

IN THE MATTER OF:

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

AND

M PARTNERS INC. AND STEVEN ISENBERG

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Investment Industry Regulatory Organization of Canada (“IIROC”) will issue a Notice of Application to announce that it will hold a settlement hearing to consider whether, pursuant to Section 8215 of the Consolidated Enforcement, Examination and Approval Rules of IIROC, a hearing panel (“Hearing Panel”) should accept the settlement agreement (“Settlement Agreement”) entered into between the staff of IIROC (“Staff”) and M Partners Inc. and Steven Isenberg (together, the “Respondents”).

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff and the Respondents jointly recommend that the Hearing Panel accept this Settlement Agreement in accordance with the terms and conditions set out below.

PART III – AGREED FACTS

3. For the purposes of this Settlement Agreement, the Respondents agree with the facts as set out in Part III of this Settlement Agreement.

Overview

4. M Partners failed to comply with its trading supervision obligations and satisfy its audit trail requirements. During the relevant period, there were numerous instances where M Partners failed to properly complete trade tickets in accordance with regulatory requirements and its internal policies and procedures (the “Audit Trail Deficiencies”). This was contrary to M Partners’ regulatory obligations and created uncertainty as to client instructions and the ownership of securities.
5. Isenberg, as UDP of M Partners, failed to supervise M Partners’ compliance with its trading supervision and audit trail obligations, despite a prior disciplinary proceeding on these issues and reports from M Partners’ former CCO.
6. There were multiple Audit Trail Deficiencies for trades entered by Isenberg himself which is inconsistent with the promotion of compliance by the UDP.

The Respondents

7. M Partners is a registered IIROC Dealer Member and a member and subscriber to IIROC-regulated marketplaces. As such, M Partners is a Participant under the Universal Market Integrity Rules (“UMIR”).
8. M Partners is a full service brokerage, primarily engaged in corporate finance activities. M Partners currently employs 13 IIROC registrants.
9. Isenberg is the UDP for M Partners and has been registered in that capacity since 2005. Isenberg is also M Partners’ CEO. Isenberg enters trades for his accounts as well as the accounts of his clients.
10. In February 2015, an IIROC Hearing Panel accepted a Settlement Agreement between M Partners and Staff (the “First Settlement Agreement”). In the First Settlement Agreement M Partners admitted that during November 2012 it had Audit Trail Deficiencies and improper order handling practices. Isenberg executed the First Settlement Agreement on behalf of M Partners.

11. Pursuant to the First Settlement Agreement, M Partners paid a fine of \$40,000 and represented that it had taken remedial steps to rectify the deficiencies. The following facts demonstrate that the remediation was inadequate.

Audit Trail Requirements

12. At the relevant time, M Partners did not use electronic trade ticketing. Rather, M Partners' trade desk personnel (the "Trade Desk") were required to complete and time-stamp manual trade tickets ("Tickets") for all orders. Isenberg or one of two other employees who placed trades at M Partners would then enter trades using the information provided in the Ticket.
13. For every trade, M Partners was required to record the specific information set out in UMIR 10.11 and Part 11 of the Trading Rules (National Instrument 23-101). The requisite information included, among other things:
 - a) the order identifier
 - b) the type, issuer, class, series and symbol of the security;
 - c) the face amount or unit price;
 - d) the number of securities;
 - e) the date and time the order is first originated or received;
 - f) the client account number or client identifier; and
 - g) any client instructions or consents, respecting the handling or trading of the order.
14. M Partners' internal policies and procedures adopted these requirements and amplified them. The policies stated that:
 - a) a Ticket was required for every trade recording, among other things, quantity, price, security/symbol, and account number/name;
 - b) all Tickets were required to be time-stamped with the date and time the order was received;
 - c) changes to the form of an order ("CFO"), such as to price or quantity, were required to be properly recorded on the Ticket and time-stamped to reflect when the changed instructions were received;

- d) filled Tickets were retained for seven years and unfilled Tickets were retained for five years.

Audit Trail Deficiencies

(i) 2015 Audit Trail Deficiencies

- 15. Subsequent to entering into the First Settlement Agreement, IIROC Staff identified Audit Trail Deficiencies in February and March 2015. Over a sample period of six trading days, there were a significant number trading events with one or more Audit Trail Deficiencies, including:
 - a) missing Tickets where M Partners failed to produce a Ticket to correspond to an order placed by its Trade Desk;
 - b) Tickets without a time-stamp to indicate the date and time the order was received;
 - c) Tickets with a time-stamp that did not correspond to the actual trading;
 - d) Tickets that did not identify client name and/or account;
 - e) Tickets where the number of units and price did not correspond to the order(s) entered;
 - f) Tickets where the fill information intended to record the number of shares purchased or sold and price did not correspond to the actual transaction(s);
 - g) Tickets for trades subject to CFO, where the new instructions were not time-stamped or properly recorded; and
 - h) Tickets where required information was illegible and/or missing.
- 16. Tickets were also incomplete. For example, on February 2, 2015, M Partners entered an order to sell 155,000 shares of Highbury Projects (“HPI”) at \$0.34. However, the Ticket refers to 155,500 shares. The order expired at the end of the day unfilled. The following day an order was entered at 9:03 to sell 155,000 shares at \$0.34. At 10:19, the order was changed to \$0.335 and at 12:56, it was changed again to \$0.325 and 120,000 shares were sold at that price. The final change in price is not indicated on the Ticket or time-stamped.

17. By way of further example, a Ticket stamped February 27, 2015 reflects an order to buy two blocks of 50,000 shares in Theratechnologies (“TH”) at \$0.72 and \$0.74, respectively. The orders were filled on February 27 at an average price of \$0.73. However the Ticket refers to a fill of 100,000 shares at \$0.6375 on February 26, 2015, the day before the Ticket was time-stamped and the orders were entered and filled.
18. The deficient ticketing and failure to maintain a proper audit trail created uncertainty regarding ownership and the potential for improper allocation and breaches of client priority.
19. Isenberg entered trades in several of the trading events referred to above with Audit Trail Deficiencies.
20. In the year leading up to the February/March 2015 period referred to above, the CCO reported to Isenberg and the M Partners Board of Directors that improvements were needed in regards to accurate and complete ticketing. Quarterly reports detailed the results of the CCO’s testing for audit trail requirements and noted instances of missing information such as price and quantity of securities purchased, as well as missing and late time stamps.

(ii) Audit Trail Deficiencies in Trading of Advisor under Close Supervision

21. An advisor became registered with M Partners in December 22, 2014. He was subject to close supervision due to prior discipline by IIROC. M Partners completed and filed a Close Supervision Report every month for the employee, however Audit Trail Deficiencies in his trading were not identified in a timely manner.

(iii) 2016 Audit Trail Deficiencies

22. During a 2016 compliance examination of M Partners, IIROC compliance staff identified further Audit Trail Deficiencies and improper use of accumulation accounts in August and September 2016.
23. For example, between August 15 and 31, 2016, M Partners purchased approximately 413,000 shares of Performance Sports Group Ltd. (“PSG”) and sold approximately

400,000 shares. This was accomplished through hundreds of orders entered almost exclusively under Isenberg's trading identifier.

24. All of the PSG units were deposited to a firm inventory account and held there until August 30 and 31, 2016 when they were allocated to accounts belonging to Isenberg's clients and M Partners.
25. The Tickets for some of the PSG orders missing. The Tickets that are available are time-stamped on the allocation dates, rather than the trade dates which were up to two weeks earlier. Most of the PSG Tickets were marked non-client and the trades were entered into the market accordingly. When the PSG shares were issued to client accounts, M Partners made entries into IROC's Regulatory Market Correction System ("RMCS") to change the markers from "non-client" to "client".
26. In 2016, M Partners submitted a high number of RMCS entries to correct trade markers. The significant number of improperly marked orders reflects inadequate controls around ticketing and order entry.

M Partners Failed to Adequately Supervise Trading and Audit Trail Requirements

27. As a Participant under UMIR, M Partners was obliged to supervise its employees to ensure that trading in securities on a marketplace is carried out in compliance with the applicable regulatory requirements, including those set out in UMIR and the Trading Rules. In particular, M Partners is required to comply strictly with audit trail requirements.
28. M Partners failed to comply with audit trail requirements. The Audit Trail Deficiencies make it impossible to audit trading instructions and confirm whether M Partners has properly allocated securities purchased and maintained client priority.

Isenberg Failed to Take Adequate Steps to Ensure and Promote Compliance

29. Isenberg was aware that M Partners had a history of Audit Trail Deficiencies, having signed the First Settlement Agreement and been the UDP when it was accepted. He also received the CCO's quarterly reports identifying ongoing Audit Trail Deficiencies.
30. Isenberg's own Tickets were deficient as were those prepared by the M Partners Trade Desk. Isenberg did not follow the requirements for trading and maintaining an audit trail set out in UMIR and the Trading Rules or in M Partners' own policies and procedures, nor did he take adequate steps to ensure that M Partners' employees did so. Thus, Isenberg failed to fulfill his obligations as UDP.

Mitigating Factors

31. In 2017, M Partners retained a consultant to address the issues described in this Settlement Agreement and do a comprehensive review of its compliance program. M Partners has implemented electronic ticketing to address the Audit Trail Deficiencies and is implementing other improvements to its compliance program.
32. In March 2018, Isenberg completed the CCO examination.

PART IV – CONTRAVENTIONS

33. By engaging in the conduct described above, the Respondents committed the following contraventions of IIROC's Rules:

Count 1

Between February 2015 and August 2016, the Respondent M Partners Inc.:

- a) failed to comply with its trading supervision obligations, contrary to UMIR 7.1; and
- b) failed to maintain a proper audit trail by not recording specific information relating to orders as required by Part 11 of the Trading Rules (National Instrument 23-101), contrary to UMIR 10.11(1).

Count 2

Between February 2015 and August 2016, the Respondent Steven Isenberg, as Ultimate Designated Person (“UDP”), did not take adequate steps to supervise M Partners’ compliance with its regulatory obligations regarding trading supervision and the maintenance of a proper audit trail and failed to promote compliance at M Partners, contrary to IIROC Dealer Member Rule 38.5(c).

PART V – TERMS OF SETTLEMENT

34. The Respondent agrees to the following sanctions and costs:
- a) M Partners will pay a fine of \$120,000;
 - b) Isenberg will pay a fine of \$70,000; and
 - c) M Partners will pay costs of \$10,000.
35. If this Settlement Agreement is accepted by the Hearing Panel, the Respondents agree to pay the amounts referred to above within 30 days of such acceptance unless otherwise agreed between Staff and the Respondents.

PART VI – STAFF COMMITMENT

36. If the Hearing Panel accepts this Settlement Agreement, Staff will not initiate any further action against the Respondents in relation to the facts set out in Part III and the contraventions in Part IV of this Settlement Agreement, subject to the provisions of the paragraph below.
37. If the Hearing Panel accepts this Settlement Agreement and the Respondents fail to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Rule 8200 against the Respondents. These proceedings may be based on, but are not limited to, the facts set out Part III of this Settlement Agreement.

PART VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT

38. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
39. This Settlement Agreement shall be presented to a Hearing Panel at a settlement hearing in accordance with the procedures described in Sections 8215 and 8428, in addition to any other procedures that may be agreed upon between the parties.
40. Staff and the Respondents agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing, unless the parties agree that additional facts should be submitted at the settlement hearing. If the Respondents, or either of them, do not appear at the settlement hearing, Staff may disclose additional relevant facts, if requested by the Hearing Panel.
41. If the Hearing Panel accepts the Settlement Agreement, the Respondents agree to waive all rights under the IIROC Rules and any applicable legislation to any further hearing, appeal and review.
42. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondents may enter into another settlement agreement or Staff may proceed to a disciplinary hearing based on the same or related allegations.
43. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
44. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IIROC will post a full of copy of this Settlement Agreement on the IIROC website. IIROC will also publish a summary of the facts, contraventions, and the sanctions agreed upon in this Settlement Agreement.
45. If this Settlement Agreement is accepted, the Respondents agrees that neither of them, nor anyone on their behalf, will make a public statement inconsistent with this Settlement Agreement.

46. The Settlement Agreement is effective and binding upon the Respondents and Staff as of the date of its acceptance by the Hearing Panel.

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

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

48. A fax or electronic copy of any signature will be treated as an original signature.

DATED this 27th day of April, 2018.

“Witness”
Witness

“M Partners Inc.”
M PARTNERS INC.
Per: “Steve Isenberg”

“Witness”
Witness

“Steven Isenberg”
STEVEN ISENBERG

“Witness”
Witness

“Elissa Sinha”
Elissa Sinha
Enforcement Counsel on behalf of
Enforcement Staff of the Investment
Industry Regulatory Organization of
Canada

The Settlement Agreement is hereby accepted this “28th” day of “June”, 20“18” by the following Hearing Panel:

Per: “Peter Hambly”
Panel Chair

Per: “Richard Austin”
Panel Member

Per: “Leo Ciccone”
Panel Member