restricted. In addition, it is clear that the Respondent did not want his relationship with Mr. Castano and the STL Account disclosed. As the Respondent testified in the Interview, he believed that the only hope he had of having his loans to Mr. Castano repaid was through profitable trading in the STL Account. Had the Respondent disclosed his relationship with Mr. Castano and the STL Account to his employer, the Respondent might well have been disciplined, the trading in the STL Account restricted, and the Respondent not able to have his loans repaid – all of which in fact have subsequently occurred.

¶ 53 Section 5.5 of the Guidelines includes in its recommended sanctions a minimum fine of \$15,000 for an Approved Person and, in egregious cases, a permanent ban from the industry. We believe that the conduct of the Respondent in this matter both from his general attitude in misrepresenting the situation to his employer and in the two cited examples of deliberate misrepresentation qualifies this as an egregious case. We therefore fine the Respondent the sum of \$25,000 for each of the two deliberate misrepresentations above set out and impose upon the Respondent a permanent ban from the industry.

¶ 54 We agree with IROC Staff counsel's recommendation of assessing costs at \$15,000.

¶ 55 In summary, we impose on the Respondent the following penalty for all four counts:

1. A collective fine in the amount of \$150,000; and
2. A permanent ban from registration in the industry.

¶ 56 In accordance with Dealer Member Rule 20.49, we assess costs against the Respondent in the amount of \$15,000.

Dated at the City of Vancouver, Province of British Columbia, this 27th day of April 2012.

R. John Rogers

Brian Field

Michael E. Johnson