

Re Laurentian Bank Securities

IN THE MATTER OF:

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

and

Laurentian Bank Securities Inc.

2017 IIROC 38

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

Heard: March 29 and May 16, 2017

Decision: July 11, 2017

Hearing Panel:

M^c Alain Arsenault, Chair, Mr. Daniel Houle, Ms. Lise Casgrain, Panel members

Appearances:

M^c Francis Larin, Enforcement Counsel for IIROC

M^c Julie-Martine Loranger (McCarthy Tétrault LLP), Counsel for the Respondent

DECISION ON SETTLEMENT AGREEMENT

I. PREAMBLE

¶ 1 After investigation, the Enforcement Department of the Investment Industry Regulatory Organization of Canada (“IIROC”) determined that Laurentian Bank Securities Inc. (hereinafter, the “Respondent”) did commit violations for which it may be disciplined by a hearing panel appointed pursuant to IIROC Rule 8408 (hereinafter the “Hearing Panel”), namely:

- “1) *Between March 2011 and September 2012, the Respondent failed to take reasonable steps to ensure that three of its registered representatives were proficient, in accordance with the requirements provided under IIROC Dealer Member Rule 2900.3 and, more specifically in connection with the 90-day training program, contrary to IIROC Dealer Member Rule 18.3(b);*
- 2) *Between February 12, 2012 and April 28, 2013, the Respondent failed to establish and maintain a system that allowed adequate supervision of the business activities of one of its registered representatives, by neglecting to ensure compliance with one of the conditions of registration imposed on said representative by the Approval Committee of the Québec District Council, namely periodic visits to his place of work, contrary to IIROC Dealer Member Rule 38.1.*

¶ 2 On December 19 and 21, 2016, the parties consented to the settlement of this matter by way of a Settlement Agreement, which is appended hereto and is deemed to be an integral part thereof.

¶ 3 The Settlement Agreement concluded between the parties, by which the Respondent acknowledges its guilt in respect of the offences, provides for the following terms of settlement:

- a) an aggregate fine in the amount of \$200,000;
- b) Costs in the amount of \$20,000.

¶ 4 The factual background in this matter is summarized in paragraphs 6 to 27 of this agreement:

“Particulars of Count 1:

6. *IIROC Dealer Member Rule 2900.3 imposes a 90-day Training Program on all new registered representatives;*
7. *In accordance with Member Regulation Notice MR0359 published on July 13, 2005 by the Investment Dealers Association of Canada (IDA) and titled Revised Guidelines for 90-Day Training Program, this training program includes a firm-specific component, as well as a component that may include courses offered by the Canadian Securities Institute (CSI);*
8. *The firm-specific component covers the firm’s proprietary products, services, systems and procedures notably;*
9. *An examination of the Respondent’s business conduct compliance, conducted by staff of IIROC in March 2011, noted as a deficiency that the Respondent’s 90-day training program did not include an educational component about the firm and its products, for new registered representatives;*
10. *In response to this finding, the Respondent subsequently confirmed that as of June 2011, it had added an education component about the firm and its products to its 90-day training program and that the process would be duly completed by the end of the current year;*
11. *The Respondent’s next business conduct compliance examination, conducted by IIROC staff in June 2012, noted as a deficiency that the Respondent had not made sure that the 90-day training of its registered representatives had been adequately completed;*
12. *The Respondent notably proceeded to register two (2) representatives with IIROC, in July and August 2011, declaring that these individuals had each completed their 90-day training periods, whereas this was not the case;*
13. *One of the two registered representatives had only performed one transaction, and the other, none;*
14. *Moreover, in December 2011, the Respondent attempted to register a third representative, whereas the latter had not completed the 90-day training program;*
15. *The Respondent had not, at the time, run any checks and had no internal policy or procedure in place that would enable it to check whether the 90-day training program had been duly completed by its registered representatives;*
16. *In October 2012, the Respondent informed IIROC staff that, since April 2012, it had set up internal controls that would enable it to meet the requirements in connection with the 90-day training program;*
17. *The Respondent subsequently participated, beginning in 2013, in a pilot project offered by the Registration Department of IIROC regarding the Respondent’s registration processes and procedures.*

PARTICULARS OF COUNT 2:

18. *On February 13, 2012, the Approval Committee of the Québec District Council (the Approval Committee) approved the reactivation and approval application of a registered representative of the Respondent, subject to conditions, since the representative was under investigation by Staff*

of IIROC at the time;

19. *Pursuant to this decision of the Approval Committee, one of the conditions imposed was that the designated supervisor responsible for the activities of this registered representative must perform a site visit at the latter's place of work, every two (2) weeks;*
20. *The Respondent duly consented to the imposition of the conditions that were the object of the Approval Committee's decision, including the one described in the preceding paragraph, with the designated supervisor working out of the Québec City branch and the registered representative working at the Thetford Mines branch;*
21. *On September 7, 2012, the Approval Committee accepted an application to change the conditions of registration for this registered representative of the Respondent, namely that the site visits by the designated supervisor to the registrant's place of work be conducted henceforth on a monthly basis, rather than every two (2) weeks, notably given the internal controls and the system for supervising the accounts of this registered representative;*
22. *On April 29, 2013, Staff of IIROC informed the Respondent that the conditions of registration that were the subject of the two (2) decisions rendered by the Approval Committee on February 13 and September 7, 2012, were henceforth lifted, considering that the investigation of the registered representative was now closed;*
23. *Consequently, between February 13, 2012 and the end of August 2012, the designated supervisor should have made at least fourteen (14) site visits to the registered representative's place of work;*
24. *Following the Approval Committee's decision dated September 7, 2012, namely for the period from September 7, 2012 to April 28, 2013, the designated supervisor should have made at least eight (8) site visits to the registered representative's place of work;*
25. *Yet, between February 13, 2012 and April 28, 2013, it seems that the designated supervisor only visited said place of work on eleven (11) occasions, whereas pursuant to the two (2) decisions rendered by the Approval Committee, twenty-two (22) site visits should have been made to the registered representative's place of work during this period;*
26. *At the material time, the Respondent did not have a system or controls in place that would allow it to ensure that one of the conditions imposed by the Approval Committee was being met;*
27. *Over the course of 2013, the Respondent's Supervisor's Guide was amended to specify that supervisors must make note of and document their meetings, conversations and any other relevant information, in order to be able to demonstrate that supervision conditions have been met."*

¶ 5 On March 29 and May 16, 2017, a settlement hearing was held, during which the Hearing Panel heard the pleadings of the legal counsel for both parties, who jointly recommended acceptance of the Settlement Agreement that was concluded between them on December 19 and 21, 2016, pursuant to Rule 8400 (IIROC's Rules of Practice and Procedure) and section 8215 of Rule 8200 (IIROC's Enforcement Proceedings).

¶ 6 At the hearing, the legal counsel for both parties outlined the aggravating and mitigating circumstances that, in their opinion, would justify the terms of settlement agreed between the parties.

¶ 7 The aggravating circumstances raised by counsel for the parties are as follows:

- a) The Respondent had a disciplinary history in a similar matter;
- b) Although it had committed to making the corrections required by IIROC Staff with respect to past violations, the Respondent has not met that commitment.

¶ 8 The mitigating circumstances raised by counsel for the parties are as follows:

- a) There has been no customer complaint, nor any loss arising from the alleged violations;

- b) The alleged violations have not affected the integrity of the capital markets;
- c) The Respondent cooperated fully in the investigation by IIROC;
- d) Regarding the first count, the Respondent was proactive in participating in a pilot project offered by the Registration Department of IIROC, relative to the Respondent's registration processes and procedures;
- e) The Respondent took measures and made the required corrections to prevent the recurrence of the deficiencies noted by IIROC's Inspection Department;
- f) Since the corrective action was taken by the Respondent, no new deficiency has been identified by IIROC's Inspection Department in connection with counts 1 and 2.

II. POWERS AND DUTIES OF THE HEARING PANEL RELATIVE TO A SETTLEMENT AGREEMENT

¶ 9 The Hearing Panel notes that, pursuant to IIROC Dealer Member Rule 8215(5), its powers relative to a settlement agreement are limited to accepting or rejecting the agreement. It may in no case modify the content.

¶ 10 On this subject, the Hearing Panel cites the following paragraph in *Re BMO Nesbitt Burns*, 2012 IIROC 21:

“THE DUTY OF A HEARING PANEL UPON A SETTLEMENT AGREEMENT

“8. It is clear from jurisprudence emanating from the courts and from Hearing Panels of IIROC, Investment Dealers Association and the Mutual Fund Dealers Association, that our task is not to decide whether, in this case, we would have arrived at the same decision as that reached by the parties. Rather, our duty is to determine whether the penalty is a reasonable one and that it meets the objectives of the disciplinary process which are to maintain the integrity of the investment industry. We cite from the recent decision of the Hearing Panel in Re CIBC World Markets Inc., [2011] IIROC No. 38 :

13. Finally, hearing panels will not lightly interfere with a negotiated settlement. As was said in Re Milewski, [1999] IDACD No. 17,

A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.

14. Or, as put by Winkler J. (albeit in another context) in Gilbert v. CIBC [2004] O.J. 4260:

There is a presumption of fairness when a proposed class settlement negotiated at arms length... is presented to the court for approval. A court will only reject a proposed settlement when it finds that the settlement does not fall within a range of reasonableness.

The test to be applied is whether the settlement is fair and reasonable... This allows for a range of possible results and there is no perfect settlement. Settlement is a product of compromise, which by definition, necessitates give and take.

15. In our view, the settlement, negotiated as it was by the parties assisted by capable counsel, does not clearly fall "outside a range of appropriateness" and it should therefore be, and was, accepted by the panel.”

GUIDELINES AND OTHER DECISIONS

9. In determining whether a settlement is a reasonable one, a hearing panel is entitled to look at regulatory guidelines and other decisions. Guidelines are not binding upon a hearing panel and cannot derogate from its responsibility to decide what may be an appropriate penalty in a given case. However, they are useful in that they show what penalties members of the industry think are

generally appropriate. [...]”

¶ 11 More recently in *Re Kloda*, 2016 IROC 50, the hearing panel reiterated these principles in connection with the role of disciplinary sanctions:

“10. The question for the Hearing Panel is whether, given the misconduct, the penalties fall within "a reasonable range of appropriateness". The Hearing Panel can either accept or reject the Settlement Agreement. It may not in any way alter the agreement or have knowledge of facts not in evidence in the Agreement. The Hearing Panel powers end there.

11. As expressed in Siska:

«Our mission is not that of an appeal body. We are not required to consider whether, having heard the case in an adversarial proceeding in the first instance, we would have ruled or not as the Parties agreed in their SETTLEMENT AGREEMENT. Neither is it up to us to consider whether the content of the SETTLEMENT AGREEMENT is too lenient or too harsh. That is not our role in the matter either. Even were we of the opinion that, having heard the case in first instance, our decision on Penalties would have been more lenient or more severe than the SETTLEMENT AGREEMENT, that would not be our mission either.

12. As also pointed out in Faber:

It is not a question of whether the agreed-upon penalties are ones which this panel would have imposed had the matter come before us for determination at a hearing. It is also not open to us to amend, rewrite or alter the terms of the agreement reached between the parties.

13. The primary purpose of IROC disciplinary proceedings is to maintain high standards of conduct in the securities industry and to protect market integrity and improve overall business standards and practices.

14. Disciplinary sanctions are twofold: not only a specific sanction against a contravention to the Rules but also a means that should serve as deterrence. "In order to achieve this, sanctions should be significant enough to prevent and discourage future misconduct by the respondent (specific deterrence), and to deter others from engaging in similar misconduct (general deterrence)". This is specifically what the Hearing Panel has to assess.

15. Are the conclusions lenient or harsh to the point of being unreasonable, contrary to the public interest and/or of a nature to bring IROC's disciplinary process into disrepute? The analysed answer the Hearing Panel gives to that question should either be yes or no to the Agreement as submitted.” [References omitted]

¶ 12 In this matter, the Hearing Panel must analyze the content of the Settlement Agreement concluded between the parties to determine whether the penalties that it provides are reasonable. To this end, it will draw inspiration notably from the objectives stated in the *IROC Sanction Guidelines*:

“Part I – Sanction Principles for IROC Disciplinary Proceedings

The following principles provide a framework that should be considered in connection with the imposition of sanctions in all cases.

1. Disciplinary sanctions are preventative in nature and should be designed to protect the investing public, strengthen market integrity, and improve overall business standards and practices.

The purpose of sanctions in a regulatory proceeding is to protect the public interest by restraining future conduct that may harm the capital markets. [...]

When considering specific and general deterrence in the imposition of sanctions, consideration should be given to the size of the Dealer Member, including the firm's financial

resources, nature of the firm’s business, and the number of individuals associated with the firm, with a view toward ensuring that the sanctions imposed are sufficient to achieve deterrence. [...]

General deterrence can be achieved if a sanction strikes an appropriate balance by addressing a Regulated Person’s specific misconduct but is also in line with industry expectations. Any sanction imposed must be proportionate to the conduct at issue and should be similar to sanctions imposed on respondents for similar contraventions in similar circumstances. The sanction should be reduced or increased depending on the relevant mitigating and aggravating factors.

2. *Disciplinary sanctions should be more severe for respondents with prior disciplinary records.*

A respondent’s prior disciplinary record is an aggravating factor and may warrant a harsher sanction than would be required had this been the respondent’s first disciplinary contravention.

A prior disciplinary record for a similar or identical contravention strongly suggests that the prior sanction was not a sufficient deterrent, thereby necessitating an increased sanction in order to address specific deterrence. However, a prior record where the misconduct is different may nonetheless be a factor to consider and it may demonstrate a respondent’s general disregard for compliance with regulatory requirements, the investing public or market integrity in general. A prior disciplinary record generally becomes less relevant as it becomes more dated.

3. *For multiple violations, the total or cumulative sanction should appropriately reflect the totality of the misconduct.*

Where there are multiple violations, the overall sanction imposed should not be excessive or disproportionate to the gravity of the total misconduct at hand. For this reason, a global approach to sanctioning may be appropriate where the imposition of a sanction for each contravention would have the effect of imposing on the respondent a cumulative sanction that is excessive.

[...]

8. *In determining the appropriate sanction, a respondent’s proactive and exceptional assistance to IIROC in the investigation will be considered.*

IIROC Rules require a respondent to cooperate fully with investigations and respond to requests for information in a timely and straightforward manner.

In light of the general requirement to cooperate with IIROC investigations, only assistance by a respondent that is proactive and exceptional should be considered as a mitigating factor in imposing sanctions. [...] [References omitted]

¶ 13 Since sanctions should be tailored to address the misconduct involved in a particular case, a penalty must be proportionate to the seriousness of the misconduct and the relative degree of responsibility of a respondent. To properly assess the seriousness of a specific misconduct, the decision-maker should look to a number of factors, including the following enumerated in the *IIROC Sanction Guidelines*:

“Part II – Key Factors in Determining Sanctions

The following list of key factors should be considered, where applicable, when determining the appropriate sanctions. This list sets out commonly considered factors and is intended to be illustrative, not exhaustive.

- 1. The number, size and character of the transactions at issue.*
- 2. Whether the respondent engaged in numerous acts and/or a pattern of misconduct.*

3. *Whether the respondent engaged in the misconduct over an extended period of time.*
4. *Whether the misconduct was intentional, willfully blind, or reckless with respect to regulatory requirements.*
5. *Extent of harm to clients or other market participants.*
6. *Extent of harm to market integrity or the reputation of the marketplace, or both.*
7. *The level of vulnerability of the injured or affected client(s).*
8. *The respondent's relevant disciplinary history [...].*
9. *Extent to which the respondent obtained or attempted to obtain a financial benefit from the misconduct [...].*
10. [...].
11. *In the case of a Dealer Member, whether the respondent accepted responsibility for and acknowledged the misconduct to the regulator prior to detection and intervention by the regulator.*
12. [...].
13. *Whether an individual respondent or Dealer Member respondent voluntarily employed subsequent corrective measures to revise general and/or specific procedures to avoid recurrence of misconduct.*
14. *Whether the respondent made voluntary acts of compensation, including voluntary disgorgement of commissions, profits, other benefits and/or payment of restitution to clients.*
15. *Whether the respondent provided proactive and exceptional assistance to IIROC in the investigation of the misconduct [...].*
16. *Whether the respondent attempted to delay IIROC's investigation, to conceal information from IIROC, or intentionally provided inaccurate or misleading testimony or documentary information to IIROC.*
17. *Whether the respondent demonstrated reasonable reliance on competent supervisory, legal or accounting advice.*
18. [...]
19. *Whether the respondent attempted to conceal his or her misconduct or to lull into inactivity, mislead, deceive or intimidate a client, regulatory authorities or, in the case of an individual respondent, the member firm with which he or she is/was associated.*
20. *Whether the respondent failed to heed regulatory guidance with respect to the misconduct at issue.*
21. *Whether the respondent engaged in the misconduct at issue notwithstanding prior warnings from IIROC, another regulator or a supervisor (in the case of an individual respondent) that the conduct contravened firm policies, IIROC rules or applicable securities laws or regulations or was not in the best interests of the client or public."*

III. SERIOUSNESS OF THE RESPONDENT'S MISCONDUCT IN THIS MATTER

¶ 14 In the matter at hand, the Hearing Panel is of the opinion that while market integrity was not harmed and no client suffered any financial loss, the Respondent's misconduct is serious.

¶ 15 On this score, the Hearing Panel cites with approval the following passage from *Re OptionsXpress Canada*, 2012 IIROC 72, in which deficiencies relating to the supervision of the activity in certain client accounts, which the respondent had represented were corrected, had not been corrected. The hearing panel expressed itself as follows regarding the seriousness of the contraventions in this matter:

“7. The responsibility of dealer members to comply with their obligations to supervise their activities and their employees is a very important one. Supervision is necessary to ensure ethical conduct, fair trading and the integrity of the investment industry. The contraventions in this case must, therefore, be treated as serious ones. The contraventions are more serious because the respondent failed to comply with the representation, which it had given to BCC. A regulator is entitled to assume that a Member will comply with its representations.”

¶ 16 In *Re OptionsXpress Canada*, the hearing panel gave effect to a settlement agreement that provided the following penalties:

- a) A fine in the amount of \$65,000;
- b) Costs in the amount of \$2,500.

¶ 17 The hearing panel had then taken into account the firm’s modest size, the fact that the respondent had no disciplinary history, that it had cooperated fully with IIROC’s investigation, and that no client had filed a complaint, which suggests that no financial loss was incurred.

¶ 18 Still in *Re OptionsXpress Canada*, the hearing panel had noted that “[m]onetary penalties are necessary to act as specific and general deterrence”, and that those imposed in this matter, given the firm’s size, “should be sufficient to alert all members that failure of supervision and failure to comply with representations made to a regulator will attract significant consequences.” (par. 13).

IV. RANGE OF APPROPRIATENESS FOR SIMILAR SANCTIONS

¶ 19 In the matter at hand, what emerges from the pleadings of counsel for both parties is that contraventions of a similar nature to the allegations against the respondent are rare and that, consequently, the range of appropriateness in such matters is somewhat vague. Nevertheless, counsel for the parties submitted several decisions to the hearing panel, to help it rule on the appropriateness of the sanctions recommended in the settlement agreement signed by the parties on December 19 and 21, 2016.

a) The comparable case law submitted by counsel for both parties

Regarding Count 1:

¶ 20 *Re Laurentian Bank Securities 2012 IIROC 49:*

In this matter, the respondent was accused of the following contraventions: (1) having failed to exercise adequate and effective supervision by not taking every measure to ensure that its supervisors fully understood the features and risks inherent in leveraged Exchange-Traded Funds; and (2) having failed to use due diligence, by neglecting to offer training to ensure that its supervisors had full knowledge to adequately supervise the trading of leveraged Exchange-Traded Funds.

At the close of a settlement hearing, the hearing panel in this matter accepted the agreement reached by the parties, which provided the following penalties:

- a) an aggregate fine of \$140,000;
- b) costs in the amount of \$10,000.

The following aggravating factors were then taken into account: (1) the respondent had two disciplinary measures on its record in matters of supervision; (2) a complaint had been filed by a client; (3) despite all the information that had been published on the subject of leveraged Exchange-Traded Funds, the respondent took no measures to intervene.

In addition, the fact that the \$168,000 loss had in large part been compensated by the Respondent following the filing of the complaint was retained as a mitigating factor in this matter.

¶ 21 *Re Industrial Alliance Securities Inc., 2015 IIROC 42:*

In this matter, the respondent was accused of the following contraventions: (1) having failed to take reasonable measures to ensure that two of its representatives, and some of its supervisors, possessed the

required knowledge and understood the features and risks inherent in leveraged Exchange-Traded Funds, and (2) having failed to intervene in respect of one of its representatives to ensure that trades executed by the latter in the accounts of two clients were within the bounds of good business practice.

At the close of a settlement hearing, the hearing panel in this matter accepted the agreement reached by the parties, which provided the following penalties:

- a) an aggregate fine of \$75,000;
- b) costs in the amount of \$15,000.

The following aggravating factors were then taken into account: (1) by omitting to implement an adequate policy, respondent opened the door to unsuitable transactions for three of its clients; (2) in spite of the interventions made by the respondent's various branch managers, the firm took no measure to remedy the problem.

Also, in this matter, the hearing panel retained the following mitigating factors: (1) the contraventions concerned isolated incidents; (2) the respondent had no prior disciplinary record in this regard; (3) not all of the clients in question filed an official complaint and compensation was paid; (4) the respondent cooperated with the disciplinary investigation.

¶ 22 *Re Wellington West Capital & Walters Sagher, 2013 IIROC 46:*

In this matter, the respondent was accused of the following contraventions: (1) having failed to use due diligence to learn the essential facts regarding LETFs; and (2) having failed to exercise adequate supervision of the suitability of recommending investments in LETFs.

At the close of a settlement hearing, the hearing panel in this matter accepted the agreement reached by the parties, which provided the following sanctions:

- c) an aggregate fine of \$175,000;
- d) costs in the amount of \$10,000.

The following aggravating factor was retained at the time: the failure to supervise had consequences for 145 clients who suffered losses exceeding just over \$270,000.

As well, the following mitigating factors were considered by the hearing panel in this matter: (1) the respondent circulated IIROC's guidance notice to its registered representatives; (2) in the wake of the events, the respondent took additional measures to ensure that it sufficiently understood the structure and features of more complex and/or non-transparent investment products that its registered representatives would be recommending to clients; (3) the respondent cooperated with IIROC's investigation.

¶ 23 *RBC Matter, Ontario, June 19, 2014:*

In this matter, the respondent was accused of the following contraventions: (1) having failed to take reasonable measures to ensure that two of its representatives, as well as certain of its supervisors, possessed the required knowledge and adequate understanding of the features and risks inherent in leveraged exchange-traded funds; and (2) having neglected to adequately supervise a registered representative, and the accounts of certain of the latter's clients, when he recommended certain exchange-traded funds that were unsuitable given their risk tolerance.

At the close of a settlement hearing, the hearing panel in this matter accepted the agreement reached by the parties, which provided the following sanctions:

- e) an aggregate fine of \$90,000;
- f) costs in the amount of \$2,050.

The following mitigating factors were then taken into account: (1) the manager and assistant manager of the branch discussed the strategy adopted by the registered representative on several occasions following its implementation; (2) the managers examined the registered representative's client accounts in the

course of their daily and monthly supervision of all of the branch's accounts; (3) the respondent instructed the registered representative to recommend that the clients abandon the strategy.

¶ 24 Leede Financial Matter, Alberta, August 24, 2015:

In this matter, the respondent was accused of the following contravention: “Respondent failed to properly supervise Grant Patrick Matthews who employed an aggressive trading strategy with respect to 4 clients which resulted in suitability, discretionary trading and churning violations”.

¶ 25 At the close of a settlement hearing, the hearing panel in this matter accepted the agreement reached by the parties, which provided the following sanctions:

- g) a fine in the amount of \$90,000;
- h) costs in the amount of \$10,000.

The following aggravating factors were taken into account: (1) “all 4 clients were retired or approaching retirement, and sustained losses in their accounts ranging from 8% to 28%”; (2) “in respect of the numerous red flags [...] that were present, [...] Leede failed to effectively perform [its] supervisory responsibility”.

As well, the following mitigating factors were considered by the hearing panel in this matter: (1) “Leede strengthened its policies regarding LETFs”; (2) “Leede [...] requires clients who trade in LETFs to have a high level of investment knowledge, along with a minimum value of liquid assets”.

Regarding Count 2:

¶ 26 Re Byron Capital Markets & Becher, 2014 IIROC 22:

In this matter, the respondent was accused of the following contraventions: (1) “Respondent failed to adequately supervise the activities of research analyst”; and (2) “Respondent failed to ensure that adequate disclosure was made in various research reports published by the firm”.

At the close of a settlement hearing, the hearing panel in this matter accepted the agreement reached by the parties, which provided the following sanctions:

- a) a fine in the amount of \$24,000 on each count;
- b) costs in the amount of \$2,000.

The following mitigating factors were then taken into account: (1) the respondent revised its Policies and Procedures Manual to set out more detailed procedures and to remedy the deficiencies contained in the research reports; (2) the respondent cooperated in IIROC's investigation and admitted its wrongdoing; (3) the respondent had no previous disciplinary history.

¶ 27 Re Portfolio Strategies Securities, 2012 IIROC 36:

In this matter, the respondent was accused of the following contravention: (1) “Respondent failed to designate a supervisor qualified to supervise options trading at the firm”; and (2) “Respondent failed to supervise the activities of an individual who was a consultant and agent on the firm”.

At the close of a settlement hearing, the hearing panel in this matter accepted the agreement reached by the parties, which provided the following sanctions:

- a) an aggregate fine of \$40,000;
- b) costs in the amount of \$3,500.

The following mitigating factors were then taken into account: (1) the respondent had no disciplinary history; (2) the respondent collaborated fully with IIROC's investigation; (3) no client complaint was filed.

¶ 28 Re First Canada Capital Partners Inc., 2009 IIROC 19:

In this matter, the respondent was accused of the following contravention: “Respondent failed to adhere

to a condition regarding the implementation of a supervisory structure at First Canada which was mandated by the Pacific District Council”.

At the close of a settlement hearing, the hearing panel in this matter accepted the agreement reached by the parties, which provided the following sanctions:

- a) a \$40,000 fine;
- b) costs in an amount to be determined.

¶ 29 *Re Industrial Alliance Securities, 2014 IIROC 57:*

In this matter, the respondent was accused of the following contravention: “*Respondent failed to adequately supervise the activities of one of its Registered Representatives*”.

At the close of a settlement hearing, the hearing panel in this matter accepted the agreement reached by the parties, which provided the following sanctions:

- a) an aggregate fine of \$50,000;
- b) costs in the amount of \$7,500.

The following mitigating factors were then taken into account: (1) it was an isolated incident; (2) no client was harmed; (3) the respondent terminated its business relationship as soon as it was informed of the commission-sharing arrangement; (4) the respondent took the matter seriously.

¶ 30 *Re National Bank Direct Brokerage Inc., 2011 IIROC 2:*

In this matter, the respondent was accused of the following contravention: (1) having failed in its duty to provide supervision and in its duty to establish and maintain adequate internal controls in respect of the activities of one of its registered representatives; (2) having failed to keep adequate records regarding the keeping of physical acknowledgements confirming the receipt, reading and understanding of the 2005 Compliance Manual by the employees of the respondent; (3) having engaged in conduct unbecoming in that it continued the registration of its chief compliance officer with the regulatory authorities although this person was no longer its employee.

At the close of a settlement hearing, the hearing panel in this matter accepted the agreement reached by the parties, which provided the following sanctions:

- a) an aggregate fine of \$75,000;
- b) costs in the amount of \$25,000.

The following aggravating factors were taken into account by the hearing panel: (1) the three-and-a-half-year period during which the respondent failed in its duty to provide supervision and in its duty to establish and maintain adequate internal controls; (2) the respondent’s failure to keep physical acknowledgements; (3) the time period of nearly a year and a half during which the respondent continued the registration of its CCO although this person was no longer its employee; (4) the fact that the respondent’s records did not comply with regulations.

In addition, the following mitigating factors were retained by the hearing panel in this matter: (1) the representative who was at fault hid his activities from the respondent; (2) the failure to keep an acknowledgment is a “technical” violation; (3) it was the respondent which launched an internal investigation and reported the situation to IIROC; (4) the respondent suspended the representative upon discovering his misconduct and subsequently dismissed him; the respondent did not profit from the representative’s misconduct.

V. **APPLICATION OF THE GUIDELINES AND COMPARATIVE CASE LAW TO THE FACTS IN THIS MATTER**

¶ 31 Given the foregoing, the Hearing Panel in this matter considers that the sanctions provided in the Settlement Agreement signed between the parties on December 19 and 21, 2016 appear insufficient at first

glance.

¶ 32 Indeed, while no client complaint was filed, and no monetary loss was incurred as a result of the Respondent's contraventions, the fact remains nonetheless that these contraventions are serious, since they affect the fundamental nature of the role of the dealer member, which must exercise adequate supervision over its employees and its activities. As the hearing panel noted in *Re OptionsXpress Canada*, above: "Supervision is necessary to ensure ethical conduct, fair trading and the integrity of the investment industry".

¶ 33 For this reason, the Hearing Panel considers that **being lucky that no financial loss was incurred cannot be considered a mitigating factor given the circumstances in the matter.**

¶ 34 Conversely, **the existence of a disciplinary history involving a similar matter, as well as failure to follow through on the statements made to IIROC Staff, appear to be especially aggravating factors that tend to demonstrate a general laxness on the Respondent's part when it comes to regulatory compliance.**

¶ 35 As stated in the *IIROC Sanction Guidelines*: "A prior disciplinary record for a similar or identical contravention strongly suggests that the prior sanction was not a sufficient deterrent".

¶ 36 Keep in mind, that for its disciplinary history in a similar matter, the Respondent agreed to pay a fine of \$140,000, which apparently was not high enough to achieve the desired level of deterrence.

¶ 37 However, the Hearing Panel notes that, **this time, the Respondent really seems to have implemented appropriate measures to ensure the non-recurrence of the irregularities raised by IIROC Staff. Furthermore, the Respondent has shown proactivity by participating in a pilot project proposed by the IIROC Registration Department, in regard to the Respondent's registration processes and procedures, which must play in its favour.**

¶ 38 As mentioned recently by the hearing panel in *Re Cavalaris*, 2017 IIROC 04, a hearing panel may only set aside a joint recommendation in cases where the suggestion is contrary to the public interest or would tend to bring the administration of justice into disrepute:

"15. In deciding whether to accept a Settlement Agreement, a panel is required to determine whether the proposed resolution satisfies the public interest test. That test was recently confirmed as the appropriate one by the Supreme Court of Canada in R. v. Anthony-Cook 2016 SCC 43 in the context of the test to be applied by a trial judge in deciding whether to depart from a joint submission on a criminal sentence.

16. The principles of joint submissions in criminal sentencing are relevant to joint submissions in the administrative law context. See Rault v. Law Society of Saskatchewan, [2009] SKCA 81 cited at para 6 of Re Higgs, [2010] IIROC No. 3.

17. In Anthony-Cook, Moldaver J., speaking for the court, endorsed the public interest test explaining that such a test asks "whether the proposed sentence would bring the administration of justice into disrepute, or would otherwise be contrary to the public interest" (paras 5, 31 and 32). He observes that joint submissions are both "commonplace and vitally important to the well-being of our criminal justice system, as well as our justice system at large" and that, as such, they are readily approved by trial judges. (para 25) He observes, as a general rule, that the Crown and the defence counsel are "highly knowledgeable" about the relevant circumstances and capable of arriving at fair resolutions consistent with the public interest. (para 44) He also notes the importance of joint submissions to all participants in the justice system, including the advantage of certainty to the parties, as well as the benefit that joint submissions bring in conserving the resources of the justice system. (para 40)

18. At para 34, Moldaver J. explains that the rejection of a joint submission by a trial judge would occur only when it is in the public interest in the sense that the proposed submission is "so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper

functioning of the justice system has broken down".

19. The public interest test is the one applied by a Hearing Panel in the regulatory context. In Re Bereskin, [2010] IIROC 37, the Hearing Panel accepted the statement in Re Milewski, [1999] IDACD No. 17 concerning the public interest benefits of the settlement process. In Milewski at p. 13, the Hearing Panel explained that a penalty in a "settlement agreement is likely to be at the low end of the spectrum to avoid the costs of a contested hearing and [to guarantee] a favourable result". As that decision points out, this is why the Panel accepts or rejects rather than approves a settlement agreement. Settlements are to be supported as a means of encouraging negotiation and compromise to arrive at an expeditious resolution of appropriate disciplinary proceedings. Accordingly, a joint submission in the regulatory context would be rejected only where the proposal, if accepted, would lead to the conclusion that the regulatory scheme had broken down or was otherwise not in the public interest."

¶ 39 Given the aggravating and mitigating circumstances specific to the matter before us, the case law submitted by the parties, and *IIROC Sanction Guidelines*, which must serve as our guide, the Hearing Panel considers that **the sanctions recommended in the Settlement Agreement appended hereto fall at the lower end of what constitutes a reasonable range of appropriateness, but are not contrary to public order, nor would they tend to bring the administration of justice into disrepute.**

¶ 40 The Hearing Panel reiterates in this regard that it is not up to it to alter the Settlement Agreement before it, nor to substitute penalties that it might consider fairer, because its role is limited solely to determining whether the agreement is reasonable or not, given the circumstances.

FOR THESE REASONS, THE HEARING PANEL:

ACCEPTS the Settlement Agreement signed by the parties on December 19 and 21, 2016, and appends and gives effect to it from this date.

Signed at Montréal, this 11th day of July, 2017.

Alain Arsenault

Daniel Houle

Lise Casgrain

SETTLEMENT AGREEMENT

PART I - INTRODUCTION

1. The Investment Industry Regulatory Organization of Canada ("IIROC") will issue a notice of application to announce that a settlement hearing will be held before a Hearing Panel (the Hearing Panel) to consider whether, pursuant to Rule 8215 of the Consolidated Rules of IIROC, the Hearing Panel should accept a settlement agreement (the Settlement Agreement) between Staff of IIROC (Staff) and Laurentian Bank Securities Inc. (the Respondent).

PART II - JOINT SETTLEMENT RECOMMENDATION

2. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement in accordance with the terms set forth below.

PART III – AGREED FACTS

3. For purposes of the Settlement Agreement, the Respondent agrees with the facts set out in Part III of this Settlement Agreement.

SUMMARY

4. The Respondent did not take reasonable measures to ensure that the requirements were met in *Re Laurentian Bank Securities* 2017 IIROC 38

connection with the mandatory 90-day training period for three of its registered representatives;

5. Furthermore, the Respondent failed to establish and maintain an adequate system of supervision of the activities of one of its registered representatives, more particularly as regards the latter's compliance with the conditions of registration imposed by the Approval Committee of the Québec District Council, namely periodic site visits at his place of work.

PARTICULARS OF COUNT 1:

6. IIROC Dealer Member Rule 2900.3 imposes a 90-day Training Program on all new registered representatives;
7. In accordance with Member Regulation Notice MR0359 published on July 13, 2005 by the Investment Dealers Association of Canada (IDA) and titled *Revised Guidelines for 90-Day Training Program*, this training program includes a firm-specific component, as well as a component that may include courses offered by the Canadian Securities Institute (CSI);
8. The firm-specific component covers the firm's proprietary products, services, systems and procedures notably;
9. An examination of the Respondent's business conduct compliance, conducted by staff of IIROC in March 2011, noted as a deficiency that the Respondent's 90-day training program did not include an educational component about the firm and its products, for new registered representatives;
10. In response to this finding, the Respondent subsequently confirmed that as of June 2011, it had added an education component about the firm and its products to its 90-day training program and that the process would be duly completed by the end of the current year;
11. The Respondent's next business conduct compliance examination, conducted by IIROC staff in June 2012, noted as a deficiency that the Respondent had not made sure that the 90-day training of its registered representatives had been adequately completed;
12. The Respondent notably proceeded to register two (2) representatives with IIROC, in July and August 2011, declaring that these individuals had each completed their 90-day training periods, whereas this was not the case;
13. One of the two registered representatives had only performed one transaction, and the other, none;
14. Moreover, in December 2011, the Respondent attempted to register a third representative, whereas the latter had not completed the 90-day training program;
15. The Respondent had not, at the time, run any checks and had no internal policy or procedure in place that would enable it to check whether the 90-day training program had been duly completed by its registered representatives;
16. In October 2012, the Respondent informed IIROC staff that, since April 2012, it had set up internal controls that would enable it to meet the requirements in connection with the 90-day training program;
17. The Respondent subsequently participated, beginning in 2013, in a pilot project offered by the Registration Department of IIROC regarding the Respondent's registration processes and procedures.

PARTICULARS OF COUNT 2:

18. On February 13, 2012, the Approval Committee of the Québec District Council (the Approval Committee) approved the reactivation and approval application of a registered representative of the Respondent, subject to conditions, since the representative was under investigation by Staff of IIROC at the time;
19. Pursuant to this decision of the Approval Committee, one of the conditions imposed was that the designated supervisor responsible for the activities of this registered representative must perform a site visit at the latter's place of work, every two (2) weeks;

20. The Respondent duly consented to the imposition of the conditions that were the object of the Approval Committee's decision, including the one described in the preceding paragraph, with the designated supervisor working out of the Québec City branch and the registered representative working at the Thetford Mines branch;
21. On September 7, 2012, the Approval Committee accepted an application to change the conditions of registration for this registered representative of the Respondent, namely that the site visits by the designated supervisor to the registrant's place of work be conducted henceforth on a monthly basis, rather than every two (2) weeks, notably given the internal controls and the system for supervising the accounts of this registered representative;
22. On April 29, 2013, Staff of IIROC informed the Respondent that the conditions of registration that were the subject of the two (2) decisions rendered by the Approval Committee on February 13 and September 7, 2012, were henceforth lifted, considering that the investigation of the registered representative was now closed;
23. Consequently, between February 13, 2012 and the end of August 2012, the designated supervisor should have made at least fourteen (14) site visits to the registered representative's place of work;
24. Following the Approval Committee's decision dated September 7, 2012, namely for the period from September 7, 2012 to April 28, 2013, the designated supervisor should have made at least eight (8) site visits to the registered representative's place of work;
25. Yet, between February 13, 2012 and April 28, 2013, it seems that the designated supervisor only visited said place of work on eleven (11) occasions, whereas pursuant to the two (2) decisions rendered by the Approval Committee, twenty-two (22) site visits should have been made to the registered representative's place of work during this period;
26. At the material time, the Respondent did not have a system or controls in place that would allow it to ensure that one of the conditions imposed by the Approval Committee was being met;
27. Over the course of 2013, the Respondent's Supervisor's Guide was amended to specify that supervisors must make note of and document their meetings, conversations and any other relevant information, in order to be able to demonstrate that supervision conditions have been met.

PART IV – CONTRAVENTIONS

28. By reason of the above-described conduct, the Respondent contravened IIROC Dealer Member Rules as follows:

Count 1: Between March 2011 and September 2012, the Respondent failed to take reasonable steps to ensure that three of its registered representatives were proficient, in accordance with the requirements provided under IIROC Dealer Member Rule 2900.3 and, more specifically in connection with the 90-day training program, contrary to IIROC Dealer Member Rule 18.3(b);

Count 2: Between February 12, 2012 and April 28, 2013, the Respondent failed to establish and maintain a system that allowed adequate supervision of the business activities of one of its registered representatives, by neglecting to ensure compliance with one of the conditions of registration imposed on said representative by the Approval Committee of the Québec District Council, namely periodic visits to his place of work, contrary to IIROC Dealer Member Rule 38.1.

PART V - TERMS OF SETTLEMENT

29. The Respondent accepts the following penalties and costs:
 - a) A fine in the amount of \$200,000; and
 - b) Additionally, the Respondent agrees to pay IIROC costs in the amount of \$20,000.
30. If the Hearing Panel accepts this Settlement Agreement, the Respondent agrees to pay the above-mentioned amounts within 30 days of such acceptance, unless otherwise agreed between Staff and the

Respondent.

PART VI – STAFF COMMITMENT

31. If the Hearing Panel accepts the Settlement Agreement, Staff will not initiate any further action against the Respondent 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 paragraph 9 below.
32. If the Hearing Panel accepts this Settlement Agreement and the Respondent fails to comply with any of its terms, Staff may bring proceedings under Rule 8200 against the Respondent. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement.

PART VII – SETTLEMENT ACCEPTANCE PROCEDURE

33. The Settlement Agreement is subject to acceptance by the Hearing Panel;
34. The Settlement Agreement shall be presented to a Hearing Panel at a settlement hearing held 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.
35. Staff and the Respondent agree that this Settlement Agreement shall constitute 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 Respondent does not appear at the settlement hearing, Staff may disclose additional relevant facts, if requested by the Hearing Panel.
36. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives its right, under IIROC rules and any applicable legislation, to a disciplinary hearing, review or appeal.
37. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement; or Staff may proceed to a disciplinary hearing in relation to the same allegations or to related allegations.
38. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
39. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IIROC will post a full 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.
40. If this Settlement Agreement is accepted, the Respondent agrees that neither it, nor anyone on its behalf, will make a public statement inconsistent with this Settlement Agreement.
41. The Settlement Agreement shall become effective and binding upon the Respondent and Staff from the date of its acceptance by the Hearing Panel.

PART VIII – SIGNATURE OF THE SETTLEMENT AGREEMENT

42. This Settlement Agreement may be signed in one or more counterparts which, together, will constitute a binding agreement.
43. The fax or electronic copy of any signature will be treated as an original signature.

SIGNED at Montréal, Québec, this 19th day of December 2016.

(s) Witness _____

WITNESS

(s) Yves Ruest _____

YVES RUEST

Senior Vice-President, Finance & Administration,
Chief Financial Officer, Chief Compliance Officer,

for Laurentian Bank Securities Inc.

Respondent

SIGNED at Montréal, Québec, this 21st day of December 2016.

(s) Linda Vachet _____

(s) Francis Larin _____

WITNESS

ME FRANCIS LARIN

Senior Enforcement Counsel, for Staff of IIROC

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