INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

THE RULES OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)

AND

THE BY-LAWS OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA (IDA)

AND

ALAN CUSSON

SETTLEMENT AGREEMENT

I. INTRODUCTION

- 1. IIROC Enforcement Staff and Alan Cusson ("the Respondent"), consent and agree to the settlement of this matter by way of this settlement agreement ("the Settlement Agreement").
- 2. The Enforcement Department of IIROC has conducted an investigation ("the Investigation") into the conduct of Alan Cusson.
- 3. On June 1st, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada and Market Regulation Services Inc. Pursuant to the Administrative and Regulatory Services Agreement between IDA and IIROC, effective June 1st, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions.
- 4. The Respondent consents to be subject to the jurisdiction of IIROC.
- 5. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C ("the Hearing Panel").

II. JOINT SETTLEMENT RECOMMENDATION

- 6. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
- 7. The Respondent admits to the following contraventions of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:
 - 1. Between June 2004 and April 2008, Cusson engaged in business conduct or practice which is unbecoming or detrimental to the public interest, in that, on at least fourteen (14) occasions, he misappropriated funds from one of his clients, contrary to IDA By-law 29.1 (now IIROC Rule 29.1); and
 - 2. Between June 2004 and April 2008, Cusson engaged in business conduct or practice which is unbecoming or detrimental to the public interest, in that he engaged in personal financial dealings with a client without disclosing and obtaining prior approval from his employer, contrary to IDA By-law 29.1 (now IIROC Rule 29.1).
- 8. Staff and the Respondent agrees to the following terms of settlement:
 - a) Count 1: a fine of \$125,000;
 - b) Count 2: a fine of \$30,000;
 - c) A permanent ban.
- 9. The Respondent agrees to pay costs to IIROC in the sum of \$10,000.

III. STATEMENT OF FACTS

(i) Acknowledgment

10. Staff and the Respondent agree with the facts set out in this Section III and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts.

(ii) Factual Background

OVERVIEW

11. Cusson was the investment advisor of "A", an 80 years old retired technician from Bell, who had a net worth of \$550,000 consisting of \$250,000 of liquid assets and \$300,000 of fixed assets.

- 12. During the course of their relationship, Cusson misappropriated \$98,500 from "A".
- 13. Of this \$98,500, \$58,500 was misappropriated from "A" while Cusson was registered with IIROC as a Registered Representative.
- 14. The misappropriation was effected by Cusson directing "A" to sign blank cheques under false pretenses. Cusson would then complete the cheques and make them payable to himself.
- 15. On at least two (2) other occasions, Cusson directed his client "A", to lend him a total of \$25,000 without having disclosed and obtained the approval of his employer.

REGISTRATION

- 16. In June 2004, Cusson became a Registered Representative at the Ville St-Laurent office of Berkshire Securities Inc. ("Berkshire"), that later became Manulife Securities Inc. ("Manulife") in 2007.
- 17. Before his employment at Berkshire, Cusson was a Mutual Funds Representative at Berkshire Investment Group Inc. since 2000. Berkshire and Berkshire Investment Group Inc. shared the same address in Ville St-Laurent. Berkshire Investment Group Inc. was not an IDA Member Firm.
- 18. Cusson was dismissed by Manulife on March 22nd, 2010, and is no longer a registrant with an IIROC member firm.

INTERNAL INVESTIGATION

- 19. On March 22nd, 2010, upon receipt of "A"'s letter of complaint, Manulife opened an internal investigation that led to the termination of the agency agreement between Cusson and Manulife.
- 20. On March 23rd, 2010, Cusson signed a declaration in which he admitted taking "A"'s money and using it for his own purposes.

MISAPPROPRIATON OF FUNDS FROM HIS CLIENT "A"

- 21. In or about September 2002, "A" became a client of Cusson. At that time, he was a Mutual Funds Representative at Berkshire Investment Group Inc.
- 22. In June 2004, "A" transferred his account from Berkshire Investment Group Inc. to Berkshire. The value of "A"'s account was approximately \$60,000.

- 23. The investigation revealed that between September 2003 and April 2008, seventeen (17) cheques signed by "A" were made payable to Cusson, for a total of \$98,500.
- 24. The seventeen (17) cheques were completed by Cusson as follows:

BERKSHIRE INVESTMENT GROUP INC. (NOT AN IIROC MEMBER)

Cheque	Date	Amount (\$)	Payor	Payee	Handwriting
325	September 15 th , 2003	10,000	"A"	Alan Cusson	Alan Cusson
365	January 15 th , 2004	20,000	"A"	Alan Cusson	Alan Cusson
349	May 22 nd , 2004	10,000	"A"	Alan Cusson	Alan Cusson

SUB-TOTAL \$40,000

BERKSHIRE SECURITIES INC. (IIROC MEMBER)

Cheque	Date	Amount (\$)	Payor	Payee	Handwriting
357	September 1 st , 2004	7,000	"A"	Alan Cusson	Alan Cusson
364	December 2 nd , 2004	4,000	"A"	Alan Cusson	Alan Cusson
558	April 13 th , 2006	5,500	"A"	Alan Cusson	Alan Cusson
582	May 30 th , 2006	5,000	"A"	Alan Cusson	Alan Cusson
595	June 16 th , 2006	4,000	"A"	Alan Cusson	Alan Cusson
604	August 7 th , 2006	4,000	"A"	Alan Cusson	Alan Cusson
607	August 24 th , 2006	2,000	"A"	Alan Cusson	Alan Cusson
612	September 19 th , 2006	3,500	"A"	Alan Cusson	Alan Cusson
620	October 26 th , 2006	3,000	"A"	Alan Cusson	Unidentified
573	January 3 rd , 2007	3,500	"A"	Alan Cusson	Alan Cusson
587	March 28 th , 2007	3,500	"A"	Alan Cusson	Alan Cusson
635	August 20 th , 2007	5,000	"A"	Alan Cusson	Alan Cusson
636	August 27 th , 2007	5,000	"A"	Alan Cusson	Alan Cusson
852	December 6 th , 2007	3,500	"A"	Alan Cusson	Alan Cusson

SUB-TOTAL \$58,500

TOTAL: \$98,500

25. Cusson completed each of the above-mentioned cheques, except for one unidentified handwriting, after "A" signed them but not in his presence. Other than his signature, "A" did not fill out any other section of the cheques.

- 26. It was the client's understanding that, once Cusson returned to his office, he would stamp the seventeen (17) cheques with the name of Berkshire, and then he would deposit the cheques in "A"'s account at Berkshire.
- 27. Instead, Cusson put is name as the "Payee" and then deposited the seventeen (17) cheques in his personnal bank account at the Toronto Dominion Bank in Dorval, Québec.
- 28. Some of the above-mentioned cheques contained the note "Investment".
- 29. During the same period of time, "A" also signed four (4) cheques that were completed and deposited into "A"'s account as he intended them to be.
- 30. In 2009, "A" named "B" as his power of attorney.
 - In November 2009, the account of "A"'s at Berkshire was transferred to RBC Dominion Securities Inc. ("RBC").
- 31. In January 2010, as a result of inquiries by "B", the power of attorney of "A", and with the help of his new advisor at RBC, it was discovered that an amount of \$98,500 was missing from the investment account of "A".
- 32. During the internal investigation that took place at Manulife, Cusson admitted to his wrong-doing and signed a written statement in which he admitted taking "A"'s money and using it for his own purposes.
- 33. Cusson never reimbursed the \$98,500 misappropriated from his former client "A".

PERSONAL FINANCIAL DEALINGS WITH "A"

- 34. On or about July 5th, 2006, Cusson convinced his client "A" to lend him the sum of \$5,000.
- 35. On or about April 17th, 2008, Cusson convinced his client "A" to lend him an additional sum of \$20,000.
- 36. Cusson never disclosed nor obtained approval from Berkshire or Manulife for these two (2) loans.
- 37. In 2009, Cusson made some post-dated cheques to "A" as loan repayments.

- 38. On three (3) of these post-dated cheques, respectedly dated June 30th, 2009, September 30th, 2009 and December 31st, 2009. Cusson instructed its bank to issue a stop payment.
- 39. Cusson has only reimbursed "A" a total sum of \$5,750 out of the \$25,000.
- 40. In August 2010, Manulife repaid "A" a total sum of \$117,500 in compensation for the misappropriated funds and the unpaid balance of the loans by Cusson.

IV. TERMS OF SETTLEMENT

- 41. This settlement is agreed upon in accordance with IIROC Dealer Member Rules 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.
- 42. The Settlement Agreement is subject to acceptance by the Hearing Panel.
- 43. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
- 44. The Settlement Agreement will be presented to the Hearing Panel at a hearing ("the Settlement Hearing") for approval. Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.
- 45. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her/its right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
- 46. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement; or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.
- 47. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
- 48. Staff and the Respondent agree that if the Hearing Panel accepts the Settlement Agreement, they, or anyone on their behalf, will not make any public statements inconsistent with the Settlement Agreement.
- 49. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.

50. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

AGREED TO by the Respondent at the City of Dorval in the Province of Québec, this 30th day of May, 2012. (Sgd.) Alan Cusson **WITNESS ALAN CUSSON** RESPONDENT **AGREED TO** by Staff at the City of Montréal in the Province of Québec, this 21st day of June, 2012. (Sgd.) Linda Vachet (Sgd.) Martin Hovington Witness **Martin Hovington Enforcement Counsel on behalf** of Staff of the Investment **Industry Regulatory Organization** of Canada