

Re Scoten

IN THE MATTER OF:

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

and

Samuel Ryan Scoten

2012 IIROC 67

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

Hearing: October 11, 2012
Decision: November 21, 2012

Hearing Panel:

John Rogers, Chair, L. Karen Henderson and Michael Johnson

Appearances:

Lorne Herlin, Enforcement Counsel, for the Investment Industry Regulatory Organization of Canada

Simon Kent, Barrister and Solicitor, for the Respondent

REASONS FOR DECISION

¶ 1 A Hearing Panel of the Investment Industry Regulatory Organization of Canada (“IIROC”) was convened on October 11, 2012 in accordance with Rule 15 of the IIROC Dealer Member Rules of Practice and Procedure to review a settlement agreement (“Settlement Agreement”) dated October 11, 2012 negotiated between the Enforcement Department of IIROC and Samuel Ryan Scoten (“Respondent”) in accordance with Rule 20.35 of Part 10 of the IIROC Dealer Member Rules (the “Rules”) and Rule 15 of the Dealer Member Rules of Practice and Procedure.

Statement of Facts

¶ 2 The Settlement Agreement contains certain facts agreed to by IIROC Staff and the Respondent for the purpose of the Settlement Agreement. A summary of these facts is set out below. Unfortunately, certain discrepancies were contained among the facts set out in the Settlement Agreement which has made it difficult for us to reconcile what the Respondent has admitted to in the Settlement Agreement. These discrepancies are noted in brackets following reference to the particular facts to which they relate in the hope that in future negotiations on settlement agreements greater care is taken by the parties in the drafting of the final agreement.

1. The Settlement Agreement states that between 2007 and 2009, the Respondent solicited and facilitated the off-book purchase of 76,413 previously issued shares of a non-reporting issuer, Asian Coast Development (Canada) Ltd. (ACDL), by 26 of his clients for “total imputed price” of \$966,682 USD. *(Facts agreed to elsewhere in the Settlement Agreement suggest that there were 30 off-book purchases made by 25 of the Respondent’s clients).*
2. Between March 2008 and January 2010, 1,000 shares of ACDL were transferred into the Respondent’s name and 28,557 shares of ACDL were transferred into the name of his daughter.

3. In August 2009, the Respondent's employer discovered emails indicating that the Respondent was involved in the sale of the ACDL shares to his clients.
4. When asked by his employer to provide an explanation for his involvement with ACDL, the Respondent advised his employer by an email dated August 10, 2009 that the Respondent, members of his family, and 18 of his clients had purchased 58,782 shares of ACDL at either \$14 USD or \$10 USD per share.
5. The Respondent also advised his employer that he had been offered options to purchase 15,000 shares of ACDL at a price of \$20 USD per share in return for his input on the company.
6. Following a review of ACDL's Central Securities Register as at February 7, 2009 (*it is most likely this date is either February 7, 2010 or February 7, 2011 because references are made to client purchases after February 2009*) by IIROC Staff, in an interview with IIROC Staff on June 22, 2011 the Respondent indicated, among other things, that:
 - a. In addition to the 18 clients identified by the Respondent in his email of August 10, 2009, there were an additional 11 clients who had purchased shares of ACDL from an existing shareholder of ACDL (*a close reading of Schedule "A" to the Settlement Agreement suggests that there were 12 off-book purchases made by 7 of the Respondent's clients*);
 - b. He had not received any compensation for finding clients to purchase ACDL shares;
 - c. He had purchased the approximately 28,200 shares of ACDL transferred into the name of his daughter for purchase prices of either \$14 USD or \$10 USD, paid for by the Respondent by way of a bank draft; and
 - d. He had not told his supervisors that he was recommending ACDL shares to his clients.
7. In email exchanges between the Respondent and IIROC Staff commencing July 7, 2011 and culminating in a letter from the Respondent to IIROC Staff on July 27, 2011, when asked by IIROC Staff to produce documentary evidence that the Respondent had paid for the shares of ACDL transferred into his name and that of his daughter, the Respondent replied (on July 8, 2011) that he was no longer in possession of the relevant banking records documenting this transaction and that he could not recall which bank he had used.
8. In the July 27, 2011 letter, the Respondent advised that he had not paid for the 1,000 shares of ACDL transferred into his name nor had he paid for the 28,557 shares of ACDL which had been transferred into his daughter's name.
9. The Respondent further advised IIROC Staff on September 1, 2011 that he had entered into this compensation arrangement for the 29,577 shares with two vendors prior to clients making any purchases and that he had told some clients, but not all, that he was receiving compensation from the vendors of the ACDL shares purchased by his clients.
10. On April 1, 2010, 45 client accounts for which the Respondent was responsible sold 63,760 shares of Suncor Energy Inc. (Suncor) by way of sell orders entered between 8:10 AM and 9:05 AM for gross proceeds of approximately \$2,190,466. The gross commissions on these sales were approximately \$12,720.
11. Later that same morning of April 1, 2010 between 9:48 AM and 10:45 AM, 43 client accounts for which the Respondent was responsible purchased 54,720 shares of Encana Corporation (Encana) for a pre-commission cost of approximately \$1,755,495 generating gross commissions of \$11,620.
12. 41 of the 45 client accounts which sold Suncor shares used the sale proceeds to purchase Encana shares.
13. During an interview with IIROC Staff on June 22, 2011, the Respondent indicated, among other things, that he had placed discretionary trades for only 2 of his client accounts on April 1, 2010 and he claimed that he had received approval for these trades from the spouse of the client in whose account the trades were made. For the balance of the accounts, the Respondent indicated that he had contacted the account

holder to obtain consent, and then while his assistant was entering the order for which consent had been given, he contacted the next client.

14. Then on September 1, 2011 during a subsequent interview with IIROC Staff after IIROC Staff had provided the Respondent with evidence that all of the Suncor sell orders were entered followed approximately 43 minutes later by the first of the Encana buy orders, the Respondent admitted to having placed discretionary trades for client accounts on the morning of April 1, 2010, indicating that he may have talked to three-quarters of the clients on whose behalf he placed trades that morning. He could not recall how many trades were discretionary nor could he identify in which accounts the discretionary trades took place.

Contraventions

¶ 3 The Settlement Agreement contains the Respondent's admissions that:

1. Between 2007 and 2009, the Respondent solicited and facilitated the purchase of previously issued shares of ACDL by some of his clients without the knowledge or consent of his employer, contrary to Dealer Member Rule 29.1 (prior to June 1, 2008, IDA By-law 29.1);
2. Between 2008 and 2010, the Respondent received compensation for his facilitation of his clients' purchase of previously issued ACDL shares without his employer's knowledge or consent, contrary to Dealer Member Rule 29.1 (prior to June 1, 2008, IDA By-law 29.1);
3. In April 2010, the Respondent placed discretionary trades for client accounts even though they had not been designated as being discretionary accounts by his employer, contrary to Dealer Member Rules 1300.4 and 1300.5; and
4. In June 2011, the Respondent informed IIROC Staff that he had not received any compensation for the purchase of previously issued ACDL shares by some of his clients and that he only placed discretionary trades on behalf of two accounts on April 1, 2010, which he knew or ought to have known was false, contrary to IIROC Dealer Member Rule 29.1.

Terms of Settlement

¶ 4 In the Settlement Agreement, IIROC and the Respondent agree to the following terms of settlement:

1. A three year prohibition from approval in any capacity;
2. That the Respondent successfully complete the *Conduct and Practices Handbook Course* prior to being eligible for approval in any capacity;
3. That upon re-approval the Respondent undergo a one year period of strict supervision;
4. Payment of a \$50,000 fine to IIROC;
5. That the Respondent pay IIROC a portion of IIROC's investigative and prosecution costs in the sum of \$5,000; and
6. That the agreed upon prohibition from approval is to commence and the fine and payment of costs are payable immediately upon our approval of the Settlement Agreement.

Decision

¶ 5 We accept the Settlement Agreement.

Reasons

¶ 6 Rule 20.36 empowers a Hearing Panel upon the conclusion of a settlement agreement hearing to either accept or reject the settlement agreement under consideration. Neither in Rule 20.36 nor elsewhere in the Rules is there guidance for what criteria a Hearing Panel should use in making this decision.

Appropriateness of Penalty

¶ 7 Past decisions of Hearing Panels determining whether or not to accept a settlement agreement are of assistance. In *Milewski* [1999] I.D.A.C.D. No. 17, Bulletin No. 2605, August 5, 1999, and *Clark* [1999] I.D.A.C.D. No. 40, Bulletin No. 2674, December 14, 1999 the test for a Hearing Panel to use in determining whether or not to accept a settlement agreement was defined as whether or not the settlement agreement reached between the respondent and IIROC Staff includes a penalty which clearly falls outside a “reasonable range of appropriateness”. If in the opinion of the Hearing Panel the penalty falls outside this reasonable range, the Hearing Panel should not accept the settlement agreement. Otherwise it should do so. The rationale behind this approach is that a Hearing Panel should be cognizant of the settlement process and should not interfere in a negotiated settlement by attempting to substitute its discretion for that of the parties.

¶ 8 Further assistance as to what factors should be considered by a Hearing Panel in determining whether or not to accept that a settlement agreement contains an appropriate penalty was provided in *Derivative Services Inc.*, [2000] I.D.A.C.D. No. 26 at page 3. The decision lists five considerations of which a Hearing Panel should be cognizant in determining an appropriate penalty. These considerations are:

1. Protection of the investing public;
2. Protection of the IIROC membership;
3. Protection of the integrity of the IIROC hearing process;
4. Protection of the integrity of the securities markets; and
5. Prevention of a repetition of the conduct leading to the penalty.

Disciplinary Sanction Guidelines

¶ 9 IIROC Staff counsel referred us to Disciplinary Sanction Guideline numbered 3.10 entitled “Outside Business Activities – Dealer Member Rule 29.1”. The applicable considerations under this guideline are:

1. The size and value of this outside business activity. The matter before us amounted to a total value of \$966,682 USD involving 26 (or possibly 25) clients, for which the Respondent was compensated with 29,557 ACDL shares from two vendors either to himself or an immediate family member; and
2. Although there were no client complaints, the Respondent was not under a mistaken belief that he had received approval from his employer.

¶ 10 IIROC Staff counsel directed our attention to the recommended sanctions under this guideline of a minimum fine of \$10,000, a disgorgement of profits, a period of close and/or strict supervision, a rewriting of the *Conduct and Practices Handbook Course* and a period of suspension in egregious cases. He advised that all these elements were in the recommended penalty before us save and except for the disgorgement of profits as it was not possible to calculate these amounts. However, this factor was, he advised, included in the determination of the quantum of the fine.

¶ 11 Reference was also made by IIROC Staff Counsel to Disciplinary Sanction Guideline numbered 3.6 entitled “Discretionary Trading – Dealer Member Rule 1300.4 & 1300.5” and to some of the considerations contained therein applicable to the matter at hand. He pointed out that:

1. the number of unauthorized trades resulted from 45 sell orders and 43 buy orders affecting 45 clients,
2. that although there was no evidence that Respondent’s clients provided verbal authority for all of the transactions, there were no client complaints,
3. there was no evidence that the trading was not in the clients’ best interests or that there was any question of suitability of the transactions for the clients involved; and
4. the discretionary trades all took place during a single morning trading session.

The recommended sanctions under this guideline are similar to Guideline 3.10 referred to above, except that the minimum fine is set at \$5,000.

¶ 12 The third Disciplinary Sanction Guideline referred to us by IIROC Staff counsel was number 5.1 entitled “Failure to Cooperate – Dealer Member Rule 19.5 and 19.6”. The guideline defines the category of misconduct dealt with under this guideline to include a failure by the Respondent to:

1. Cooperate or respond in a timely manner; and
2. Respond truthfully.

¶ 13 The applicable considerations under this guideline are:

1. The Respondent’s disciplinary history. The Respondent has not before been disciplined by IIROC;
2. Whether or not the contravention was intentional or inadvertent. IIROC Staff counsel suggested that the Respondent was well aware of what he was doing and that there was no inadvertence, as it was only after prompting by IIROC Staff that the Respondent cooperated fully and truthfully; and
3. There was only a partial non-compliance by the Respondent in his dealings with IIROC Staff. In the communications or interviews over the time period between June 22, 2011 and September 1, 2011, the Respondent eventually fully cooperated with the investigation being conducted by IIROC Staff. However, his activity clearly delayed the investigation in not providing responses and information of material importance to the investigation and required the use of additional IIROC Staff investigatory resources that would not otherwise have been required.

The relevant recommended sanctions under this guideline include a minimum fine of \$10,000.

Relevant Precedents

¶ 14 IIROC Staff counsel provided us with the following decisions of IIROC Hearing Panels who had dealt with matters similar to the one before us: *Re:Michaels* [2007] I.D.A.C.D., No. 8, Bulletin No. 3614, March 14, 2007 (affirmed on appeal to the British Columbia Securities Commission *David Michael Michaels v. Investment Industry Association of Canada* 2007 BCSECCOM 775); *Re Paziuk* [2009] IIROC No. 47; and *Re Stefiuk* [2011] IIROC No. 24.

¶ 15 In *Re:Michaels*, following a disciplinary hearing the Hearing Panel found that the respondent had advised and assisted 13 clients with respect to the off-book purchase of approximately \$66,000 worth of shares of a public company without the consent of his employer and that he attempted to mislead the investigation and to conceal information during the course of the investigation into his conduct in order to frustrate the investigation. The respondent was fined \$45,000, suspended for 2 months, subjected to 6 months of close supervision upon returning to the industry, and was required to re-write the *Conduct and Practices Handbook Course*. He was also required to pay \$15,000 towards the investigation costs.

¶ 16 In *Re:Paziuk*, the Hearing Panel “with some hesitation” accepted a settlement agreement in which the respondent admitted to, among other items, engaging in off-book dealings with 32 clients without his employer’s consent and to providing a misleading document to his employer during the course of an investigation into this activity. The settlement agreement provided for a fine in the amount of \$20,000, a one month’s suspension, strict supervision for a year following re-employment in the industry, successful completion of the *Conduct and Practices Handbook Course*, and a contribution to investigation costs of \$5,000.

¶ 17 In *Re:Stefiuk* the Hearing Panel accepted a settlement agreement in which the respondent admitted to engaging in off-book transactions without his employer’s knowledge or consent with 37 clients in an amount totaling \$837,000, but for which he did not receive any commissions. A fine in the amount of \$35,000 was agreed to together with a requirement that the respondent complete the *Conduct and Practices Handbook Course* and be subject to a period of one year of strict supervision with reports to be filed with IIROC. In addition, the respondent agreed to contribute \$5,000 to investigation costs.

Mitigating Factors

¶ 18 In his submission to us, the Respondent’s counsel stressed the fact that the Respondent’s actions generated no client complaints and that there were no client losses. He pointed out that the Respondent had

been in the investment industry for a period of 10 years prior to his actions leading to the admitted contraventions with no previous disciplinary proceedings against him.

Misgivings

¶ 19 In the Settlement Agreement, the Respondent admitted to serious breaches of the Rules in soliciting and facilitating off book trading and receiving compensation thereon without the consent of his employer and in trading in a discretionary manner in accounts not approved as discretionary. For these breaches the agreed upon penalties in the Settlement Agreement adequately reflect the gravity of the offenses.

¶ 20 If one were to read between the lines with reference to the activities admitted to by the Respondent in the Settlement Agreement there is a strong suggestion of an approach on the part of the Respondent in his dealings with IIROC Staff which involved obfuscation, if not prevarication, in the responses he provided to IIROC Staff investigators.

¶ 21 The investment industry by necessity operates in an atmosphere of trust. Trust between the Approved Person and his or her client, trust between the Approved Person and his or her employer, and trust between the Approved Person and IIROC Staff. Where an Approved Person breaches any of these trust relationships, serious consequences should follow.

¶ 22 If such a reading between the lines of the Settlement Agreement was the final resolution of this matter, the Respondent could be taken to have seriously breached the trust relationship between himself and IIROC Staff. He was given the opportunity to respect this trust relationship, admit his wrongdoing and suffer the consequences. It was not until IIROC Staff had conducted further investigations and was able to present the Respondent with contradictory material that the Respondent elected to provide a complete picture of what had in fact occurred.

¶ 23 If the matter before us had been a Disciplinary Hearing and not a hearing to approve the Settlement Agreement, and if the reading between the lines approach referred to above was the evidence before us, the penalty that we would have imposed upon the Respondent most likely would have been a lifetime ban from the industry. To paraphrase the wording of Clause 4.3 entitled “Permanent Bar from Approval or Expulsion/Termination of Membership” contained in the General Principles of IIROC’s Disciplinary Sanction Guidelines, such breaches of trust demonstrated by the Respondent towards IIROC Staff may suggest evidence of a person who could not be trusted to act in an honest and fair manner in all dealings with the public, his clients, and the securities industry as a whole and who, therefore, should not be permitted to be employed in the investment industry.

¶ 24 However, this is not a Disciplinary Hearing and as a Hearing Panel we are not entitled to read between the lines of a settlement agreement in order to substitute our assessment of an appropriate penalty for that agreed upon by the parties. We are required to accept the facts in the Settlement Agreement as they are stated if we choose to accept that agreement.

¶ 25 We are also mindful of the numerous precedents placing great value on the settlement process.

¶ 26 As well, we are mindful of the sanctions agreed to by the Respondent in the Settlement Agreement. A 3 year prohibition from approval in any capacity is a significant penalty. On a practical basis, it means that upon any contemplated re-entry into the industry as an Approved Person, the Respondent will be faced with the challenging task of rebuilding a book of business from scratch. This rebuilding process will include the requirement that he perform this task while under a one year period of strict supervision, during which time activities in which the Respondent is involved will require approvals by his supervisor, which supervision must be documented to IIROC monthly. In addition, the fine of \$50,000 agreed to by the Respondent in the Settlement Agreement appears to be significant when compared with the fines set out in the similar fact precedents submitted to us by IIROC Staff counsel and referred to above.

¶ 27 Therefore, we have accepted the Settlement Agreement, albeit as with the Hearing Panel in *Re: Paziuk* with a strong feeling of hesitation, as falling within a reasonable range of appropriateness and find it to be in keeping with the protection of the investing public, the protection of the IIROC membership, the protection of

the integrity of the IIROC hearing process, and the protection of the integrity of the securities markets.

Dated at Vancouver, British Columbia, this 21st day of November, 2012.

John Rogers, Chair

L. Karen Henderson

Michael Johnson

SETTLEMENT AGREEMENT

I. INTRODUCTION

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

II. JOINT SETTLEMENT RECOMMENDATION

6. Staff and Scoten jointly recommend that the Hearing Panel accept this Settlement Agreement.
7. Scoten admits to the following contraventions of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:
 - a) Between 2007 and 2009, Scoten solicited and facilitated the purchase of previously issued shares of Asian Coast Development (Canada) Ltd. (ACDL) by some of his clients, without the knowledge or consent of his employer, contrary to Dealer Member Rule 29.1 (prior to June 1, 2008, IDA By-law 29.1).
 - b) Between 2008 and 2010, Scoten received compensation for his facilitation of his clients' purchase of previously issued ACDL shares, without his employer's knowledge or consent, contrary to Dealer Member Rule 29.1 (prior to June 1, 2008, IDA By-law 29.1).
 - c) In April 2010, Scoten placed discretionary trades for client accounts even though they had not been designated as being discretionary accounts by his employer, contrary to Dealer Member Rules 1300.4 and 1300.5.
 - d) In June 2011, Scoten informed Staff that he had not received any compensation for the purchase of previously issued ACDL shares by some of his clients and that he only placed discretionary trades on behalf of two accounts on April 1, 2010, which he knew or ought to have known was false, contrary to IIROC Dealer Member Rule 29.1.
8. Staff and Scoten agree to the following terms of settlement:
 - a) a three year prohibition from approval in any capacity;

- b) that he successfully complete the *Conduct and Practices Handbook Course* prior to being eligible for approval in any capacity;
 - c) upon re-approval a one year period of strict supervision; and
 - d) payment of a \$50,000 fine to IIROC.
9. Scoten agrees to pay IIROC a portion of IIROC's investigative and prosecution costs in the sum of \$5,000.

III. STATEMENT OF FACTS

(i) Acknowledgment

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

(ii) Factual Background

Overview

11. Scoten solicited and facilitated the off-book purchases by some of his clients of previously issued shares of ACDL, a non-reporting issuer, without the knowledge or consent of his employer. In June 2011, Scoten informed Staff that he did not receive any compensation for finding buyers for the shares. In July 2011, Scoten informed Staff that he received approximately 29,557 ACDL shares as compensation for finding buyers for the shares.
12. Further, in June 2011 Scoten informed Staff that he only placed discretionary trades on behalf of two client accounts in April 2010. In September 2011 Scoten informed Staff that he had placed discretionary trades on behalf of additional client accounts in April 2010.

Regulatory History

13. Scoten first began working in the securities industry in or around March 1999.
14. From December 2004 to November 2007, Scoten worked as a registered representative at a Surrey, BC branch office of CIBC World Markets Inc. (CIBC).
15. Between November 2007 and April 2010, Scoten worked at a Surrey, BC branch office of TD Waterhouse Canada Inc. (TD). Since that time, he has not worked as an approved person.
16. Scoten has no prior disciplinary history.

Soliciting and Facilitating Off-Book Transactions

17. In August 2009, TD came across emails from Scoten which indicated that he was involved with the sale of ACDL shares to his clients. ACDL is a non-reporting issuer which, among other things, is purportedly developing a resort in Vietnam.
18. TD then asked Scoten to provide an explanation of his involvement with ACDL.
19. By way of an August 10, 2009 email to TD, Scoten, among other things, indicated the following:
- a) In the summer of 2007, ACDL received the "first of its kind gaming license for Vietnam". As a result, Scoten, members of his family, and approximately 15 of his clients decided to purchase ACDL shares at cost of \$14 USD per share. In total his clients purchased 50,282 ACDL shares.
 - b) In spring 2009, three additional clients purchased 8,500 ACDL shares at \$10 USD per share.
 - c) ACDL had offered Scoten 15,000 options for ACDL shares at \$20 USD per option in return for his input on the company. He had not yet received the options because ACDL's Board of Directors had not yet approved them.

- d) ACDL was planning an initial public offering in Hong Kong in 2010.
20. In furtherance of its investigation, Staff obtained and reviewed ACDL's Central Securities Register as at February 7, 2009 (the Register). In addition to the clients named in Scoten's August 10, 2009 email to TD, Staff identified an additional 11 clients of Scoten who had purchased ACDL shares.
21. On June 22, 2011, Scoten was interviewed by Staff. Scoten, among other things, indicated the following:
- a) Scoten confirmed that the 11 individuals that Staff had identified through the Register had been his clients and that he had introduced them to ACDL.
 - b) Scoten's clients bought their ACDL shares from an existing shareholder.
 - c) Scoten thought the ACDL shares were transferable and he was not aware of the need to obtain a resale exemption.
 - d) For the most part, Scoten gave his clients forms to sign, took their cheques, and then delivered the completed forms and cheques to ACDL. He also picked up share certificates from ACDL to deliver to his clients.
 - e) Scoten also recommended ACDL to a number of friends and family members who were not his clients.
 - f) Scoten purchased approximately 28,200 ACDL shares which were transferred into his daughter's name as follows:
 - 12,000 shares at \$14 USD;
 - 10,000 shares at \$10 USD;
 - 5,200 shares at \$10 USD; and
 - 1,000 shares at \$10 USD.
 - g) Scoten paid for these shares by bank draft.
 - h) Scoten did not receive any compensation for finding clients to purchase ACDL shares.
 - i) Scoten did not tell his supervisors at either CIBC or TD that he was recommending ACDL stock to his clients.
22. As detailed in Schedule "A", in total Scoten initiated and facilitated the purchase of 76,413 previously issued ACDL shares by 26 of his clients from two shareholders, Michael Steele (Steele) and Live Palace Inc., a company controlled by Shlomo Arviv (Arviv). The total imputed price of the shares was \$966,682 USD.

Receipt of Compensation

23. During Scoten's June 22, 2011 IIROC interview, Staff asked him to produce documentary evidence that he had paid for the ACDL shares which were transferred into his or his daughter's name.
24. By way of a July 7, 2011 email, Staff again asked Scoten to provide evidence that he had paid for the ACDL shares which were transferred into his or his daughter's name.
25. By way of a July 8, 2011 email, Scoten replied that he no longer possessed any of the relevant banking records and that he could not recall which bank he had used.
26. By way of a July 11, 2011 email, Staff again requested that Scoten provide evidence that he had paid for the ACDL shares which were transferred into his or his daughter's name.
27. By way of a July 27, 2011 letter, Scoten advised that he had not paid for any of the ACDL shares which were transferred into his or his daughter's name. Scoten further advised that in total he had received

1,000 ACDL shares from Steele and 28,557 ACDL shares from Arviv as follows:

Date	Recipient	# of Shares
March 2008	Scoten's Daughter	6,000
April 2008	Scoten's Daughter	4,857
April 2009	Scoten's Daughter	2,500
October 2009	Scoten's Daughter	10,000
October 2009	Scoten	1,000
January 2010	Scoten's Daughter	5,200

28. On September 1, 2011, Scoten was again interviewed by Staff. During this interview, Scoten indicated, among other things, the following:
- a) He received in excess of 28,000 shares of ACDL from Arviv as compensation for finding buyers who purchased shares that Arviv owned. He entered into his compensation arrangement with Arviv prior to any of his clients purchasing any ACDL shares.
 - b) Scoten received 1,000 shares of ACDL from Steele as compensation for finding buyers who purchased shares that Steele owned. He entered into his compensation arrangement with Steele prior to any of his clients purchasing any ACDL shares from Steele.
 - c) He told some clients, but not all, that he was receiving compensation from the vendors.

Discretionary Trading

29. On April 1, 2010, 45 of Scoten's client accounts sold a total of 63,760 shares of Suncor Energy Inc. (Suncor) for gross proceeds of approximately \$2,190,466. Gross commissions for the sales totaled approximately \$12,720. All of the Suncor sell orders were entered between 8:10 am (PT) and 9:05 am (PT).
30. Later that same morning, between 9:48 am (PT) and 10:45 am (PT), 43 of Scoten's client accounts purchased a total of 54,720 shares of Encana Corporation (Encana) at a pre-commission cost of approximately \$1,755,495. The gross commission for the purchase of the Suncor shares was approximately \$11,620.
31. 41 of the 45 client accounts which sold Suncor shares used the proceeds to purchase Encana shares
32. During his June 22, 2011 IIROC interview, Scoten, among other things, indicated that:
- a) On the morning of April 1, 2010, he only placed discretionary trades for two client accounts. In both cases, the trades involved selling Suncor shares and using the proceeds to purchase Encana shares. Scoten claimed to have received approval for these trades from the spouse of each client.
 - b) For all the remaining accounts, he contacted the account holder to obtain their consent to sell their Suncor shares and/or to buy Encana shares. He then had his assistant enter the order(s) and he would contact another client.
33. By way of an August 30, 2011 email, Staff provided Scoten with a spreadsheet that, among other things, indicated that all of the Suncor sell orders were entered and then approximately 43 minutes later the first of the Encana buy orders was entered.
34. During his September 1, 2011 IIROC interview, Scoten:
- a) admitted to placing additional discretionary trades for his client accounts on the morning of April 1, 2010.
 - b) indicated that he could not recall how many trades were discretionary, nor could he identify which accounts the discretionary trades took place in; and

- c) indicated that he may have talked to three-quarters of the clients on whose behalf he placed trades that morning.

IV. TERMS OF SETTLEMENT

34. This settlement is agreed upon in accordance with IROC Dealer Member Rules 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member *Rules of Practice and Procedure*.
35. The Settlement Agreement is subject to acceptance by the Hearing Panel.
36. The Settlement Agreement shall become effective and binding upon Scoten and Staff as of the date of its acceptance by the Hearing Panel.
37. The Settlement Agreement will be presented to the Hearing Panel at a hearing (the Settlement Hearing) for approval. Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.
38. If the Hearing Panel accepts the Settlement Agreement, Scoten waives his right under IROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
39. If the Hearing Panel rejects the Settlement Agreement, Staff and Scoten may enter into another settlement agreement; or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.
40. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
41. Staff and Scoten agree that if the Hearing Panel accepts the Settlement Agreement, they, or anyone on their behalf, will not make any public statements inconsistent with the Settlement Agreement.
42. Unless otherwise stated, any monetary penalties and costs imposed upon Scoten are payable immediately upon the effective date of the Settlement Agreement.
43. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

Schedule "A"

Scoten Clients Who Purchased ACDL Shares

Date Share Certificate Issued	Buyer/Scoten Client	Seller	# of Shares	Reported Price
2008				
March 6	TB	Live Palace Inc.	1,785	\$14 USD
March 6	J & JBr	Live Palace Inc.	3,571	\$14 USD
March 6	MD	Live Palace Inc.	1,785	\$14 USD
March 6	A & CF	Live Palace Inc.	1,785	\$14 USD
March 6	J & SH	Live Palace Inc.	5,000	\$14 USD
March 6	T & HM	Live Palace Inc.	3,571	\$14 USD
March 6	G & MM	Live Palace Inc.	2,000	\$14 USD
March 6	LM	Live Palace Inc.	1,785	\$14 USD
March 6	F & CR	Live Palace Inc.	2,142	\$14 USD
March 6	K & CS	Live Palace Inc.	5,000	\$14 USD
March 6	AS	Live Palace Inc.	1,785	\$14 USD
March 6	GT	Live Palace Inc.	4,143	\$14 USD
March 6	R & KW	Live Palace Inc.	2,000	\$14 USD

March 6	R & DW	Live Palace Inc.	5,000	\$14 USD
March 6	CW	Live Palace Inc.	1,000	\$14 USD
March 10	CY	Live Palace Inc.	3,571	\$14 USD
April 2	BC	Live Palace Inc.	2,000	\$14 USD
April 2	A & CF	Live Palace Inc.	215	\$14 USD
April 2	T & JH	Live Palace Inc.	500	\$14 USD
April 2	K & CS	Live Palace Inc.	2,000	\$14 USD
2009				
May 14	CY	Live Palace Inc.	2,500	\$10 USD
June 22	RN	Michael Steele	5,000	\$10 USD
September 2	T & HM	Live Palace Inc.	3,000	\$10 USD
September 2	BS	Live Palace Inc.	2,000	\$10 USD
September 2	DJ	Live Palace Inc.	1,000	\$10 USD
September 2	MK	Live Palace Inc.	1,000	\$10 USD
September 2	GK	Live Palace Inc.	5,000	\$10 USD
September 2	K & CS	Live Palace Inc.	2,775	\$10 USD
October 2	AL	Michael Steele	1,000	\$10 USD
October 2	RH	Michael Steele	2,500	\$10 USD
Total:			76,413 shares	\$966,682 USD

AGREED TO by the Respondent, Samuel Ryan Scoten at the City of Vancouver in the Province of British Columbia, this 3rd day of October, 2012.

Witness

Samuel Ryan Scoten

AGREED TO by Staff at the City of Vancouver in the Province of British Columbia, this 10th day of October, 2012.

Witness

Lorne Herlin

Senior Enforcement Counsel
on behalf of Staff of the Investment Industry
Regulatory Organization of Canada

ACCEPTED at the City of Vancouver in the Province of British Columbia, this 11th day of October, 2012, by the following Hearing Panel:

Per: "R. John Rogers"

Panel Chair

Per: "Michael Johnson"

Panel Member

Per: "L. Karen Henderson"

Panel Member

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