Unofficial English Translation

Re Lemay

IN THE MATTER OF:

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

and

The Universal Market Integrity Rules

and

Jean-François Lemay

2013 IIROC 26

Hearing Panel
of the Investment Industry Regulatory Organization of Canada
(Québec District)

Hearing held on March 15, 2013
Decision rendered May 14, 2013

Hearing Panel
The Hon. Benjamin J. Greenberg, Q.C., Arb. A., Chair, Mr. Guy L. Jolicoeur and Mr. Marcel Paquette
Appearances
Me Sébastien Tisserand, Enforcement Counsel, for IIROC and UMIR
Mr. Jean-François Lemay, RESPONDENT, for himself

UNANIMOUS DECISION ON PENALTY

CONTENTS

I. THE DEFINITIONS

¶ 1 Unless otherwise stated herein, all of the terms defined in our UNANIMOUS DECISION ON THE MERITS dated December 13, 2012 in the matter of THE RESPONDENT shall have the same significance when used in this UNANIMOUS DECISION ON PENALTY.

II. JUDICIAL AND DISCIPLINARY HISTORY IN THIS MATTER

¶ 2 At all material times, UNION Securities Ltd. (**"UNION"**) was a "Participant[1] or "Access Person"[2] and the RESPONDENT, an "employee"[3] and a "representative with unrestricted practice" as defined in the UMIR, and were therefore subject to Part 10.4(1) of UMIR,[4] which fact RESPONDENT acknowledged in his Hearing on the Merits.

¶ 3 It is useful to review the various procedures initiated in this matter, along with their disposition, as applicable.

¶ 4 Following receipt by IIROC of "ComSet" report[5] number 95B572[6] , dated April 30, 2009, concerning an allegation of misappropriation of funds filed by UNION in regard to the activities of the RESPONDENT and another representative at UNION, said ComSet became a "complaint" filed with IIROC against the RESPONDENT.

¶ 5 Following an evaluation of said complaint by IIROC Staff, the latter launched a formal investigation on August 21, 2009; the investigation was conducted by Yannick Béland who has been an investigator with IIROC since 2005.

¶ 6 The latter had been an investigator at the Montréal Exchange between 2003 and 2005, where he performed functions similar to those he fulfills today at IIROC.

¶ 7 During the investigation, Mr. Béland determined that UNION's allegations of a misappropriation of funds by the RESPONDENT and the other representative were unfounded. Still, in the course of the investigation, Mr. Béland uncovered the seventeen (17) stock transactions that are at issue here.[7]

¶ 8 Mr. Béland shifted his focus at this point, and the investigation into an alleged misappropriation of funds became an investigation involving the UMIR.

¶ 9 During Mr. Béland's investigation of this matter, on March 15, 2011, he questioned the RESPONDENT

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[1] Defined in UMIR Part 1.1: "Participant means:(a) a dealer registered in accordance with securities legislation of any jurisdiction and who is: (i) a member of an Exchange, (ii) a user of a QTRS, or (iii) a subscriber of an ATS; or (b) a person who has been granted trading access to a marketplace and who performs the functions of a derivatives market maker."

[2] Defined in UMIR Part 1.1: "Access Person means a person other than a Participant who is:

(a) a subscriber; or

(b) a user."

[3] Defined in UMIR Part 1.1: "Employee includes any person who has entered into principal/agent relationship with a Participant in accordance with the terms and conditions established for such a relationship by any self-regulatory entity of which the Participant is a member"

[4] Part 10.4: "Extension of Restrictions (1) A related entity of a Participant and a director, officer, partner or employee of the Participant or a related entity of the Participant shall: :

(a) comply with the provisions of UMIR and any Policies with respect to just and equitable principles of trade, manipulative and deceptive activities, short sales and frontrunning as if references to "Participant" in Rules 2.1, 2.2, 2.3, 3.1 and 4.1 included reference to such person; and

(b) in respect of the failure to comply with the provisions of UMIR and the Policies referred to in clause (a), be subject to the practice and procedures and to penalties and remedies set out in this Part. "

[5] All investment dealers in Canada are required to issue and file with IIROC a report, known as "ComSet", concerning a representative with unrestricted practice against whom there has been a complaint or regarding whom the dealer has opened an internal investigation of its own accord.

[6] - See exhibit P-1.

[7] Fourteen (14) of which on the TSXV and three (3) "over-the-counter". See line 6 to 9 on page 25 of the Transcript of the July 4, 2012 Hearing. They are described on the title page of Exhibit P-72, which comprises the Volume 4 binder filed by IIROC in the matter. This list is appended to the present UNANIMOUS DECISION ON PENALTY as Schedule « A ».

under oath regarding the facts of the matter, in the presence of Me Myriam Giroux-Del Zottoand before court stenographer Claude Morin. The transcript of this interview was appended to the case file as Exhibit P-40 and is very revealing.

¶ 10 Following the aforesaid investigation, on February 9, 2012, Carmen Crépin, Vice-President, Québec at IIROC, published a Notice of Hearing detailing the count of violations brought by IIROC against the RESPONDENT.

¶ 11 In addition to outlining the RESPONDENT's alleged misconduct in some detail, the Notice of Hearing informed the RESPONDENT that a hearing on the merits would be held at 10 a.m., on April 11 and 12, 2012, at Centre Mont-Royal, 2200 Mansfield Street, Montréal, Québec, Mansfield 2 Room.

¶ 12 The count against the RESPONDENT concerned seventeen (17) stock transactions that were allegedly fictional and for which he allegedly entered orders or executed trades on the TSX Venture Exchange (TSXV) or on an over-the-counter bulletin board (OTCBB).

¶ 13 The UMIR provision that applies in respect of the violations allegedly committed by the RESPONDENT is UMIR PART 2.2, which states:

> ***"PART 2 - ABUSIVE TRADING***
>
> ***2.2 Manipulative and Deceptive Activities***
>
> *(1) A Participant or Access Person shall not, directly or indirectly, engage in or participate in the use of any manipulative or deceptive method, act or practice in connection with any order or trade on a marketplace if the Participant or Access Person knows or ought reasonably to know the nature of the method, act or practice.*
>
> *(2) A Participant or Access Person shall not, directly or indirectly, enter an order or execute a trade on a marketplace if the Participant or Access Person knows or ought reasonably to know that the entry of the order or the execution of the trade will create or could reasonably be expected to create:*
>
> *a) a false or misleading appearance of trading activity in or interest in the purchase or sale of the security;*
>
> *(b) an artificial ask price, bid price or sale price for the security or a related security.*
>
> *(3) For greater certainty, the entry of an order or the execution of a trade on a marketplace by a person in accordance with the Market Maker Obligations shall not be considered a violation of subsection (1) or (2) provided such order or trade complies with applicable Marketplace Rules and the order or trade was required to fulfill applicable Market Maker Obligations.*[8]

¶ 14 POLICY 2.2. [9] which pertains to the aforesaid PART 2.2 cited above, provides:

> ***POLICY 2.2 – MANIPULATIVE AND DECEPTIVE ACTIVITIES***
>
> ***Part 1 - Manipulative or Deceptive Method, Act or Practice***
>
> *There are a number of activities which, by their very nature, will be considered to be a manipulative or deceptive method, act or practice. For the purpose of subsection (1) of Rule 2.2 and without limiting the generality of that subsection, the following activities when undertaken on a marketplace constitute a manipulative or deceptive method, act or*

[8] It is clear to us that, based on the facts in the matter, the exception stipulated in UMIR PART 2.2, subparagraph (3), finds no application here.

[9] A consistent body of case-law in the matter has conclusively established that the stated "POLICIES" have the same legal force and value as the actual "PARTS" of the UMIR.

practice:

(a) making a fictitious trade;

(b) effecting a trade in a security which involves no change in the beneficial or economic ownership;

(c) effecting trades by a single interest or group with the intent of limiting the supply of a security for settlement of trades made by other persons except at prices and on terms arbitrarily dictated by such interest or group; and;

(d) purchasing a security with the intention of making a sale of the same or a different number of units of the security or a related security on a marketplace at a price which is below the price of the last sale of a standard trading unit of such security displayed in a consolidated market display.

If persons know or ought reasonably to know that they are engaging or participating in these or similar types of activities those persons will be in breach of subsection (1) of Rule 2.2 irrespective of whether such method, act or practice results in a false or misleading appearance of trading activity or interest in the purchase or sale of a security, or an artificial ask price, bid price or sale price for a security or a related security.

¶ 15 The Notice of Hearing also informed the RESPONDENT that he had the right to appear at the hearing and placed him on notice to serve upon Staff of IIROC a response to the Notice of Hearing in accordance with the provisions of par. 9.1 of UMIR Policy 10.8.

¶ 16 Neither the RESPONDENT nor his attorney at the time, Me Eric Cadi, ever served a response to the Notice of Hearing, either before or after the stipulated deadline.

¶ 17 After the prevarications described in detail in the aforesaid UNANIMOUS DECISION ON THE MERITS, by this panel, THE RESPONDENT was found guilty on the sole count against him, to wit:

"1. Between April 28 and October 31, 2008, Jean-François Lemay (the Respondent) contravened the following Universal Market Integrity Rules (UMIR):

He entered orders or executed transactions on the Toronto Venture Exchange (TSX-V) and on a quotation and trade reporting system (Over-the-Counter Bulletin Board – OTCBB) when he knew, or ought reasonably to have known, that the entry of such orders or the execution of the transactions would create, or could reasonably be expected to create a false or misleading appearance of trading activity with respect to the security, contrary to UMIR 2.2(2)(a), and to Policy 2.2, with which he is required to comply pursuant to UMIR 10.4."

III. THE PENALTY HEARING

¶ 18 The HEARING on PENALTIES was held on March 15, 2013.

¶ 19 Me Tisserand did not call any witnesses at the aforesaid Hearing stage. However, in accordance with Rule 13.4 of IIROC's Rules of Practice and Procedure, he produced the Sworn Statement of Ms. Linda Vachet dated March 8, 2013. Ms. Vachet is an Enforcement Assistant in IIROC's Montréal office.

¶ 20 Said Statement details the costs and expenses incurred until then by Enforcement Staff in the matter of the RESPONDENT and relative to the disciplinary proceedings initiated against him.

¶ 21 Said costs and expenses at the time totaled sixty thousand four hundred and eighty-six dollars and seventy-five cents ($60,486.75). However, IIROC is demanding only twenty-five thousand dollars ($25,000) from RESPONDENT in this regard.

¶ 22 For his part, the RESPONDENT himself testified and called as a witness Mr. André Brosseau, President and CEO of Avenue Capital Markets, where RESPONDENT has worked since "… the second calendar quarter

of two thousand eleven (2011)."[10] Avenue Capital Markets operates in the field of institutional financing and works with sophisticated investors. [11]

¶ 23 Mr. Brosseau described the RESPONDENT as follows:

> [TRANSLATION] "… *A poised, thoughtful guy who himself strove to remove any emotionality from the situation.*
>
> *And then I remember thinking, to myself "that guy has potential, he presents himself well, he lacks a little finish, but it would be… it would be interesting to spend a little more time with him to give him a little polish, and to introduce him to a world which I consider more institutional than the one he had been used to in years past.*
>
> *My impression was… my impression was very good. I had met someone who was analytical, who was thoughtful and poised, someone who… more importantly, was ready to listen and learn, because when a person arrives with a viewpoint and is unwilling to hear the other person's views, it is very very difficult to arrive at a conclusion that can be constructive."* [12]

¶ 24 At the oral arguments stage of the Penalty Hearing, Me Tisserand submitted the following six elements as suitable and appropriate sanctions in the matter:

A. suspension of access to the marketplace for a period of six months;

B. a fine of one hundred thousand dollars ($100,000);

C. costs, limited to twenty-five thousand dollars ($25,000);

D. twelve (12) months of strict supervision should the RESPONDENT decide to return to the industry;

E. successful completion of the *Conduct and Practices Handbook Course*; and

F. successful completion of the *Trader Training Course.*[13]

¶ 25 For his part, the RESPONDENT advocated a simple reprimand and accepted only sanctions D. E. and F. described in paragraph [24] above. He argued that elements A., B. and C. of the aforesaid paragraph [24] were neither necessary nor appropriate in his opinion. However, later in his pleadings at the Penalty Hearing, [14] he stated that he would consider acceptable a fine of ten thousand dollars ($10,000) and costs in the amount of five thousand dollars ($5,000).

¶ 26 Counsel for IIROC invoked, as aggravating factors in the matter, the multiplicity of the fictional stock market trades of which RESPONDENT was found guilty over a six-month period, his lack of cooperation during the investigation conducted by Mr. Yannick Béland and at the Hearing on the Merits, and the near-total lack of remorse and/or contrition on his part. The only mitigating factor that Me Tisserand acknowledged in RESPONDENT's favour was the absence of any disciplinary history.

IV. DISCUSSION

¶ 27 We wish to open a parentheses here. It is unheard of that individuals who already testified earlier, at the hearing before the Hearing Panel, should have *ex parte* communication with the Panel Members once their testimony under oath is complete.

¶ 28 First, at 5:07 PM on April 24, 2013, the witness for the RESPONDENT, his current employer Mr. André

[10] See Mr. André Brosseau's testimony, from line 7 to line 24, on page 23 of the Transcript of the March 15, 2013 Hearing.
[11] See lines 5 to 10 on page 189 and lines 16 to 19 on page 197 of the Transcript of the March 15, 2013 Hearing.
[12] See line 9 on page 17 to line 5 on page 18, of the Transcript of the March 15, 2013 Hearing.
[13] This course is offered by CSI Global Education Inc.
[14] See line 3 to line 13 on page 219 of the Transcript of the March 15, 2013 Hearing.

Brosseau, emailed the Hearing Panel Chair and the Members the following:

> *"Good afternoon, Mr. Greenberg and good afternoon to the committee,*
>
> *I thought it would be appropriate for me to send you a quick note re Jean Francois Lemay, you will find herewith a confirmation of Mr. Lemay's enrollment to the necessary test as required by the regulatory bodies supervising the EMDs*[15]*. Following my participation to your process I sat down with Mr. Lemay and we agreed on a path to continue his evolution in the capital markets industry, this test to be taken this Saturday April the 26th is a confirmation to me of his interest to learn and progress.*
>
> *Respectfully yours,*
>
> *Andre Brosseau."*

¶ 29 None of the Hearing Panel members responded to said email and it was followed the next day by an email sent by the RESPONDENT at 2:14 PM. This one reads:

> [TRANSLATION]
>
> *"Me Greenberg,*
>
> *I wish to inform you of my registration in the securities course given by the IFSE.*
>
> *This course is the equivalent of the Canadian Securities Course offered by CSI and recommended by IIROC.*
>
> *I also wish to inform you that the test date is set for next Saturday.*
>
> *In the hope that this will meet your expectations, as well as IIROC's requirements,*
>
> *Yours truly,*
>
> *Jean-François Lemay"*

¶ 30 Referring to paragraph [27] above, we find that the level of reproach is not the same in regard to the RESPONDENT as it is for Mr. Brosseau. In his April 24, 2013 letter to Me Sébastien Tisserand, with cc to the RESPONDENT among others, the Chair of the Hearing Panel had invited the latter to communicate his comments relative to the reply that Me Tisserand would be sending. However, RESPONDENT jumped the gun somewhat by sending us his written argument on April 25, 2013, since Me Tisserand's reply is dated April 29, 2013.

¶ 31 The attachment to the aforementioned email from Mr. Brosseau, as well as both emails, revealed that RESPONDENT registered for the IFSE "*Exempt Market Products Course*" on March 26, 2013, and that the exam was to take place on April 26, 2013. We did not hear subsequently whether RESPONDENT passed the exam or not.[16] We now close this parentheses, set aside this incident, and return to the heart of the matter in this DECISION.

¶ 32 After studying the documentation received from Mr. Brosseau concerning the *"Exempt Market Products Course"* offered by the IFSE, along with that pertaining to the *"Trader Training Course"* offered by CSI Global Education Inc., even if the former seems appropriate for an "EMD", which is where RESPONDENT currently works, we are of the opinion that the second is neither appropriate, nor necessary in the context, and

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[15] "*Exempt Market Dealers*".

[16] **The present UNANIMOUS DECISION ON PENALTY (« DECISION ») was finalized yesterday, May 13, 2013, bound and ready to be signed this very day, May 14, 2013, by the three Hearing Panel members. However, at 8:50 this morning, May 14, 2013, before the three Hearing Panel members met to sign the DECISION, they received an email from the RESPONDENT which reads as follows:** [TRANSLATION] *"Good Morning, just a note to announce that I passed the IFSE exam. My training is now up to date and I am once again licensed for the exempt markets. Best regards, JF Lemay."* **This has not altered the CONCLUSIONS in Chapter VI of this DECISION.**

that the Conduct and Practices Handbook Course is more appropriate. Indeed, the *Trader Training Course* is more for persons who act as Trader for a Dealer Member, whereas the Conduct and Practices Handbook Course is specifically for Registered Representatives.

¶ 33 From the beginning of this case, the Hearing Panel Members have been asking themselves: "What was the aim of the seventeen (17) stock market transactions that are at issue here?" and the question remains unanswered. We still do not know what the aim was, nor who, if anyone, really benefited.

¶ 34 So, apart from the $6,000 in commissions charged by UNION on the seventeen (17) trades, hence the 40% consideration to the RESPONDENT, which comes to approximately $2,400, we do not to this day know who else may have benefited and, if applicable, by how much?

¶ 35 At the Hearing on the Merits, Me Tisserand asked the witness Béland the following question:[17]

> [TRANSLATION]
>
> *" Q.: [461] Okay. Were you able to determine why, what was the aim of these transactions? When you met with Mr. Lemay, what did he say to you regarding these transactions?*
>
> *"A.: Well, first, Mr. Lemay indicated to me that he did not know who Bozo was, so… He didn't know that… He also indicated to me that he did not know if Mr. Beausoleil had… held the Bozo account. So, on this level, I think that…"*

¶ 36 It was in the same vein that at the Hearing on the Merits, the following exchange took place between RESPONDENT and the Chair of the Hearing Panel:[18]

> [TRANSLATION]
>
> *"Q.: [151] Do you know the purpose of these seventeen (17) transactions?*
>
> *A.: The purp…?*
>
> *Q.: [152] The purpose.*
>
> A.: *No, no. No. Because I would tell you, Me Greenberg, had it been a transaction for two hundred thousand dollars ($200,000) or a million ($1 million) or four hundred million ($400 million), I might have asked myself that question more. There are transactions here, we're talking twenty-five hundred dollars ($2500) for one transaction, then four thousand dollars ($4000), it's… Perhaps we ought to know, in every case, the purpose of the transaction – indeed, we should – but we don't, because often we are caught up in the day-to-day. But, no, I don't have the… I didn't ask the question. I don't know why these transactions took place. Because there is always… in accounting, there's always a relative importance, and when we make transactions for fifty, a hundred, two hundred, three hundred thousand (100 – 200 – $300,000), then we make a transaction for forty-five hundred dollars ($4500), relative importance is an aspect that comes into play.*
>
> *Q.: [153] Am I to understand from your last few sentences, that your last few words concern the transaction period, when you say "I don't know how or why these transactions took place," you are talking about then?*
>
> *A. Yes.*
>
> *Q.: [154] Since then, you have never spoken to Mr. Serge Beausoleil.*
>
> *A.: Yes, yes, I have spoken to him.*

[17] See lines 3 to 12 on page 217 of the Transcript of the July 4, 2012 Hearing.
[18] See line 10 on page 98 to line 4 on page 100 of the Transcript of the March 15, 2013 Hearing.

Q.: [155] And you still see him.

A.: Serge Beausoleil, is… Yes.

Q.: [156] He is aware of this decision.

A.: Definitely.

Q.: [157] He never explained the reason for these transactions to you? You never asked him? You are under oath.

A.: Yes, yes. No, I… honestly, I never asked him.

Q.: [158] Even after… Even after the fact?

A.: Even after the fact."

¶ 37 Which led the Hearing Panel Member, Mr. Guy L. Jolicoeur, to interject[19] :

[TRANSLATION]

" GUY JOLICOEUR:

Q.: [159] You aren't curious, Mr. Lemay."

¶ 38 As regards the fact that Me Tisserand and Mr. Lemay each submitted recommendations to the Hearing Panel concerning the Penalty to impose on the RESPONDENT, just as counsel for both parties in a criminal case might make sentence recommendations, we find this a healthy practice here as well.

¶ 39 In the field of criminal law, here is what the Québec Court of Appeal has ruled in this regard[20] :

[TRANSLATION]

"Is there any need to repeat here the remarks of the majority of the judges of our Court…. In R. v. Mouffe, on November 4, 1971 (unpublished) "Counsel for the Crown evidently has the right to suggest a sentence, but it is the privilege of the Court to either accept or reject the suggestion."

¶ 40 We have considered the penalty recommendations submitted by Counsel for IIROC and by the RESPONDENT.

¶ 41 Moreover, regarding the quality of appropriateness that every disciplinary sanction imposed by IIROC ought to have, we can borrow here again from criminal law, which still and often cites Justice Marchand of the Québec Court of Appeal in *R. c. Lemire et Gosselin*[21] :

[TRANSLATION] *"One can say that a sentence has that quality of appropriateness when it is at once proportional to the objective gravity of the offense and to its subjective gravity for the delinquent and that, moreover, it provides the necessary salutary correction and exemplary protection. Objective gravity is described in the code; the subjective gravity of an action can vary according to the degree of the intelligence and the determination of the delinquent's will."*

¶ 42 Therefore, any sanction imposed in the context of IIROC should have several factors as its goal. There is: the rehabilitation of the defendant, consideration of the objective gravity of the infraction as well as its subjective gravity, its subjective deterrence in respect of the defendant as well as its objective deterrence in respect of others who might be tempted to follow his example. We have considered, weighed and gauged all of these factors.

¶ 43 The determination of sanctions that are fit and proper, and appropriate, implies a process of "weighing"

[19] See lines 5 and 6 on page 100 of the Transcript of the March 15, 2013 Hearing.
[20] In *R. c. Fleury*, (1971) 23 C.R.N.S., 164, pages 168 and 169.
[21] (1948) 5 C.R., 181.

and "blending", as the Chair of this Hearing Panel wrote in another context while exercising another function [22]:

> *"[…] a fit and proper sentence is the result of a "wise blending" (le "savant dosage") of those considerations (deterrence, rehabilitation, and protection of society).*
>
> *In imposing the sentence herein, I have considered the objective gravity of the offences, the subjective gravity of those crimes in relation to each of the four accused, their respective ages and backgrounds, the absence or presence of any mitigating or aggravating circumstances, the salutary or exemplary effects of the sentence on each accused specifically and on others generally and, lastly, the possible rehabilitation of each accused".*

¶ 44 We have considered all of the relevant factors in the RESPONDENT's subjective context. We allow that he has no history of relevant misconduct; but like Counsel for IIROC, we are of the opinion that he has shown little or no remorse and/or contrition.

¶ 45 Throughout the events, and up until now, RESPONDENT has and still demonstrates an inaccurate view of the securities industry[23].

¶ 46 This stems from the fact that, to this day, he does not realize the consequences of the actions of which he has been found guilty in this matter[24], and he does not recognize the harm caused by his actions described above.[25] Like his current boss, he believes that the seventeen (17) fictional stock transactions in which he engaged, with and/or for Mr. Serge Beausoleil, did not really do any harm to the stock markets.

¶ 47 Still, even though it appears that it was a system, we do not think that it was a planned operation and moreover, we cannot conclude that the seventeen (17) transactions had a financial goal.

¶ 48 We understand that our principal duty in this matter is to strengthen market integrity and protect investors. This leads us to conclude more in favour of the prosecution's recommendations rather than the RESPONDENT's.

¶ 49 Accordingly, we have verified and analyzed the specific facts and the sanctions imposed in several other cases presented by Me Tisserand. These cases are:

Kenneth Nott et als[26]*;*

Scott Leckie[27]*;*

Ian Macdonald et als[28]*;*

Laurence G. Ryckman et als[29]*;*

Kenneth Muir[30]*;*

Peter D. Van Hee[31]*;* and

Patrick David O'Neill[32]

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[22] R. c. Maruska, Québec Superior Court, Docket no.: 500-27-007523-808, February 17, 1981.
[23] See lines 8 to 16 on page 93 of the Transcript of the March 15, 2013 Hearing.
[24] See line 24 on page 96 to line 9 on page 98 of the Transcript of the March 15, 2013 Hearing.
[25] See his argument in lines 12 to 17 on page 192 of the Transcript of the March 15, 2013 Hearing. [TRANSLATION] *"When you make a transaction in a security – because here there are twelve (12) different ones out of seventeen (17) transactions, so there are many that involved just one transaction, I don't see the impact of any market manipulation, strictly speaking."*
[26] [2011] IIROC No. 26
[27] [2005] R.S.D.D. No. 2 (Market Regulation Services Inc.)
[28] [2005] R.S.D.D. No. 5 (Market Regulation Services Inc.)
[29] 1996 LNABASC 18; 5 ASCS (Alberta Securities Commission)
[30] 1999 LNBCSC 44 (British Columbia Securities Commission)
[31] [2009] IIROC No. 34
[32] [2010] IIROC No. 51

¶ 50 Elements **D**. and **E.** described in paragraph [24] above have the assent of the RESPONDENT and will be ordered.

¶ 51 Regarding the sanction described in element F. of paragraph [24] above, namely: "successful completion of the *Trader Training Course*", even though IIROC asked for it and RESPONDENT signified his acceptance at the March 15, 2013 hearing, upon careful reflection and for the reasons stated in paragraph [32] above, we have decided not to order such a penalty.

¶ 52 As for element **A.** in the aforesaid paragraph [24], after careful consideration and reflection, we find it fit and proper and have decided to impose it on the RESPONDENT. With respect to element **B.**, after giving equal thought and consideration to his family and financial circumstances, as well as the other causes enumerated in paragraph [49] above, we have decided on a fine of thirty-five thousand dollars ($35,000).

¶ 53 Concerning element C. of the aforesaid paragraph [24], the recommendation of twenty-five thousand dollars ($25,000) in costs, considering that IIROC incurred over sixty thousand dollars ($60,000)[33] in this regard, we find the suggestion of twenty-five thousand dollars ($25,000) more than reasonable and have decided to allow this amount.

V. FINAL DISPOSITION

¶ 54 This UNANIMOUS DECISION ON PENALTY shall be signed by the members of the HEARING PANEL in multiple copies. Each of these signed copies shall be equally valid and authentic and shall avail for all legal purposes.

VI. CONCLUSIONS

¶ 55 FOR ALL THESE REASONS:

WE, MEMBERS OF THE HEARING PANEL:

A. IMPOSE on RESPONDENT a SUSPENSION of ACCESS to the MARKETPLACE for a period of SIX MONTHS, from this date;

B. ORDER RESPONDENT to PAY IIROC a FINE OF THIRTY-FIVE THOUSAND DOLLARS ($35,000)

C. ORDER RESPONDENT to PAY IIROC the sum of TWENTY-FIVE THOUSAND DOLLARS ($25,000) in PARTIAL REPAYMENT of the COSTS INCURRED RELATIVE to THIS MATTER;

D. ORDER that RESPONDENT BE SUBJECT TO TWELVE (12) MONTHS OF STRICT SUPERVISION by his EMPLOYER should he return to the industry or otherwise come under the jurisdiction of IIROC;

E. ORDER that RESPONDENT TAKE, and PASS, the CONDUCT AND PRACTICES HANDBOOK COURSE.

VII. SIGNATURES PAGE

Signed at Montréal, Québec, May 14, 2013

The Hon. Benjamin J. Greenberg, Q.C., Arb. A., Panel Chair

Guy L. Jolicoeur

Marcel Paquette

[33] Not including the fees that IIROC is required to pay the Hearing Panel Members. - See exhibit P-72.

VIII. SCHEDULE "A"

IIROC v. JEAN-FRANÇOIS LEMAY
EXHIBIT 72 – DOCUMENTS SUPPORTING DEVELOPMENT OF IIROC'S ANALYTICAL TABLE – "FICTIONAL TRADES JF LEMAY"

(Sources: P-22, P-52, P-63, P-66, P-67, P-69, P-70 and P-71)

TRADE NO.	SECURITY NAME (SYMBOL)	TRANSACTION DATE	MARKETPLACE
1	Lotta Coal Inc. (LCOL)	September 3, 2008	OTCBB
2	Lotta Coal Inc. (LCOL)	September 15, 2008	OTCBB
3	Reocito Capital Inc. (RCO.P)	September 15, 2008	TSXV
4	Stelmine Canada Ltd. (STH)	September 15, 2008	TSXV
5	Anticus Intl. Corp. New (ATCI)	September 15, 2008	OTCBB
6	Sofame Technologies Inc. (SDW)	September 15, 2008	TSXV
7	Quizam Media Corp. (QQ)	September 18, 2008	TSXV
8	Gee-Ten Ventures Inc. (GTV)	September 18, 2008	TSXV
9	Prosys Technologies Corp. (POZ.H)	September 18, 2008	TSXV
10	Bitumen Capital Inc. (BTM.P)	September 18, 2008	TSXV
11	JAG Mines Ltd (JML)	April 28, 2008	TSXV
12	Global Minerals Ltd (GTC)	June 2, 2008	TSXV
13	Global Minerals Ltd (GTC)	June 5, 2008	TSXV
14	Sofame Technologies Inc. (SDW)	June 12, 2008	TSXV
15	Prosys Technologies Inc. (POZ.H)	October 31, 2008	TSXV
16	Global Minerals Ltd (GTC)	October 31, 2008	TSXV
17	Quizam Media Corp. (QQ)	October 31, 2008	TSXV