Re Darrigo

IN THE MATTER OF:

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

and

Paul Christopher Darrigo ("Respondent")

2014 IIROC 48

Investment Industry Regulatory Organization of Canada
Hearing Panel (Ontario District)

Heard: September 22, 23, 24 and 26, 2014
Decision: October 16, 2014

Hearing Panel:
Frederick H. Webber, Chair, Hugh McNabney and Ron Smith
Appearances:
Robert DelFrate, Enforcement Counsel
Bert Noguera, Investigator

PANEL DECISION ON LIABILITY

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1. PROCEDURAL MATTERS

¶ 1 This matter was commenced by a Notice of Hearing dated September 18, 2012, containing three allegations against the Respondent. It proceeded pursuant to a Fresh As Amended Notice Of Hearing dated March 20, 2014 attached hereto as Schedule A, ("NOH") which deleted the third allegation and slightly amended the wording of the first allegation. The Respondent's position was contained in an Amended Response To Notice Of Hearing dated February 28, 2013 ("Response"). The Response admitted the matters set out in paragraphs 3, 4, 6, 8, 12 16 and 17 in the NOH. The two allegations contained in the NOH will be outlined below.

¶ 2 This matter was not heard until September 22, 23, 24 and 26, 2014 due to a number of adjournments, most of which were at the request of the Respondent based on his position that he was too mentally stressed to participate in a hearing. The latest adjournment request from the Respondent occurred immediately prior to, and again at the hearing commencing September 22. The adjournment request was denied by this Panel for reasons set out below and the hearing proceeded on September 22, 2014.

¶ 3 The procedural history of this matter is as follows:

i. September 18, 2012, NOH issued;

ii. September 20, 2012, NOH served on Respondent;

iii. October 31, 2012, set-date hearing attended by both parties resulted in Panel order that hearing would commence on April 8, 2013;

iv. On or about March 5, 2013, both parties agreed to postpone the hearing with new hearing dates to be determined;

v. On or about March 20, 2013, hearing rescheduled for July 3-5, 2013;

vi. May 22, 2013, at a pre-hearing conference, an agreement was reached to adjourn the hearing to commence on October 21, 2013;

vii. Letter from Respondent's family doctor dated October 17, 2013, stating that a postponement of the hearing would be advisable due to the Respondent's excessive anxiety;

viii. October 18, 2013, Panel agreed to adjourn the hearing scheduled for October 21, 2013, to a date to be determined;

ix. Letter dated November 20, 2013, from the Respondent's family doctor, giving an update on the Respondent's treatment and stating that a significant improvement in the Respondent's condition was anticipated by January 2014;

x. November 21, 2013, pre-hearing conference involving all parties and the Panel in which it was agreed to tentatively reschedule the hearing commencing February 24, 2014;

xi. January 16, 2014, email from IIROC counsel to the Panel outlining her attempts to correspond with Respondent's counsel in order to firm up the hearing date tentatively scheduled for February 24, 2014 and indicating a lack of response from Respondent's counsel;

xii. January 23, 2014, IIROC memorandum confirming the hearing date of February 24, 2014;

xiii. January 23, 2014 correspondence from Respondent's counsel objecting to IIROC counsel's email of January 16, 2014, indicating his unavailability on February 24, 2014, and that he expected a further medical note on January 27, 2014;

xiv. Letter dated February 20, 2014 from Respondent's counsel to IIROC stating that the Respondent is not available on February 24, 2014 and enclosing a letter also dated February 20, 2014 from the Respondent's family doctor updating the Respondent's medical status;

xv. February 24, 2014, Panel hearing attended by both IIROC and the Respondent's counsel, which ordered (and both parties agreed) that a hearing would be scheduled for April 17, 2014 to determine that the Respondent was ready to proceed with a hearing or, if not, he would produce a report of a competent psychologist or psychiatrist that he is not fit to participate in the hearing, such report if any, to be provided to IIROC by April 14, 2014. The Panel also ordered that, if the hearing was to proceed, it would take place during the week of June 9, 2014.

xvi. April 17, 2014, the hearing was adjourned to June 12, 2014 at which time a new hearing date would be determined;

xvii. June 12, 2014, Panel hearing attended by IIROC counsel and the Respondent. The Respondent still did not provide the required medical report, but indicated that he had met a nursing specialist on June 5, 2014 who was to provide recommendations to his family doctor regarding follow-up treatment and that he had an appointment with his family doctor on July 3, 2014. The Panel ordered that the hearing be scheduled for September 22, 23, 24 and 26 on a peremptory basis, after these dates were confirmed by IIROC counsel with the Respondent's counsel by phone.

2. RESPONDENT'S ADJOURNMENT REQUEST BASED ON HIS MEDICAL CONDITION

¶ 4 On August 29, 2014, the Respondent sent an email to IIROC requesting a further adjournment of the hearing scheduled to commence September 22, claiming that he was physically unable to attend a week-long hearing in his condition and could not commit to any future date for the hearing until advised by a specialist that he was capable of doing so. He indicated that he had an appointment with a psychologist scheduled for October 7, 2014. IIROC replied to the Respondent and his counsel objecting to any further delay but that the adjournment request could be dealt with by conference call with the Panel. By email dated September 8, 2014, the Respondent indicated that he was no longer represented by counsel and that he would be unable to attend the hearing. In a series of emails, the Panel determined a conference call could not be arranged and that the

Respondent's latest adjournment request would be dealt with at the commencement of the hearing on September 22.

¶ 5 At the commencement of the hearing, the Respondent was not present. The panel adjourned the hearing for 15 minutes to give the Respondent an opportunity to appear. A few minutes later the Panel were advised that the Respondent had appeared and that he and IIROC counsel were in discussions regarding a possible settlement. The hearing reconvened after a short time and after some discussions, the hearing was adjourned until the next day, September 23, so that settlement discussions could continue.

¶ 6 At the recommencement of the hearing on September 23, the parties advised the Panel that no settlement was in the offing, and the Panel then indicated it would hear submissions on the Respondent's request for an adjournment.

¶ 7 The Respondent's position was the same as it had been since his first request for an adjournment. He asserted that it was his right to fully participate in any hearing regarding the allegations against him but that he was unable to so participate due to the anxiety and depression that he was suffering. The Respondent had again been advised by email from IIROC that the Panel would require medical evidence of the Respondent's claimed medical condition and that a course of treatment had been commenced. Other than the Respondent's assertion regarding his condition and future scheduled treatment, no such evidence was provided. After hearing from both the Respondent and IIROC counsel on the matter of a further adjournment, the Panel ruled that no further adjournment would be granted and that the hearing would proceed on the merits. The Respondent was advised that he was entitled to fully participate but he chose to walk out of the hearing, which proceeded in his absence. Rule 13.5 of the IIROC Rules of Practice and Procedure ("RPP") allows the Panel to proceed in the absence of the Respondent and to accept as proven, the facts and allegations set out in the NOH. However, the Panel did not simply accept as proven the facts and allegations in the NOH, and IIROC counsel presented evidence and legal submissions to support their position that the allegations had been proven. In addition, the Panel questioned the IIROC witnesses and IIROC counsel in order to ensure that the Respondent's position was protected to the extent possible.

¶ 8 The Panel's reasons for denying the adjournment request are as follows. The request made by the Respondent at the hearing simply repeats a pattern by the Respondent of failing to supply the required medical evidence and repeated last-minute requests for adjournments. Immediately prior to a hearing scheduled for October 21, 2013, the Respondent provided what purported to be a letter dated October 17, 2013 from his family doctor. Even taken at face value, this doctor is not a psychologist or psychiatrist who specializes in mental health issues; it indicates that the Respondent responds favourably to certain medication that he had been taking and that he would be reassessed around mid-November 2013. There was no indication of the need for a referral to a specialist. The hearing scheduled for October 21, 2013 was adjourned sine die to accommodate the Respondent's claimed medical condition. A letter dated November 20, 2013 from the same doctor indicated a change in medication, that the Respondent had been advised to get psychotherapy, that a significant improvement in the Respondent's condition was anticipated and that he would be reassessed in early January 2014. Once again, IIROC and the Panel rescheduled the hearing tentatively until February 24, 2014 well past the January reassessment date in order to accommodate the Respondent's medical concerns. On January 23, 2014, Respondent's counsel advised IIROC that the Respondent had been seeing a specialist and that a medical note was expected on January 27, 2014. Nothing was provided on January 27. The February 24, 2014 date was firmed up, but immediately prior thereto, on February, 20, 2014, Respondent's counsel sent a letter from the Respondent's family doctor, not from the specialist that had been indicated, stating simply that the Respondent had shown some improvement but not enough to participate in the hearing and stating that he had again been referred to a psychologist and a psychiatrist. The Panel order on February 24, 2014 made the requirement for medical evidence abundantly clear to the Respondent and his counsel and was reasserted by the Panel at the hearing on June 12, 2014 when the Respondent failed to provide such medical evidence required by the Panel order of February 24.

¶ 9 The Panel acknowledges that the law on procedural fairness requires that a person must know the case being made against him and be given an opportunity to answer it before the decision maker. The details of what

this right entails are well established in law and need not be repeated in these reasons. It is also clear law that the scope and extent of the right to procedural fairness is flexible depending on the circumstances of the particular case and that rights of the individual must be balanced against the effective and expeditious performance of public duties. For example, in "Hearings Before Administrative Tribunals", Macauley & Sprague, Third Edition, paragraph 12.2 (c), the authors state "… the essence of administrative law is the balancing of the rights to be accorded individuals in the protection of their rights with the need of society for efficiency in administrative decision-making…" and " An agency exists to accomplish some statutory purpose….One cannot determine the fairness of a situation without taking into account that which the agency is supposed to accomplish and the practical constraints facing it in its task."

¶ 10 In this case, IIROC and the Panel have made every reasonable effort to accommodate what the Respondent has claimed is stress and anxiety which prevent him from participating in the hearing process. The hearing has been adjourned or rescheduled a total of eight times primarily at the request of the Respondent. In support of his claim, the Respondent has provided three letters from his family doctor indicating in general terms that the Respondent was suffering from anxiety and stress which did not allow him to participate in the hearings. The letters indicated some progress from time to time, but none of the anticipated recovery dates materialized. These letters were accepted at face value without any proof of their authenticity or subjecting the doctor to cross-examination. These letters were from a family doctor, not a mental health specialist notwithstanding the promises from the Respondent and his family doctor that such specialists were being engaged. At least since the Panel order of February 24, 2014, the Respondent has known that the Panel required substantiation of the Respondent's claims in the form of formal reports from mental health specialists. None of that has been provided and the Respondent has not provided the Panel with any proof that a course of treatment from a mental health specialist has been undertaken. In short, the Panel has very little to substantiate the claims of the Respondent notwithstanding the various warnings by the Panel that absent such substantiation, the hearing would have to proceed.

¶ 11 In addition to the failure of the Respondent to substantiate his claims that he was medically prevented from participating in the hearing, the Panel also considered the role of IIROC in protecting the public interest. The conduct in this case took place between October 2009 and January 2011 and due to the passage of substantial time there was a danger that the memories of the witnesses would fade. Also two of the witnesses were elderly, had been subjected to numerous adjournments and could not be expected to be willing or able to participate if the hearing were to be adjourned an additional time, with no indication that this would be the last adjournment request. Therefore the ability to prove the allegations was in danger. Furthermore the public has the right to expect that IIROC would carry out its public protection mandate in a timely manner so that, if the allegations were proven, the Respondent would be penalized appropriately and the public would be protected, to the extent possible, against such conduct in the future. In addition, the Respondent's clients have a right to expect that the Respondent's conduct would be dealt with expeditiously so that they could feel that justice was served in their particular cases.

¶ 12 It was the Panel's decision that the Respondent's right to procedural fairness has been met, and that no further adjournments should be granted. Numerous adjournments were granted to the Respondent without him providing the substantial proof of medical necessity required by the Panel, and the public interest demanded that the hearing process not be delayed any longer.

3. FIRST ALLEGATION- CONDUCT CONTRARY TO RULE 1300.1(o)

¶ 13 The first allegation is that:

> Between October 2009 and January 2011, the Respondent effected mutual fund transactions that triggered unnecessary deferred sales charges to his clients and undue commissions to himself, contrary to IIROC Dealer Member Rule 1300.1(o).

¶ 14 The essence of Rule 1300.1(o) is that orders must be "within the bounds of good business practice." Therefore, IIROC must prove that mutual fund transactions effected by the Respondent between October 2009 and January 2011

i. triggered "unnecessary" deferred sales charges to his clients;

ii. triggered "undue" commissions to himself; and

iii. such transactions were contrary to "good business practice."

¶ 15 The first witness for IIROC was Bert Noguera, a senior investigator with IIROC ("Noguera"). He testified that he took over the investigation of the Respondent in April 2011 and, inter alia, he interviewed two of the Respondent's clients, RC and DD who also were witnesses for IIROC (see below). The IIROC investigation had been triggered by an NRD report filed by the Respondent's Dealer Member, HSBC Securities (Canada) Inc. ("HSBC") on January 27, 2011 indicating that the Respondent had been terminated for cause by HSBC due to the Respondent personally borrowing money from clients.

¶ 16 Noguera testified that he investigated the accounts of a number of the Respondent's clients but became particularly concerned with the accounts of client's RC and NC, DD and CW and LW (who refused to be interviewed by Noguera), due to the deferred sales charges ("DSCs") and sales commissions which were triggered by the transactions in those accounts. He prepared a chart summarizing a number of transactions between October 2009 and January 2011 in the accounts of clients RC and NC, DD and CW and LW ("IIROC Chart"). The IIROC Chart is contained in Volume 2 of IIROC's Compendium filed as Exhibit 3 at the hearing. The transactions shown in the IIROC Chart were selected by Noguera based on the DSC fees incurred and matching buys and sells; the information in the IIROC Chart was transcribed directly from the client account statements which were also introduced into evidence as part of Exhibits 2, 3, 4 and 5.

¶ 17 By way of background, the Respondent had been experiencing financial difficulties prior to the transactions in question and several cheques he had written to HSBC had been returned NSF (Exhibit 9, transcript of interview of Ron Cote, Respondent's branch manager, page 18). This was also acknowledged by the Respondent during his interviews with IIROC on March 18, 2011 (Exhibit 2, Tab 4) and July 26, 2012 (Exhibit 2, Tab 5).

¶ 18 As confirmed by the Respondent in his IIROC interview of July 26, 2012, mutual funds may be purchased on a DSC basis or on a front load basis. When purchased on a DSC basis the client pays no commission at the time of purchase but agrees to pay a fee when the mutual fund is sold, on a declining basis generally over seven years. When purchased on a front load basis, the client pays a commission at the time of purchase, generally ranging from 0-5 %. When purchased on a DSC basis, the client's sales representative receives an immediate commission from the mutual fund company without the client's knowledge. When sold on a front load basis, the sales representative must negotiate the commission directly with the client. When purchased on a DSC basis 100% of the client's money goes into the investment being purchased. When purchased on a front load basis, the commission reduces the amount of the client's investment. It is not possible to say, in general, that either method is necessarily preferential to the other. However, when purchased on a DSC basis, it is in the client's best interest to keep the fund as long as possible to avoid, or at least minimize, the sales charges which are incurred on the sale. The DSC therefore acts as a disincentive to the client to sell an investment that he might otherwise wish to sell. The DSC method also provides a financial incentive to the sales representative since he is paid commission without having to deal with the client. When purchased on a front load basis, the client has the opportunity to negotiate the commission, so that the client may sell the investment without being concerned with the cost of getting out of the investment.

¶ 19 Before reviewing the transactions contained in the IIROC Chart, it is important to note that the evidence establishes that the transactions were not initiated by, nor always authorized by, the clients before they occurred. Mr. DD testified that, when he became a client of the Respondent, he had no investing experience. He also testified that he did not understand what a "margin" account was, that he did not initiate any of the transactions in question, that they were all based on the Respondent's recommendations, and many were done without his prior knowledge; he also testified that he did not know what "DSC" or "redemption fee" meant and that those terms were never explained to him by the Respondent. When testifying about specific transactions which involved DSCs, he said that he did not realize that a redemption fee was involved and would not have approved the transaction had he known about the DSC. Furthermore, he testified that he was unaware of the

commissions earned by the Respondent on the transactions.

¶ 20 Dr. RC also testified that he did not initiate any of the transactions in question, all were based on the Respondent's recommendations and many were done without his knowledge. However, there was one notable difference in his testimony. He testified that he knew what DSCs or redemption fees were and that he specifically instructed the Respondent not to do any transactions in which they would be incurred. However he also testified that he was unaware of the DSCs incurred on his transactions because he trusted the Respondent and only paid attention to the monthly balance on his account, not to the transactions which occurred.

¶ 21 In his interview with IIROC on July 26, 2012, the Respondent insisted that he advised these clients about the nature of buying mutual funds on a DSC basis and in particular prior to specific purchases. The Respondent's evidence (in his interview) therefore is in direct conflict with that of the clients regarding their knowledge that DSC fees would be incurred on particular transactions, even though they may have had general discussions with the Respondent about the pros and cons of buying mutual funds on a DSC basis. Since the Respondent chose not to participate in the hearing, the Panel did not have the benefit of hearing his live testimony, cross-examination thereon, nor cross-examination of the clients.

¶ 22 It is IIROC's position that the IIROC Chart (and the clients' testimony) establishes that:

i. there were a large number of transactions involving DSC fees in each account and very high turnover;

ii. in many instances a DSC mutual fund was replaced with a fund with similar investment characteristics;

iii. in some instances, DSC funds which were sold and replaced with funds from other fund families, could have been replaced with similar funds from the same family at no cost to the client;

iv. many of the funds purchased on a DSC basis were held for very short periods, usually less than one year;

v. the purchases of funds on a DSC basis were without the clients' knowledge or consent, and in the case of Dr. RC, contrary to his instructions;

vi. on many occasions, profitable funds were sold; and

vii. the clients incurred high DSC fees and low profits on the transactions, while the Respondent earned high commissions.

¶ 23 The IIROC Chart establishes the following regarding the DD accounts. In the transactions between November 2009 and January 2011, the Respondent made purchases in DD's account of approximately $467,000 consisting primarily of DSC mutual funds and he redeemed or sold approximately $400,000, again consisting of primarily of DSC mutual funds. The total value of DD's account at the beginning of October 2009 was $305,723. Accordingly, over a period of 15 months (and only for the transactions identified by Noguera), the purchases in the account were over 1.5 times the starting equity in the account. The redemptions in the account (again, only on the transactions identified by Noguera) resulted in over $17,000 of DSC fees being incurred by DD, while the Respondent earned $10,000 in commissions on the subsequent purchases. The transactions listed in IIROC Chart represent 49% (24 of 49) of the buy and sell transactions that took place in DD's accounts over the relevant period of time.

¶ 24 It is IIROC's position that the following are examples of transactions which were outside the bounds of good business practice in the DD accounts:

<u>Transactions in the Dynamic Funds</u>

1. In June 2010, the Respondent redeemed some of DD's units of the Northwest Specialty Global High Yield Bond Fund, the National Bank High Yield Bond Fund and the Dynamic High Yield Bond Fund. These funds had been purchased on a DSC basis only 8 months before. Accordingly, DD incurred significant DSC fees upon the redemption of these 3 funds. The Respondent had

earned commissions on the initial purchase of these funds, and earned additional commissions when the proceeds from the redemption of these funds were reinvested into the Manulife Yield Opportunities Fund, which was purchased on a DSC basis.

2. Despite having just redeemed units of a Dynamic fund in June 2010 which incurred significant DSC fees, the next month the Respondent redeemed units of another fund and used the proceeds to purchase a Dynamic mutual fund. In July 2010, the Respondent redeemed units of the National Bank High Yield Bond Fund and used the proceeds to purchase units of the Dynamic Strategic Yield Fund. Again, DD incurred significant DSC fees on the redemption of this fund and the Respondent earned commissions on the purchase of the new fund.

3. The Respondent could have recommended a simple switch from the Dynamic High Yield Bond fund into the Dynamic Strategic Yield Fund and DD would not have incurred any DSC fees. Had he done so, however, the Respondent would not have earned commissions on the purchase of the new fund.

Redemption of the Harbour Fund 5 Months After Purchase

1. In July 2010, the Respondent purchased $100,000 of the Harbour Fund on a DSC basis. The Respondent earned $2,550 in commissions on this purchase. In December 2010, less than 5 months later, the Respondent redeemed units of this same fund. Despite having earned a capital gain of over $2,900 on these units, after the DSC fees of $2,400 are taken into account, DD was left with a realized profit of only $467. The proceeds from this redemption were then used to purchase units of the Australian Banc Cap and the Respondent earned another commission of $688. In total, the Respondent's commissions on this purchase, redemption and subsequent purchase totalled over $3,200, whereas DD only realized a profit of $467. DD testified that he was unaware of the amounts of DSC fees he was incurring on the redemption of these funds and that he was unaware of the amounts of commissions that the Respondent was earning. Had he been aware of these fees, DD testified that he "would have gone ballistic" or "hit the ceiling".

¶ 25 The IIROC Chart establishes the following regarding RC and NC's accounts:

1. Between November 2009 and January 2011, the Respondent recommended the purchase and sale of DSC mutual funds in RC and NC's accounts. In some cases, these DSC mutual funds were sold only months after they had been purchased. In the transactions identified by Noguera, between November 2009 and January 2011, the Respondent made purchases of over $151,286, consisting primarily of DSC mutual funds and he redeemed or sold over $209,337, again consisting of primarily of DSC mutual funds. The total value of RC and NC's accounts at the beginning of November 2009 was $246,713. Accordingly, over a period of 15 months (and only for the transactions identified by Noguera), the purchases in the account were over 0.61 times the starting equity in the account. The redemptions in the account (again, only on the transactions identified by Noguera) resulted in over $8,329 of DSC fees being incurred by RC and NC, while the Respondent earned commissions of $2,913 on subsequent purchases. The transactions listed in the IIROC Chart represent 73% (31 of 42) of the buy and sell transactions that took place in RC and NC's accounts over the relevant period of time.

¶ 26 It is IIROC's position that the following are examples of transactions that were outside the bounds of good business practice in RC and NC's accounts:

1 Transactions in the Dynamic Funds

In May 2010, the Respondent redeemed RC and NC's units of the Northwest Specialty Global High Yield Bond Fund. RC and NC incurred a DSC fee of $668 upon the redemption of this fund. The Respondent had earned commissions on the initial purchase of this fund, and earned an additional commission of $350 when the proceeds from the redemption of the Northwest fund were reinvested into the Dynamic Strategic Yield Fund, which was purchased on a DSC basis.

Three months later, in August 2010, the Respondent redeemed units of the Dynamic High Yield Bond fund, incurring DSC fees of $1,286. The proceeds from this redemption were then used to purchase units of the Harbour Growth and Income Fund. The Respondent earned a commission of $612 on the purchase of this fund. Instead of purchasing units of the Dynamic Strategic Yield fund and then redeeming units of the Dynamic High Yield Bond fund, the Respondent could have switched between these two funds and RC and NC would not have incurred any DSC fees. Had he done so, however, the Respondent would not have earned commissions on the purchases of these funds.

2 Sale of the Harbour Growth and Income Fund 2 Months After Purchase

In October and November 2010, two and three months after the purchase of the Harbour Growth and Income Fund outlined above in subparagraph 1, the Respondent then redeemed these units. RC and NC incurred DSC fees of $933. The Respondent then used the proceeds from these redemptions to purchase units of two new funds. After taking into account the DSC fees incurred, RC and NC realized a profit of $237 on their investment in the Harbour Growth and Income Fund, whereas the Respondent earned total commissions of over $900 on the purchase, redemption and subsequent purchase.

3 Purchase and Sale of the Australian Banc Cap within 3 weeks

In January 2010, the Respondent purchased units of the CI Signature Diversified Yield. Eleven months later, units of this fund were redeemed, causing RC and NC to incur DSC fees of $549. The proceeds from this redemption were then used to purchase units of the Australian Banc Cap. The Respondent earned a commission of $220 on this purchase. Dr. RC testified that he recalled the Australian Banc Cap and that the Respondent advised him that it was a good investment yielding approximately 7%. Despite the fact that the Respondent advised Dr. RC that this was a good investment, 2/3 of this investment were then redeemed less than a month after the purchase, generating another commission to the Respondent of $97. RC and NC experienced a loss of over $600 in just over 3 weeks, whereas the Respondent earned commissions of over $300.

¶ 27 The IIROC Chart establishes the following regarding CW and LW's accounts: In the transactions identified by Noguera, between October 2009 and January 2011, the Respondent made purchases of $1,526,660, consisting primarily of DSC mutual funds and he redeemed or sold $1,552,838, again consisting of primarily of DSC mutual funds. The total value of CW and LW's' accounts at the beginning of October 2009 was $1,138,789. Accordingly, over a period of 15 months (and only for the transactions identified by Noguera), the purchases in the account were over 1.3 times the starting equity in the account. The redemptions in the account (again, only on the transactions identified by Noguera) resulted in $59,036 of DSC fees being incurred by CW and LW, while the Respondent earned commissions of $34,544 on subsequent purchases. The transactions listed in the IIROC Chart represent 53% (87 of 163) of the buy and sell transactions that took place in CW and LW's accounts over the relevant period of time.

¶ 28 It is IIROC's position that the following are examples of transactions that were outside the bounds of good business practice in CW and LW's accounts:

1 Transactions in the Dynamic Fund

In May and July 2010, the Respondent redeemed units of various mutual funds and purchased units of the Dynamic Strategic Yield Fund. CW and LW incurred DSC fees of over $7,500 on these redemptions. The Respondent had earned commissions on the initial purchases of these funds, and earned additional commissions of over $4,000 when the proceeds from these redemptions were reinvested into the Dynamic Strategic Yield Fund, which was purchased on a DSC basis. In addition, at the end of July 2010, CW and LW held over $81,000 in the Dynamic Money Market Fund. In October 2010, the Respondent redeemed units of the Dynamic Strategic Yield Fund and the Dynamic Money Market Fund. Although no DSC fees were incurred on the redemption of the Dynamic Strategic Yield Fund, over $3,500 in DSC fees were incurred on the

redemption of the Dynamic Money Market Fund. The proceeds from these redemptions were then used, in part, to purchase units of the Star Yield Managers Class Portfolio. The Respondent earned a commission of $1,836 on the purchase of this fund. The Star Yield Managers Class Portfolio is a fund of funds, one third of which consists of units of a Dynamic fund.

This sequence of transactions in the Dynamic Funds raise a number of concerns:

i. Instead of redeeming units of various funds to purchase the Dynamic Strategic Yield Fund, the Respondent could have recommended a switch from the Dynamic Money Market Fund and CW and LW would not have incurred any DSC fees. Had he done so however, the Respondent would not have earned commissions on the purchases of the Dynamic Strategic Yield Fund.

ii. The Respondent then redeemed units of the Dynamic Strategic Yield Fund just months after purchasing these units. Although no DSC fees were incurred, the DSC schedule was reset when the proceeds were used to purchase a new DSC fund.

iii. Instead of redeeming units of the Dynamic Strategic Yield Fund and the Dynamic Money Market Fund to then purchase units of the Star Yield Managers Class Portfolio, the Respondent could have invested directly by switching into the underlying Dynamic fund and CW and LW would not have incurred any DSC fees. Had he done so, however, the Respondent would not have earned commissions on the purchase Star Yield Managers Class Portfolio.

2 Transactions in the CI Funds

In December 2009, June 2010 and July 2010, the Respondent purchased units of the CI Signature Diversified Yield Fund in CW and LW's accounts. The Respondent earned a commission on each of these purchases. At the end of July 2010, CW and LW also held $50,000 in the CI Money Market Fund. In October and November 2010, the Respondent redeemed units of the CI Signature Diversified Yield Fund and the CI Money Market Fund. DSC fees of almost $1,700 were incurred on these redemptions. The proceeds from these redemptions were then used, in part, to purchase units of the Star Yield Managers Class Portfolio. The Star Yield Managers Class Portfolio also held an underlying investment in the CI Signature Diversified Yield Fund.

This sequence of transactions in the CI Funds raise a number of concerns:

i. Instead of redeeming units of various funds to purchase the CI Signature Diversified Fund, the Respondent could have recommended a switch from the CI Money Market Fund and CW and LW would not have incurred any DSC fees. Had he done so however, the Respondent would not have earned commissions on the purchases of the CI Signature Diversified Fund.

ii. The Respondent then redeemed units of the CI Signature Diversified Fund just months after purchasing these units. DSC fees were incurred and the DSC schedule was reset when the proceeds were used to purchase a new DSC fund.

iii. Instead of redeeming units of the Dynamic Strategic Yield Fund and the Dynamic Money Market Fund to then purchase units of the Star Yield Managers Class Portfolio, the Respondent could have simply remained invested directly in the CI Signature Diversified Fund. Had he done so, however, the Respondent would not have earned commissions on the purchase Star Yield Managers Class Portfolio.

¶ 29 In total across all accounts of the nine clients and only with respect to the transactions identified by Noguera, the Respondent's clients redeemed over $2.9 million in DSC mutual funds and these clients incurred DSC fees on these redemptions of $116,000. After the DSC fees on these transactions are taken into account, the clients realized a loss of $72,000 on these transactions while the Respondent earned commissions of

$69,000.

¶ 30 After carefully reviewing the IIROC Chart, the testimony of Noguera and the clients, DD and RC and reading the IIROC interviews of the Respondent, the Panel has decided that IIROC has successfully established the allegation that the Respondent's conduct was in breach of IIROC Dealer Member Rule 1300.1 (o). Our reasons are summarized as follows:

1. There may be good business reasons for purchasing a mutual fund on a DSC basis rather than a front load basis, and for redeeming a DSC mutual fund prior to its fee schedule running out. This was not disputed by IIROC. In his IIROC interviews, the Respondent tried to justify each of DSC fund purchases and replacements as a good investment decision, but this justification ignores the fact that there existed an alternative way of doing the same, or substantially the same transactions that would have been better for the client from the standpoint of the fees paid to achieve the investment result. It ignores the fact that DSC funds which the Respondent recommended as good investments were redeemed a short time later, that the replacement fund was often substantially the same from an investment standpoint and that the same result often could have been achieved by a switch within a fund family. When mutual funds are purchased on a DSC basis and then redeemed in a short period resulting in significant DSC fees, followed by purchases of new DSC funds thereby resetting the DSC schedule, and this happens repeatedly over a period of time resulting in a very high turnover in the accounts, when the investment justification for the transactions fails as outlined above and when such funds could have been purchased on a front load basis thus giving the clients the option of the fee basis and the opportunity to negotiate the commission, the result was that "unnecessary" fees were incurred by the clients and "undue" commissions were earned by the Respondent. It was the Respondent's obligation to look out for the best interests of the client. Instead he did the transactions in a manner that was to the clients' detriment from the standpoint of the fees paid and to his benefit in terns commissions earned.

2. Had the Respondent chosen to participate in the hearing, he likely would have taken the position, as he did in his IIROC interviews, that the Panel could not reach the conclusions set out in subparagraph 1 because the clients were aware of the DSC fees and consented thereto. Both clients who testified denied that this was the case. Neither the clients nor the Respondent were subject to cross-examination on this point, leaving the Panel in the position of having to choose between the clients' testimony and that of the Respondent as shown in the transcript of his IIROC interviews. Both clients, DD and RC, testified that they did not pay close attention to their statements and that they relied on and trusted the Respondent to make all investment decisions. It was apparent to the Panel that they were unsophisticated investors who did not have a good understanding of investment practices or terminology. However, based on the transcript of the IIROC interview of the Respondent and the testimony of the clients, the Panel has concluded that, if the Respondent discussed DSC fees with the clients, he did so only in a general way, and with respect to each transaction it is clear that the clients did not know that they were paying DSC fees and did not consent to them. In particular it was the clear, unequivocal and uncontroverted evidence of Dr. RC that he understood how DSC fees worked and he instructed the Respondent to avoid all transactions in which they would be incurred.

3. Having decided that the transactions in question resulted in "unnecessary" fees and "undue" commissions, the only remaining question is whether this amounted to being outside the bounds of good business practice. Since it was the Respondent's responsibility to look out for the best interest of his clients, whatever else "good business practice" may entail, at a minimum it must include putting the clients' interests before those of the representative. Therefore, it is the Panel's decision that transactions recommended by the Respondent which cause unnecessary fees to the clients and undue commissions to the Respondent, are outside the bounds of good business practice.

4. This conclusion is supported by the cases to which the Panel was referred by IIROC counsel even though two were settlement cases. In Fridgant (Re), [2000] I.D.A.C.D. No.27, Mr. Fridgant admitted that he effected 56 transactions in a client's account involving the sale and purchase of various mutual fund units on a DSC basis in order to generate excessive commissions and that this constituted business conduct or practice unbecoming or detrimental to the public interest, contrary to By-law 29.1. It is the Panel's opinion that, for the purposes of this case, the "practice unbecoming" standard in By-law 29.1 is substantially the same as the "good business practice" standard in Rule 1300.1(o). In total, over a 6 year period, the client incurred DSC fees of $59,032. His account declined in value by $44,467, from $125,500 to $81,032, although $32,212 was withdrawn from the account over that time.

5. Similarly, in Herd (Re), [2003] I.D.A.C.D. No 20, Mr. Herd admitted that he engaged in a trading strategy which resulted in excessive commissions. During a 4 year period, a client was charged $214,005 in commissions on a total of 252 trades. Herd earned commissions of over $50,000. The settlement agreement noted that the DSC trading strategy was clearly inappropriate and, while unprofitable to the client, was of substantial benefit to the Respondent.

> *The predominant use of DSC charges was clearly an inappropriate and unprofitable strategy to employ given the consistently high trading volume and turnover executed by the Respondent in Mr. A's account over several years. Mutual fund units purchased on a DSC basis are generally subject to a redemption charge to the client of between 3.5% to 6.5% if sold within the first year after being purchased and thereafter on a declining scale of redemption charges for each subsequent year that the units are held. Mutual funds purchased on a DSC basis are generally considered to be a long-term growth investment vehicle with an investment time horizon of 7 to 9 years. Consequently, the relentless pattern of high volume DSC purchases and corresponding quick-turnover sales (generally in under one year and most often in under 6 months) executed in Mr. A's account was not in his best interest.*
>
> *However, while unprofitable for Mr. A, the DSC strategy was of substantial benefit to the Respondent. This is because investments purchased on a DSC basis result in immediate commissions to firms and their employees of generally between 3% and 6%. Therefore, by performing high volume trading on a DSC basis in Mr. A's account the Respondent engaged in an aggressive trading strategy that put his own commission interests ahead of the interests of his client.*
>
> *This conclusion is further highlighted by the fact that the Respondent made little or no effort to make these purchases within existing mutual fund families. Switching within mutual fund families would have allowed the client to move his mutual fund units between funds at minimal or no cost. By selling DSC mutual fund units and purchasing further DSC mutual funds without taking advantage of same-family mutual fund switches, the Respondent generated increased commissions for himself and subjected Client A to unnecessary redemption fees*

4. <u>SECOND ALLEGATION- CONDUCT CONTRARY TO RULE 29.1</u>

¶ 31 The second allegation against the Respondent is:

> Between October and December 2010, the Respondent engaged in inappropriate personal financial dealings with two clients by borrowing from them, contrary to IIROC Dealer Member Rule 29.1.

¶ 32 The evidence clearly supports the conclusion that the Respondent borrowed $30,000 from his clients, CW and LW in October 2010 and $15,000 from his client RC in December 2010, in exchange for unsecured promissory notes, that he did so by advising them to redeem investments, that he did so without the knowledge or consent of HSBC, that he failed to repay the loans, and that HSBC repaid the principle but not the interest on the loans. CW and LW confirmed the said circumstances of their loan in a statement to IIROC filed as part of

Exhibit 3. RC testified confirming the said circumstances of their loan. The Respondent admitted the foregoing in his IIROC interview and again before the Panel on September 23. The promissory notes and cheques from HSBC to repay the clients are part of the documentary evidence contained in Exhibits 2 and 3. The Respondent's branch manager, Cote testified that HSBC did not know of the loans until January 2011, well after the loans were made.

¶ 33 Although terms such as "business conduct or practice unbecoming" and "high standards of ethics" in Rule 29.1 are not clearly defined in the Dealer Member Rules, these are all concepts that fall squarely within the Hearing Panel's specialized knowledge. At the very least basic honesty is required. See Re Peroni, [2006] I.D.A.C.D. No. 27 and cases referred to therein.

¶ 34 Also, the public's view of the investment industry and the impact of the misconduct on the industry's reputation must be considered in determining whether the conduct in question constitutes conduct unbecoming. People in the industry handle other people's money and therefore must be held to a very high standard of financial probity; if conduct could even appear to cast doubt on that probity, then it could be detrimental to the public interest and constitute conduct unbecoming. See Re Little, [2007] I.D.A.C.D. No. 24.

¶ 35 The Conduct and Practices Handbook Course (CPH), contained in the IIROC Book of Authorities and referred to in the IIROC Written Submissions on Liability, sets out the Canadian Securities Industry Standards of Conduct for registrants. Standard C (Professionalism) provides that registrants should avoid personal financial dealings with clients, including borrowing money from them, noting that personal financial dealings can lead to a real or potential conflict of interest. As such they must be disclosed to and approved by the Dealer Member so that this conflict can be monitored. The CPH also sets out specific examples of inappropriate conduct one of which is strikingly similar to the conduct in this case. The CPH notes that borrowing from clients "creates a fundamental conflict of interest". Though there is not an absolute prohibition against borrowing from a client, "any such dealing should not be entered into without the knowledge and approval of the firm and the firm should ensure that the client's interests are fully protected". Dealer Member Rule 1500.1(a) requires all registrants to read the CPH and all updates thereto.

¶ 36 The IIROC Written submissions on Liability also referred the Panel to several cases in which borrowing from a client without the knowledge, consent or authorization of the Dealer Member constituted conduct unbecoming and contrary to Dealer Member Rule 29.1. See Re Evans [2007] I.D.A.C.D No. 51, Re Dass, 2009 IIROC 22 and Re Hackett, 2010 IIROC 5.

¶ 37 Having regard to the CPH and the cases referred to, it is the decision of the Panel that the conduct of the Respondent in borrowing from his clients as outlined above, constitutes conduct unbecoming contrary to Dealer Member Rule 29.1.

¶ 38 RPP 13.5 provides that upon making the finding of the violations as alleged in the NOH, the Panel may immediately hear submissions on the appropriate penalty and may impose such penalty, as it deems appropriate, pursuant to Dealer Member Rule 20.33 and 20.24. In this case, the Panel found the violations as alleged at the conclusion of the hearing on September 26, but, with the concurrence of IIROC counsel, did not immediately proceed with hearing submissions on penalty in order to provide the Respondent with the opportunity to make submissions on penalty. IIROC counsel agreed that, upon the Panel issuing this decision and reasons, IIROC would set a date for hearing penalty submissions and would provide a copy of this decision and reasons to the Respondent.

Dated this 16th day of October 2014

Frederick H. Webber- Chair

Hugh McNabney- Industry Member

Ron Smith- Industry Member

FRESH AS AMENDED

NOTICE OF HEARING

TAKE NOTICE that pursuant to Part 10 of Dealer Member Rule 20 and Section 1.9 of Schedule C.1 to Transition Rule No.1 of the Investment Industry Regulatory Organization of Canada ("IIROC"), a set date hearing will be held before a hearing panel of IIROC ("Hearing Panel") on Wednesday, October 31, 2012 at IIROC British Columbia Room, 121 King Street West, 20th Floor, Toronto, Ontario at 10am, or as soon thereafter as the hearing can be heard.

TAKE FURTHER NOTICE that pursuant to Rule 6.2 of IIROC's Dealer Member Rules of Practice and Procedure ("Rules of Practice and Procedure"), that the hearing shall be designated on the:

☒ The Standard Track

☐ The Complex Track

THE PURPOSE OF THE HEARING is to determine whether Paul Christopher Darrigo ("Darrigo" or the "Respondent") has committed the following contraventions that are alleged by the staff of IIROC ("Staff"):

1. Between October 2009 and January 2011, Darrigo effected mutual fund transactions that triggered unnecessary deferred sales charges to his clients and undue commissions to himself, contrary to IIROC Dealer Member 1300.1(o).

2. Between October and December 2010, Darrigo engaged in inappropriate personal financial dealings with two clients by borrowing from them, contrary to IIROC Dealer Member Rule 29.1.

PARTICULARS

TAKE FURTHER NOTICE that the following is a summary of the facts alleged and to be relied upon by Staff at the hearing:

Overview

1. Over a period of fifteen months, Darrigo solicited buys and sells of mutual funds on a deferred sale charge (DSC) basis to the detriment of his clients, some of whom were elderly clients who relied on Darrigo for investment recommendations. Darrigo received significant commissions from the buy transactions while causing the clients to incur significant DSCs as a result of the corresponding sales transactions, in some cases up to 6% of the sales proceeds. By repeatedly selling mutual funds and then purchasing similar funds, Darrigo generated undue commissions by subjecting his clients to unnecessary redemption fees and caused the penalty period on the new fund purchases to re-set. Darrigo also engaged in inappropriate personal financial dealing with two of the elderly clients by borrowing funds from them without the knowledge or approval or his firm.

2. Mutual fund units purchased on a DSC basis are generally subject to a declining scale of redemption fees. Mutual funds purchased on a DSC basis are generally considered to be a long-term investment vehicle. Consequently, the quick turnovers of mutual funds purchased on a DSC basis facilitated by Darrigo were not in the clients' best interest.

Darrigo's Registration History

3. Darrigo first became a registered representative in 1991. His registration history is as follow:

Name of Business or Employment	From	To
Hampton Securities	2011/04	2011/08
HSBC Securities (Canada) Inc.	2009/06	2011/01
TD Waterhouse Canada Inc.	2005/06	2009/06
Scotia Capital Inc.	2001/03	2005/06
Merrill Lynch Canada Inc.	1997/11	2001/03
BMO Nesbitt Burns Inc. (and its predecessor firms)	1991/09	1997/11

4. On June 1, 2008, Darrigo became a regulated person of IIROC.

5. Following an internal investigation by HSBC Securities (Canada) Inc. (HSBC), Darrigo's employment with HSBC was terminated with cause on January 26, 2011 for engaging personal financial dealings with clients without HSBC's knowledge or approval.

6. Darrigo ceased to be a registrant of IIROC following his departure from Hampton Securities in August 2011.

Client C

7. Client C is a retired medical doctor in his eighties. He was a long-time client of Darrigo, investing with him prior to Darrigo's employment at HSBC. C paid little attention to his investment accounts and relied on Darrigo for investment recommendations. He almost always accepted the recommendations of Darrigo with little question or input.

8. In August 2009, C transferred his investment accounts from TD Waterhouse to HSBC with holdings having a market value of approximately $215,000. At that time, 80% of C's holdings were in mutual funds.

9. Throughout 2010, Darrigo solicited purchases and sales of mutual funds, some of which have similar mandates, in C's accounts. Some of the newly purchased mutual funds were held for less than a year. The proceeds from the sale transactions totaled approximately $175,000, which amounts to approximately 80% of the market value of C's accounts at beginning of the relevant period. These sales transactions triggered over $7,000 in DSCs. C was not aware that DSCs were incurred by these transactions.

10. In or around December 2010, Darrigo approached C to borrow funds, and C loaned him $15,000. This loan was made without the knowledge or approval of HSBC. To fund this loan, C authorized Darrigo to liquidate part of his holdings, which triggered $588 of DSC. C however was not made aware which fund was liquidated, and was not aware of the DSC at the time.

11. Subsequent to Darrigo's departure from HSBC, HSBC repaid C the principal of the loan. C was not reimbursed for the DSC incurred.

Client Mr. & Mrs. W

12. Mr. & Mrs. W are a retired couple in their late sixties. They became Darrigo's clients prior to his employment at HSBC, and relied on Darrigo for investment recommendations. They opened four accounts with Darrigo at HSBC and transferred approximately $1.6 million worth of investments into their accounts.

13. Between October 2009 and December 2010, Darrigo solicited purchases and sales of mutual funds, some of which have similar mandates, in the Ws' accounts. Some of the newly purchased mutual funds were held for less than a year. The proceeds from the sales transactions totaled approximately $1,300,000, which amounted to over 80% of the market value of the Ws' accounts at the beginning of the relevant period. These sales transactions triggered over $54,000 in DSCs. The Ws were not aware that DSCs were incurred by these transactions.

14. In or around October 2010, Darrigo approached Mr. W to borrow funds, and Mr. W loaned him $30,000. This loan was made without the knowledge or approval of HSBC. Darrigo approached the Ws again in December, 2010 for another loan of $10,000, and the Ws declined.

15. HSBC discovered the loan when Darrigo's branch manager contacted Mr. W regarding another matter, and launched an investigation into Darrigo's conduct. Subsequent to Darrigo's departure from HSBC, HSBC repaid the Ws the principal of the loan. The Ws were not reimbursed the DSC incurred.

Client D

16. Client D is a retiree in his mid-sixties. He continues to work part time since his retirement to supplement his modest income. He commenced investing with Darrigo when Darrigo was employed by TD Waterhouse Canada Inc. D has limited knowledge about investing and relied on Darrigo for investment decisions.

17. In or around June 2009, Darrigo opened accounts for D at HSBC and transferred D's holding, worth

approximately $330,000 at the time, from TD Waterhouse Canada Inc.

18. Between October 2009 and January 2011, Darrigo solicited purchases and sales of mutual funds, some of which have similar mandates, in D's accounts. Some of the newly purchased mutual funds were held for less than a year. The proceeds from the sale transactions totaled approximately $380,000, which amounts to more than the full market value of D's account at the beginning of the relevant period. These sales transactions triggered over $17,000 in DSCs. D was not aware that DSCs were incurred by these transactions.

DSC Incurred by Other Clients

19. In addition to the clients noted above, between October 2009 and December 2010, Darrigo solicited purchases and sales of mutual funds of a similar mandate in the accounts of at least seven other clients. The sale transactions triggered significant DSCs, amounting up to 6% of the transaction proceeds. Some of the newly purchased mutual funds were held for less than a year. Many of these clients were not aware that DSCs were incurred in their accounts. By selling the DSC-based mutual funds and then purchasing similar funds, Darrigo subjected his clients, including the clients referred to in previous sections, to unnecessary redemption fees and caused the penalty period of these mutual funds holding to re-set.

20. However, while unprofitable for his clients, these mutual fund transactions were of substantial benefit to Darrigo as a result of the commissions received from the mutual fund companies for the purchase transactions. In soliciting early redemption and repurchasing of mutual funds, Darrigo engaged in a trading strategy that put his own interests ahead of the interests of his clients.

21. As a result of purchases made in the accounts of the aforementioned client that were not in the best interest of clients, Darrigo received over $60,000 in commissions during the relevant period.

GENERAL PROCEDURAL MATTERS

TAKE FURTHER NOTICE that the hearing and related proceedings shall be subject to the Rules of Practice and Procedure.

TAKE FURTHER NOTICE that pursuant to Rule 13.1 of the Rules of Practice and Procedure, the Respondent is entitled to attend and be heard, be represented by counsel or an agent, call, examine and cross-examine witnesses, and make submissions to the Hearing Panel at the hearing.

RESPONSE TO NOTICE OF HEARING

TAKE FURTHER NOTICE that the Respondent must serve upon the Staff of IIROC a Response to the Notice of Hearing in accordance with Rule 7 of the Rules of Practice and Procedure within twenty (20) days (for a Standard Track disciplinary proceeding) or within thirty (30) days (for a Complex Track disciplinary proceeding) from the effective date of service of the Notice of Hearing.

FAILURE TO RESPOND OR ATTEND HEARING

TAKE FURTHER NOTICE that if the Respondent fails to serve a Response or attend the hearing, the Hearing Panel may, pursuant to Rules 7.2 and 13.5 of the Rules of Practice and Procedure:

(a) proceed with the hearing as set out in the Notice of Hearing, without further notice to the Respondent;

(b) accept as proven the facts and contraventions alleged by Staff in the Notice of Hearing; and

(c) order penalties and costs against the Respondent pursuant to Dealer Member Rules 20.33, 20.34 and 20.49.

PENALTIES & COSTS

TAKE FURTHER NOTICE that if the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by Staff in the Notice of Hearing, the Hearing Panel may, pursuant to Dealer Member Rules 20.33 and 20.34, impose any one or more of the following penalties:

Where the Respondent is/was an Approved Person:

(a) a reprimand;

(b) a fine not exceeding the greater of:

(i) $1,000,000 per contravention; and

(ii) an amount equal to three times the profit made or loss avoided by such Approved Person by reason of the contravention.

(c) suspension of approval for any period of time and upon any conditions or terms;

(d) terms and conditions of continued approval;

(e) prohibition of approval in any capacity for any period of time;

(f) termination of the rights and privileges of approval;

(g) revocation of approval;

(h) a permanent bar from approval with the IIROC; or

(i) any other fit remedy or penalty.

Where the Respondent is/was a Dealer Member:

(a) a reprimand;

(b) a fine not exceeding the greater of:

(i) $5,000,000 per contravention; and

(ii) an amount equal to three times the profit made or loss avoided by the Dealer Member by reason of the contravention;

(c) suspension of the rights and privileges of the Dealer Member (and such suspension may include a direction to the Dealer Member to cease dealing with the public) for any period of time and upon any conditions or terms;

(d) terms and conditions of continued Membership;

(e) termination of the rights and privileges of Membership;

(f) expulsion of the Dealer Member from membership in the IIROC; or

(g) any other fit remedy or penalty.

TAKE FURTHER NOTICE that if the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by the Staff in the Notice of Hearing, the Hearing Panel may pursuant to Dealer Member Rule 20.49 assess and order any investigation and prosecution costs determined to be appropriate and reasonable in the circumstances.

AMENDED at the City of Toronto, this 20th day of March 2014.

"ELSA RENZELLA"

VICE-PRESIDENT, ENFORCEMENT

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

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