

IN THE MATTER OF:

**THE RULES OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF
CANADA**

AND

ÉLIZABETH ST-JAMES

NOTICE OF HEARING

An initial appearance (“Initial Appearance”) will be held before a hearing panel (“Hearing Panel”) of the Investment Industry Regulatory Organization of Canada (“IIROC”) pursuant to sections 8203 and 8205 of the Enforcement, Examination and Approval Rules of IIROC in this matter. The purpose of the Initial Appearance is to schedule a hearing (“Hearing”).

The Initial Appearance will be held on: July 5, 2018, at 9:30 a.m.

The Initial Appearance will be held at: IIROC - Salle Carmen Crépin
525, avenue Viger Ouest
Suite 601
Montréal, Québec

The Respondent must serve a Response (“Response”) to this Notice of Hearing and the Statement of Allegations dated May 8, 2018 (“Statement of Allegations”) in accordance with Section 8415 within 30 days from the effective date of service of this Notice of Hearing.

If the Respondent does not file a Response in accordance with Section 8415(1), the Initial Appearance may be immediately converted to a Hearing.

If the Respondent files a Response in accordance with Section 8415(1), the Initial Appearance will be followed immediately by an initial prehearing conference. In preparation for the prehearing conference, the Respondent must serve and file a prehearing conference form in accordance with Section 8416(5).

The purpose of the Hearing will be to determine whether the Respondent has committed the contravention alleged by Staff of IIROC (“Staff”), contained in the Statement of Allegations.

Pursuant to Section 8409, the Hearing will be conducted as a[n]:

- oral hearing
- electronic hearing
- written hearing

The Initial Appearance, the Hearing and all related proceedings will be subject to the Rules of Practice and Procedure as set out in Section 8400.

Pursuant to the Rules of Practice and Procedure, the Respondent is entitled to attend the Hearing and to be heard, to be represented by counsel or by an agent, to call, examine and cross-examine witnesses, and to make submissions to the Hearing Panel at the Hearing.

If the Respondent fails to serve a Response, the Hearing Panel may, pursuant to Section 8415(4):

- (a) proceed with the hearing as set out in this Notice of Hearing, without further notice to the Respondent;
- (b) accept as proven the facts and contraventions alleged by Staff of IIROC in the Statement of Allegations; and
- (c) order penalties and costs against the Respondent pursuant to Sections 8209, 8210 and 8214 and/or Rule 20.33 and 20.34 of IIROC's Dealer Member Rules and/or Rule 10.5 of the Universal Market Integrity Rules.

If the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by Staff in the Statement of Allegations, the Hearing Panel may, pursuant to Sections 8209 and 8210 and/or Rules 20.33 and 20.34 of IIROC's Dealer Member Rules and/or Rule 10.5 of the Universal Market Integrity Rules, impose one or more of the following penalties:

Where the Respondent is/was a Regulated Person who is not a Dealer Member:

- (a) a reprimand;
- (b) disgorgement of any amount obtained, including any loss avoided, directly or indirectly, as a result of the contravention;
- (c) 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 the person, directly or indirectly, as a result of the contravention.

- (d) suspension of the person's approval or any right or privilege associated with such approval, including access to a Marketplace, for any period of time and on any terms and conditions;
- (e) imposition of any terms or conditions on the person's continued approval or continued access to a Marketplace;
- (f) prohibition of approval in any capacity, for any period of time, including access to a Marketplace;
- (g) revocation of approval;
- (h) a permanent bar to approval in any capacity or to access to a Marketplace;
- (i) permanent bar to employment in any capacity by a Regulated Person, and
- (j) any sanction determined to be appropriate under the circumstances.

Where the Respondent is/was a Dealer Member:

- (a) a reprimand;
- (b) disgorgement of any amount obtained, including any loss avoided, directly or indirectly, as a result of the contravention;
- (c) 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;
- (d) suspension of the membership or of the membership rights and privileges of the Regulated Firm, including a prohibition from dealing with clients for any period of time and on any terms and conditions;
- (e) imposition of any terms and conditions on the Dealer Member's continued membership, including on access to a Marketplace;
- (f) expulsion from membership and termination of the rights and privileges of membership, including access to a Marketplace;
- (g) a permanent bar to membership in IIROC;

- (h) appointment of a monitor; and
- (i) any sanction determined to be appropriate under the circumstances.

If the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by the Staff in the Statement of Allegations, the Hearing Panel may assess and order any investigation and prosecution costs determined to be appropriate and reasonable in the circumstances pursuant to Section 8214 and/or Rule 20.49 of IIROC's Dealer Member Rules and/or Rule 10.7 of the Universal Market Integrity Rules.

DATED this May 8, 2018.

"National Hearing Coordinator"

NATIONAL HEARING COORDINATOR
Investment Industry
Regulatory Organization of Canada
Suite 2000, 121 King Street West
Toronto, Ontario, M5H 3T9

IN THE MATTER OF:

**THE RULES OF THE INVESTMENT INDUSTRY
REGULATORY ORGANIZATION OF CANADA**

AND

ÉLIZABETH ST-JAMES

STATEMENT OF ALLEGATIONS

Further to a Notice of Hearing dated May 8, 2018, Staff of the Investment Industry Regulatory Organization of Canada make the following allegations:

PART I - CONTRAVENTIONS ALLEGED

Count 1

From August 2009 to September 2012 and from December 2012 to July 2013, the Respondent failed to adequately supervise activities in a customer account by a registered representative under her responsibility, in accordance with supervision conditions imposed on this registered representative by the Approval Committee of the Quebec District Council, contrary to Rule 38.4 (a) and Rule 2500 of the IIROC Dealer Member Rules; and

Count 2

From July 2013 to March 2014, the Respondent failed to adequately supervise a registered representative under her responsibility, in accordance with supervision conditions imposed on this registered representative by the Approval Committee of the Quebec District Council, contrary to Rule 38.4 (a) and Rule 2500 of the IIROC Dealer Member Rules.

PART II - PARTICULARS

A. Summary

1. At the material times, the Respondent was employed as a branch manager at Mackie Research Capital Corporation (Mackie);
2. From August 2009 to September 2012 and from December 2012 to July 2013, the Respondent failed to adequately supervise the activities effected in a customer RRSP account by Samuel Kloda (Kloda), a registered representative under her responsibility who was subject to close supervision conditions;
3. From July 2013 to March 2014, the Respondent failed to adequately supervise the activities of Daniel Dubois (Dubois) a registered representative under her responsibility who was subject to close supervision conditions at his place of work (*on site*), which notably implied that the close supervision had to be performed at the representative's place of work by a Supervisor of Approved Persons who is approved as such by IIROC.

B. Approval History

4. The Respondent has been employed at Mackie's Montréal branch since February 2003;
5. The Respondent has been approved as a registered representative with IIROC, as well as its predecessor the Investment Dealers Association of Canada (IDA), since November 2005;
6. The Respondent worked in a supervisory role from September 2008 to March 2014.

C. Background

The representative Kloda

7. Kloda was employed as a registered representative at Mackie from July 2009 to November 2016;

8. On July 22, 2009, the Approval Committee of the Québec District Council approved the reactivation and approval application of Samuel Kloda, a registered representative at Mackie, with the condition of close supervision, which was imposed during his previous employment;
9. The condition of close supervision was imposed on the representative Kloda from July 2009 until November 2016, when he left Mackie's employ.

Regulatory contraventions

10. Following a hearing held on November 14, 2016 (*2016 IIROC 50*), a Hearing Panel of IIROC accepted a settlement agreement between Staff of IIROC and the representative Kloda, in which the latter recognized his liability regarding, notably:
 - a) investments that were unsuitable for his client;
 - b) failure to respect the Know-Your-Client rule with regard to this same client; and
 - c) excessive trading for the purpose of generating additional commissions in the client's account.
11. The material facts in this matter, presented in the decision on settlement, are as follows:

Unsuitable Investments

- a) Between August 3, 2009 and December 16, 2014, Kloda failed to use due diligence to ensure that his recommendations were suitable for his client when he practiced an aggressive investment strategy geared to short-term gains in her account;
- b) The client opened an RRSP account with the representative Kloda at Mackie on August 3, 2009. At the time of opening the account, she was 58 years old, divorced and retired;

- c) According to the New Account Application Form, the client had total assets valued at \$200,000 and an annual income of \$30,000 and her risk tolerance was defined as 50% "low" and 50% "high";
- d) On August 3, 2009, the client's account contained two income funds, which represented 45% of the portfolio's value.
- e) On August 19, 2009, Kloda sold these two funds and replaced them with high-risk securities;
- f) On November 2, 2009, just three months after the account was opened, Kloda updated his client's New Account Application Form, increasing the risk tolerance parameters from 50% to 100% "high";
- g) After this update, Kloda continued to trade other high-risk stocks and funds in the client's account;
- h) In total, between August 2009 and April 30, 2013, there were 42 short-term or high-risk trades made in the client's account;
- i) Between August 2009 and August 2013, the client's account was composed entirely (100%) of high-risk securities;
- j) Given the client's profile, it is clear that the concentration of high-risk shares was not suitable for her;
- k) The unsuitable trades effected by Kloda in his client's account entailed losses representing approximately 62% of the portfolio value;
- l) During this same period, Kloda earned \$11,742 in commissions on these trades.

Failure to respect the Know-Your-Client rule

- m) On September 30, 2009, Kloda contacted the client about updating her account information form;

- n) The account information change form was signed by the client on November 2, 2009;
- o) The update changed the client's stated risk tolerance to "100% high";
- p) The update did not at all reflect the client's real circumstances, and was only done to match the client's account information form to her portfolio status at the time;
- q) The investment objectives and risk tolerance parameters stated on the form were too risky and did not coincide with the client's true financial circumstances, or with her investment knowledge, investment objectives and risk tolerance;
- r) Kloda failed in his duty of KYC when he altered the risk tolerance parameters in this manner.

Excessive trading

- s) During the period of January 1 to December 31, 2011, Kloda also engaged in excessive trading in his client's account for the purpose of generating additional commissions;
- t) From December 31, 2010 to December 31, 2011, Kloda executed 34 trades in the client's account;
- u) During this period, the annual asset turnover rate in the client's account was 10.9, which corresponds to the total value of the positions acquired divided by the average value of the account; it indicates an extremely high trading volume;
- v) Between December 31, 2010 and December 31, 2011, the total value of the client's account dropped by \$16,244 (a 41% loss);
- w) This drop included \$4,573 in commissions on an average account value of \$29,326, namely 16%.

The representative Dubois

12. Daniel Dubois was employed as a registered representative at Mackie from November 2011 to March 2014;
13. On November 29, 2011, the Approval Committee of the Québec District Council rendered a decision to impose close supervision conditions at the place of work (*on site*) upon reactivation and approval of Daniel Dubois as a registered representative with Mackie. It was decided that Dubois would be required, notably, to work "*from a place of work that was approved by IIROC as having a Supervisor of Approved Persons on site,*" which implied that the close supervision must be exercised at the representative's place of work (*on site*) by a Supervisor of Approved Persons approved as such by IIROC;
14. This condition of close supervision at the place of work (*on site*) was imposed on Dubois from November 2011 to March 2014.

D. Contraventions Alleged

Failure to supervise the representative Kloda adequately

15. During the material periods, namely from August 2009 to September 2012 and from December 2012 to July 2013, supervision of the representative Kloda was effected by the Respondent;
16. As branch manager, the Respondent had certain obligations, in particular, the approval of new account applications and customer record updates, and the daily and monthly supervision of operations to detect problems, notably in terms of suitability, concentration and excessive trading;
17. In addition to general supervision obligations, and considering the close supervision conditions imposed on Kloda, the Respondent had an obligation to exercise even more rigorous supervision of the representative's trading activities on both a daily and monthly basis;

18. During the material period, there were numerous red flags regarding Kloda's client's account, for which the Respondent failed to take appropriate action in order to exercise adequate control, notably:
- a) On August 3, 2009, when the RRSP account was opened, the client was retired and vulnerable, possessing little or no knowledge of investing;
 - b) On August 19, 2009, namely less than 30 days after the account was opened, the representative effected transactions that did not correspond to the client's investor profile, by purchasing high-risk securities;
 - c) On November 2, 2009, just three months after the account was opened, the representative Kloda updated his client's New Account Application form, increasing the risk tolerance in the client's account from 50% to 100% "high";
 - d) During the period of December 31, 2010 to December 31, 2011, Kloda also engaged in excessive trading in this client's account;
 - e) In September 2011, Kloda effected 15 transactions in his client's account, generating over \$2,000 in gross commissions;
 - f) During the period of December 31, 2010 to December 31, 2011, the annual asset turnover rate in the client's account was 10.9;
 - g) Between August 2009 and August 2013, the client's account was composed entirely (100%) of high-risk securities;
 - h) Given the client's profile, it is clear that the concentration of high-risk stocks was not suitable for her;
 - i) The unsuitability of the trades effected by Kloda in his client's account resulted in losses representing approximately 62% of the portfolio value;
 - j) During this same period, Kloda earned \$11,742 in commissions on these trades.

- k) The trades reflected an aggressive and speculative trading strategy that led to substantial losses considering the initial value of the account;
 - l) The considerable volume of high-risk securities trades in the account of a client who was retired.
19. During the material period, and despite the existence of these many “red flags”, the Respondent:
- a) Failed to use due diligence to ensure that the buy orders for high-risk securities executed on August 19, 2009 reflected the client’s financial circumstances, her knowledge of investing, her investment objectives and her risk tolerance;
 - b) Failed to use due diligence to ensure that the investment objectives and risk tolerance parameters stated in the customer profile after it was updated on November 2, 2009, were consistent with the client’s true investor profile;
 - c) Did not question the inappropriate nature of the numerous account transactions, nor the suitability of the trades;
 - d) Did not question the unjustified proliferation of transactions, which resulted in an extremely high annual asset turnover rate of 10.9 in 2011;
 - e) Did not question, in accordance with Mackie policy, the more than \$1500 in monthly commissions billed to the client in September 2011;
 - f) Incorrectly assessed the risks to the client and allowed the representative Kloda to apply a very aggressive strategy that was unsuitable for the client and which led to substantial losses considering the initial value of the account.
20. For the material period, there is no written trail demonstrating that the Respondent did any checking in connection with the activities of the representative Kloda in the client’s account;

21. For the material period, by failing to use due diligence and not adequately questioning the activities of the representative Kloda in the client's account, considering the above-mentioned "red flags", the Respondent did not truly carry out the supervisory responsibilities that were incumbent on her as the branch manager.

Failure to adequately supervise the representative Dubois

22. During the material period, namely from July 2013 to March 2014, supervision of the representative Dubois was effected by the Respondent;
23. As branch manager, the Respondent had certain obligations, in particular, the approval of new account applications and customer record updates, and the daily and monthly supervision of operations to detect problems, notably in terms of suitability, concentration and excessive trading;
24. In addition to general supervision obligations, and considering the close supervision conditions imposed on the representative Dubois, the Respondent had an obligation to exercise even more rigorous supervision of the representative's activities at his physical place of work (*on site*);
25. The Respondent has stated to Staff of IIROC that she did not conduct a daily and monthly review of the activities of the representative Dubois in the accounts of his clients from his physical place of work (*on site*);
26. According to the Respondent, she effected sufficient supervision of the representative's activities just by basing herself on a monthly audit of transactions that was conducted by a Mackie staff person based in Toronto, and not at the physical place of work (*on site*). This audit, as described by the Respondent, did not meet the close supervision conditions imposed on the representative Dubois, the objective of which was that the supervision be effected from the latter's physical place of work (*on site*);
27. Furthermore, at the end of each month, the Respondent also had an obligation to fill out a monthly supervision report which attested that she had effected close supervision of the representative Dubois from the latter's physical place of work (*on site*). The report had to be filled out and signed by the Respondent and then sent to IIROC's Registration Department;

28. The Respondent has stated to Staff of IIROC that she personally filled out and signed the reports during the material period. For this report to be filled out in accordance with the regulatory requirements, the Respondent should have personally reviewed the representative Dubois' activities in his clients' accounts from the representative's physical place of work (*on site*) on a daily and monthly basis. The Respondent therefore signed the monthly supervision reports required by IIROC without really having effected the close supervision of the representative Dubois;
29. For the material period, there is no written note or trail demonstrating that the Respondent did any checking in connection with the activities of the representative Dubois from his physical place of work;

DATED at Montréal, Québec, on May 8, 2018.