Re Moldovan & Holmes

IN THE MATTER OF:

The Dealer Member Rules of the
Investment Industry Regulatory Organization of Canada

and

Traian Moldovan and Robert Bruce Holmes

2014 IIROC 17

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

Heard: February 17, 2014 in Vancouver, British Columbia
Decision: April 16, 2014

Hearing Panel:
Wade Nesmith, Chair, Barbara Fraser and Chris Lay
Appearances:
Lorne Herlin, Enforcement Counsel
David Mitchell, for Traian Moldovan and Robert Bruce Holmes (the "Respondents")

DECISION

¶ 1 This matter was commenced by Notice of Hearing dated May17, 2013 (the "Notice"). A copy of the Notice is appended to this Decision. By way of a letter dated January 24, 2014, David Mitchell, counsel for the Respondents, advised Lorne Herlin, counsel for IIROC that the allegations in the Notice would not be disputed and that the hearing would focus on penalty. The Panel was advised later the same day. The Hearing, originally set for 4 days commencing February 17, 2014, was started and completed on February 17. The Panel's decision was reserved.

¶ 2 Staff's allegations, which are now admitted, contained the following contraventions:

Count 1

From September 2008 to October 2008, Traian Moldovan ("Moldovan") and Robert Bruce Holmes ("Holmes") failed to use due diligence to learn and remain informed of the essential facts relative to every order accepted, contrary to IIROC Dealer Member Rule 1300.1(a).

Count 2

From September 2008 to October 2008, Moldovan and Holmes failed to use due diligence to ensure that recommendations were suitable for their clients, contrary to IIROC Dealer Member Rule 1300.1(q

FACTS

¶ 3 For purposes of this Decision, the following are the salient facts, which can be found elaborated upon in the attached Notice:

1. Moldovan began working as a registered representative in 1996 and continued in that capacity until April 2009. Holmes began his career as a registered representative in 2001 and continued until the fall of 2013. Neither is currently employed in the industry.

2. At all relevant times, the Respondents were employed by Canaccord Capital Corporation ("Canaccord"), having commenced their employment there in 2005.

3. The Respondents operated an investment program known as the "Strategy". At its essence, the Strategy involved clients investing in T-bills and similar low risk securities, and then writing uncovered puts and calls on a handful of major indices. During relatively stable or modestly rising or falling equity markets – markets with a low volatility index - the Strategy provided reasonable returns while preserving capital. The real profits from the Strategy came through the premiums received from the sale options that expired unexercised.

4. During the period relevant to the instant matter, the Respondents had approximately 100 clients involved in the Strategy. It was the focus of their employment at Canaccord. By August 2009, about a year after the matters at issue, representatives of 25 accounts (the "Accounts") had complained to IIROC about the conduct of the Respondents.

5. The accounts represented approximately $8.8 in assets at July 31, 2008. As a result of continuing the Strategy through July and August, 2008, a period of significant volatility, losses of $3.86 million were incurred. Despite the chaos in the financial markets during that period, and the increasing volatility of the equity markets and, thereby, the indices, the Respondents continued to employ the Strategy through September and October 2008, resulting in a further $2.85 million in losses in the Accounts.

6. By virtue of their employment agreements with Canaccord, the Respondents were required to purchase "insurance" options – "protective puts" - that would have had the effect of providing limits to the losses that could otherwise be suffered by their clients. The Respondents stopped purchasing "protective puts" for one index and did not do it at all for several others. Some of the clients were under the impression that these "insurance" options had been purchased for all transactions in the Strategy, although it would have been clear from a review of their monthly statements that those purchases had not been made.

7. The Respondents did not understand the complexities and the risks associated with the Strategy. As a result, they were unable to assess the suitability of the Strategy for their clients with the result that their clients lost significant amounts of money.

¶ 4 During the hearing, IIROC Staff called 3 witnesses to who were each clients of the Respondents. Those witnesses confirmed the facts that have been admitted. However, more importantly, those witnesses testified regarding the effect that the actions of the Respondents had on their lives. This testimony became very important in the context of the penalty phase of the hearing. In hearings where a panel is provided only with agreed facts, set out in documents, it is often difficult to assess the impact of actions of respondents on victims. In this matter, there was no such difficulty. The actions of the Respondents caused significant harm to the lives of the witnesses in ways that far exceeded the financial losses, which in and of themselves were substantial. Witnesses who were on a road to retirement now find themselves working full-time again. Plans to help children with education costs have been abandoned. Depression has been diagnosed. Any previously held confidence in the brokerage community has disappeared. It would be an overstatement to say that lives have been devastated, but it is hard to overstate how significant the damage has been.

¶ 5 The witnesses that testified gave uncontradicted evidence that a settlement had been reached with Canaccord regarding their losses. Although they are bound by a confidentiality agreement with respect to the settlement and, therefore, the terms were unavailable to the Panel, it appears from the testimony that the settlement resulted in only partial compensation for their losses.

FINDINGS

¶ 6 As a result of the admissions made, the evidence offered by Staff and accepted by the Panel, and the facts outlined above, we find that the allegations set out in the Notice have been proved and that the Respondents breached the provisions of IIROC Dealer Member Rules 1300.1(a) and (q).

ARGUMENTS ON PENALTY

¶ 7 It appears to be common ground that the Respondents are equally culpable, and we accept that approach with respect to penalty.

¶ 8 IIROC Staff submitted that the appropriate penalty for each respondent should be a 24 month suspension and a fine of $100,000, with a disgorgement of commissions on transactions conducted during September and October 2008, plus costs of $25,000 each.

¶ 9 Counsel for the Respondents submitted that a 3 month suspension would be appropriate.

¶ 10 In support of the Staff's position, Mr. Herlin took us through the Dealer Member Disciplinary Sanction Guidelines (the "Guidelines") that he felt were relevant. Below we list those that we find most applicable, together with a summary of Mr. Herlin's submissions.

1. Harm – Losses amounted to approximately $6.6 million, involving 25 accounts, with a number of accountholders retired or near retirement. These significant losses caused financial and emotional distress.
2. Blameworthiness – The Respondents are fully responsible and their conduct was deceptive.
3. Enrichment – The Strategy accounted for the vast majority of the trades conducted by the Respondents and virtually all of their commission income.
4. Prior Discipline History – It is accepted that there is no prior history of discipline.
5. Planning and Organization – This was very carefully planned and organized, although it is clear from the evidence that the Respondents failed to understand the risk associated with the Strategy.
6. Multiple Incidents over a Period of Time – The matters at issue occurred over a 4 month period and included many separate transactions.
7. Significant Economic Loss – This is self-evident.

¶ 11 Mr. Herlin then reviewed a series of decisions involving unsuitable investments. These decisions generally involved losses that were less than those occasioned here, and with penalties that are consistent with or in excess of the position taken by Staff. We do not feel it necessary to review those decisions here.

¶ 12 On the matter of costs, Mr. Herlin presented a bill of costs of approximately $120,000 and argued for each respondent to pay $25,000 in costs, which he noted represented approximately 25% of the total costs billed.

¶ 13 Mr. Herlin also argued that disgorgement should be made with respect to commissions earned during September and October of 2008. Unfortunately, the evidence in support of the quantum of those commissions was lacking.

¶ 14 On behalf of the Respondents, Mr. Mitchell argued that a fine should not be awarded against the Respondents as they had no ability to pay any financial penalties and such action would provide no useful purpose in respect of deterrence. He offered no precedents in support of this position. Regarding disgorgement, he pointed to the lack of concrete information regarding quantum. He was silent in respect of the matter of costs.

¶ 15 With respect to the matter of suspension, Mr. Mitchell referred the Panel to the decision of the British Columbia Securities Commission in Re Steinhoff (2014 BCSECCOM23) where the Commission, quoting an earlier decision by the Commission in the same matter, said:

> "Suspension of any length beyond the range of a normal vacation is, for a registered representative, an extremely serious matter. A suspension of one year, what the IIROC panel ordered here, is tantamount to the termination of the registrant's career."

¶ 16 On the basis of the above comments, Mr. Mitchell argued that the 2 year suspension urged upon us by Mr. Herlin would be the end of the careers of the Respondents and would, therefore, be excessive. He argued that a 3 month suspension would be sufficient.

DECISION ON PENALTY

¶ 17 At the outset, we want to reiterate our view that this is a very serious matter. Clients of the Respondents put their faith in them, during a very turbulent time in the financial markets. It is exactly in times like these that expertise is required of industry participants and sought by their clients, as the result of making an incorrect decision can be disastrous. Sadly, the Respondents were ill-equipped to provide expertise in this period of crisis. In short, they did not know what they were doing, but purported to advise anyway.

¶ 18 Furthermore, they failed to purchase the "insurance puts" that they were required, by the terms of their employment, to purchase, and which clients believed to be in place. Their conduct was a catastrophic failure to serve their clients' best interests and they persisted in employing the Strategy over a 4 month period despite continued volatility and extraordinary losses for their clients.

¶ 19 With that background, what is the appropriate penalty? Should it result in a financial penalty as well as a period of suspension from the industry? We believe that it should.

¶ 20 Dealing first with the matter of a fine, we find that there is ample support for the Staff's position for a fine of $100,000. While a respondent's ability to pay is a factor to be considered whenever a fine is being proposed, it is but one of a number of other factors and in the instant matter, we find that a fine of $100,000 is appropriate and consistent with precedents provided.

¶ 21 Our view on the matter of costs is similar. Indeed, we could see ourselves inclined to award a larger amount in the matter, but we will accede to the Staff's request in this matter.

¶ 22 However, on the matter of disgorgement, we find that the evidence with respect to quantum is lacking, and we will not make any order in respect of disgorgement of commission income.

¶ 23 That leaves us with the matter of a suspension, which for us is the most difficult. The precedents provided certainly provide support for the Staff's position. We have carefully considered Mr. Mitchell's arguments in support of a shorter suspension and have taken into account the comments of the British Columbia Securities Commission in Re Steinhoff. However, our view of those comments is that they are very fact specific. The Commission was not making a finding of law, which would be binding on us, but instead simply expressing their opinion on the effect of suspensions generally, and making a finding of fact in respect of the case in front of them.

¶ 24 In the matter before us, we have two respondents, neither of whom is currently employed in the industry. Their conduct in this matter was so egregious that it cries out for a significant suspension. In our view, the suspension proposed by Staff is insufficient.

¶ 25 Our understanding of the registration process for registered representatives is that in a situation where a registered representative has been out of the industry for less than 3 years, there is an abbreviated route to requalification. Our view is that such an abbreviated route would be completely inappropriate for either respondent in this matter. If they determine, at some point in the future, that they want to be employed again in a registered capacity in the securities industry, they should be required to qualify and successfully complete all exams in the same way any non-industry applicant would qualify. Accordingly, we believe that a suspension of 3 years is appropriate.

ORDER

¶ 26 Based upon the above, the Panel orders that the following sanctions be imposed on each the respondents:

1. A fine in the amount of $100,000;
2. An order that the Respondents may not seek registration for 3 years from the date of this

decision as to sanctions; and

3. Payment of costs of $25,000.

Dated at Vancouver, British Columbia this 16th day of April 2014.

Wade Nesmith, Chair

Barbara Fraser

Chris Lay

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

THE DEALER MEMBER RULES OF THE

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

AND

TRAIAN MOLDOVAN

AND

ROBERT BRUCE HOLMES

NOTICE OF HEARING

TAKE NOTICE that pursuant to Part 10 of Dealer Member Rule 20 and Section 1.9 of Schedule C.1 to Transition Rule No.1 of the Investment Industry Regulatory Organization of Canada (IIROC), a hearing will be held before a hearing panel of IIROC (the Hearing Panel) on a date to be fixed by the Hearing Panel on June 25, 2013, at Reportex Agencies Ltd.,

Suite 1010 - 925 West Georgia Street, Vancouver, British Columbia at 10:00 a.m., or as soon thereafter as the hearing can be heard.

TAKE FURTHER NOTICE that pursuant to Rule 6.2 of IIROC's Dealer Member *Rules of Practice and Procedure*, the hearing shall be designated on the:

☒ The Standard Track

☐ The Complex Track

TAKE FURTHER NOTICE that on June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada (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.

THE PURPOSE OF THE HEARING is to determine whether the Respondents,

Traian Moldovan and Robert Bruce Holmes (collectively, the Respondents), who at all material times were registered representatives employed by Canaccord Genuity Corp. (previously known as Canaccord Capital Corporation), committed the following contraventions that are alleged by Staff of IIROC (Staff):

Count 1

From September 2008 to October 2008, Traian Moldovan (Moldovan) and Robert Bruce Holmes (Holmes) failed to use due diligence to learn and remain informed of the essential facts relative to every order accepted, contrary to IIROC Dealer Member Rule 1300.1(a).

Count 2

From September 2008 to October 2008, Moldovan and Holmes failed to use due diligence to ensure that recommendations were suitable for their clients, contrary to IIROC Dealer Member Rule 1300.1(q).

PARTICULARS

TAKE FURTHER NOTICE that the following is a summary of the facts alleged and to be relied upon by Staff at the hearing:

Overview

1. Moldovan and Holmes operated an option strategy which entailed writing (also known as selling) short term uncovered calls and uncovered puts for stock and commodity indices. In September and October 2008, market volatility increased dramatically. Accordingly, market conditions were not suitable for the index option writing strategy. However, Moldovan and Holmes continued to recommend the writing of uncovered index options. As a result, their clients suffered significant losses.

Moldovan's Registration History

2. Moldovan began working as a registered representative in March 1996.

3. From July 2002 to October 2005, Moldovan worked as a registered representative at the Kelowna business location of TD Waterhouse Canada Inc. (TD).

4. From October 2005 to April 2009, Moldovan worked at the Kelowna business location of Canaccord. Since May 2009, Moldovan has not been an IIROC approved person.

Holmes' Registration History

5. Holmes began working as a registered representative in January 2001.

6. From July 2002 to October 2005, Holmes worked as a registered representative at the Kelowna business location of TD.

7. From November 2005 to October 2012, Holmes worked as a registered representative at the Kelowna business location of Canaccord.

8. Since October 2012, Holmes has worked as a registered representative at the Kelowna business location of Wolverton Securities Ltd.

The Options Writing Strategy

9. Moldovan and Holmes implemented, operated, and were active in marketing an index option writing strategy called the "Top 100 Index Option Strategy" (the Strategy). Moldovan and Holmes promoted the Strategy as a way of systematically "creating cash flow" because on a monthly basis clients received premiums for writing the index option contracts.

10. Generally, the Strategy operated as follows:

- A client deposited funds into their margin account.
- In a combination trade an equal number of uncovered calls and uncovered puts were written for the same index. Both the calls and puts expired in two months.
- The following month an equal number of uncovered calls and uncovered puts were written for the same index. Both the puts and calls expired in two months.
- In each consecutive month, calls and puts would expire and new uncovered calls and uncovered puts were written.

Potential Outcomes of the Strategy

11. The ideal outcome of the Strategy was that at expiration the underlying index would be at a level below

the price of the written call, but above the price of the written put. Accordingly, both the call and put options would expire out of the money (i.e. worthless) and the client would retain all of the premiums that were generated from writing the contracts.

12. Another potential outcome of the Strategy was that at expiration the index was at a level either above the written call or below the written put, resulting in either the written call or written put being in the money. Therefore, clients likely incurred a loss on the position.

13. To address this scenario, Moldovan and Holmes bought back the in-the-money position and then wrote new uncovered calls and uncovered puts that would attempt to recapture the cost of buying back the in-the-money position at expiration. This process often narrowed the difference between the exercise prices of the uncovered calls and uncovered puts.

14. Alternatively, rather than writing new index option contracts a client could have simply bought back the in-the-money position and realized a loss.

Potential Losses by Participating in the Strategy

15. The maximum potential loss for writing uncovered calls is unlimited because in theory there is no limit on how high an index can rise.

16. The writer of uncovered puts bears a risk of loss if the value of the underlying index declines below the exercise price. Such loss could be substantial if there is a significant decline in the value of the underlying index. The maximum potential loss would occur if the underlying index falls to zero.

Stock Indices that the Strategy Employed

17. Pursuant to the Strategy, clients wrote uncovered call and uncovered put options for one or more of the following indices:

- Standards & Poors 100 Index (OEX);
- Philadelphia Stock Exchange (PHLX) Oil Service Sector Index (OSX);
- PHLX Gold/Silver Sector Index (XAU); and
- Russell 2000 Index (RUT).

18. Generally, Moldovan oversaw recommendations for the OEX and Holmes oversaw recommendations for the OSX, XAU, and RUT indices.

19. The options for the above-noted indices are European-style. Accordingly they are cash settled and they can only be exercised on their expiration date.

History of Strategy

20. Moldovan and Holmes first began operating the Strategy when they worked at TD. In 2005 they both left the employ of TD primarily because TD was no longer willing to allow them to operate the Strategy.

21. In order to promote the Strategy, Moldovan and Holmes, among other things, placed advertisements in newspapers and they held seminars in Vancouver and Calgary.

22. The Strategy generated virtually of all of Moldovan and Holmes' commission revenue.

The Clients

23. As of July 2008, Moldovan and Holmes had approximately 100 clients who participated in the Strategy and they were both responsible for the accounts that these clients operated. Many of these clients had transferred their accounts from TD to Canaccord.

24. By in or around August 2009, approximately 37 of the clients complained about the operation of the Strategy.

25. Collectively, these 37 clients operated 25 accounts which participated in the Strategy. In their respective Account Information Forms:

- 30 of the 37 clients indicated that their investment objectives were 100% short term trading - medium to high risk;
- 7 of the 37 clients indicated that their investment objectives were 100% speculative high risk trading; and
- 16 of the 37 clients indicated that they were retired.

26. As of July 31, 2008, these 25 accounts collectively held approximately $8.8 million in assets.

27. All of the 37 clients held OEX options and some of them also held OSX, XAU, and/or RUT options.

Transactions in July and August 2008

28. The success of the Strategy was more consistent with a low volatility environment (i.e. market neutral). Moldovan and Holmes used the Chicago Board Options Exchange Volatility Index (the VIX) as a gauge of the expected level of near-term market volatility.

29. Pursuant to the Strategy:

- in July 2008, Moldovan and Holmes recommended writing uncovered calls and uncovered puts which expired in September 2008; and
- in August 2008, Moldovan and Holmes recommending writing uncovered calls and uncovered puts which expired in October 2008.

30. At the time that the July and August 2008 recommendations were made the level of the VIX was in line with its historical average price of $21.00.

31. However, due to rapidly deteriorating market conditions, the July and August 2008 option contracts resulted in combined losses of $3.86 million for the 25 accounts.

The September & October 2008 Recommendations

32. As detailed below, in September and October 2008 the level of the VIX increased dramatically and overall market conditions continued to rapidly deteriorate. Rather than taking steps to close out positions in order to preserve invested capital, in September and October 2008 Moldovan and Holmes recommended to clients that they write new uncovered calls and uncovered puts. In particular, the vast majority of the uncovered put contracts which they recommended were deeply in the money.

33. By way of a September 18, 2008 email to clients, Moldovan acknowledged that the week "shall go down in history as one of the greatest financial crisis moments in time". He noted, among other things, that:

- the VIX had hit an intra-day high of $42.16 which was "a very high reading";
- Lehman Brothers Holdings Inc. had filed for bankruptcy;
- Bank of America Corporation had acquired Merrill Lynch; and
- American International Group had to be bailed out.

34. Yet, Moldovan and Holmes still recommended that when the July 2008 calls and puts expired in September 2008, clients should continue to write uncovered calls and uncovered puts in a highly volatile environment.

35. Between September 25 and October 15, 2008, Moldovan wrote a series of emails to clients that detailed the increasing level of the VIX and the worsening market conditions. However, Moldovan and Holmes continued to urge clients to remain invested in the Strategy.

36. By October 17, 2008, the date of the expiration of a number of the contracts that were written in August 2008, the level of the VIX had increased to $70.33 which was nearly 2.5 times its level as of August 29, 2008. Despite the high level of market volatility, both Moldovan and Holmes recommended that clients continue to write uncovered calls and uncovered puts.

37. By failing to act prudently to preserve client assets in a deteriorating market, Moldovan and Holmes exposed clients to significant downside risk. Ultimately, as a result of the September and October 2008 option contracts the 25 client accounts collectively incurred $2.85 million in losses.

38. Particulars of September and October 2008 option contracts are attached hereto as Schedule "A".

Failure to Purchase Protective Puts

39. Given the inherent risks of the Strategy, pursuant to the terms and conditions of Moldovan and Holmes' employment with Canaccord, they were required to purchase puts in order to mitigate losses in the event that an index dropped below the exercise price of a written put. The agreement that Moldovan signed on September 9, 2005 and which Holmes signed on November 10, 2005 stated:

> As per your strategy of employing extensive use of short selling calls and puts simultaneously on the S&P 100 and various other indexes, it is agreed by both yourselves and Canaccord that the margin requirements for the purchase and sale of these instruments will be more strict than currently established normal industry regulations.
>
> - <u>All short put positions will have offsetting long positions at a level further out of the money than the main position.</u> (emphasis added)

40. Moldovan and Holmes referred to these offsetting puts as "protective puts".

41. Moldovan and Holmes initially purchased protective puts for the OEX. However, they amended its implementation in May 2007 and they stopped purchasing protective puts for the OEX prior to the writing of the September 2008 option contracts. They never purchased protective puts for the OSX, XAU, and RUT option contracts.

42. Moldovan and Holmes did not obtain approval from Canaccord to stop buying protective puts for the OEX and to never purchase protective puts for the OSX, XAU, and RUT options.

Customized Statements of Account Gains and Losses

43. Pursuant to Canaccord's *Policies and Procedures Manual* (the Manual), all registered representatives were required to obtain approval from Canaccord prior to sending clients personalized profit and loss statements. The Manual stated:

> **22.1 Profit and Loss Statements**
>
> Profit and loss statements ("P & L") on a client's trading activities, furnished as a personalized service by IAs to their clients – often with the help of personal computer programs are subject to outgoing correspondence approval.
>
> …
>
> **22.2 Electronic Communications**
>
> All electronic communications, including email and facsimile, must be approved by the Branch Manager or VP of Compliance.

44. Between April 2007 and June 2008, Moldovan and Holmes sent some of their clients who participated in the Strategy personalized profit and loss statements.

45. The profit and loss statements contained, among other things, the trading activity and the profit/loss position of an account. However, the statements only indicated the revenue generated by writing the

uncovered calls and the uncovered puts. The statements were misleading in that they did not reflect the corresponding liability that existed on the positions (i.e. the cost to close out the positions).

46. Moldovan and Holmes never obtained Canaccord's approval to issue these profit and loss statements to clients.

Failure to Know Product

47. Moldovan and Holmes did not fully know the complexities and the risks of the Strategy. In particular, among other things, they failed to understand that the extremely volatile market conditions were not conducive to the continued operation of the Strategy.

Unsuitable Recommendations

48. By failing to understand the product, Moldovan and Holmes were unable to engage in proper suitability assessments for the clients. Further, Moldovan and Holmes failed to make their clients fully aware of the complexities and risks of the Strategy. In particular, among other things, they did not make clients aware of the additional risks due to their failure to purchase protective puts and the profit and loss statements did not reflect their clients' actual liability.

GENERAL PROCEDURAL MATTERS

TAKE FURTHER NOTICE that the hearing and related proceedings shall be subject to the *Rules of Practice and Procedure*.

TAKE FURTHER NOTICE that pursuant to Rule 13.1 of the *Rules of Practice and Procedure*, the Respondents are entitled to attend and be heard, be represented by counsel or an agent, call, examine and cross-examine witnesses, and make submissions to the Hearing Panel at the hearing.

RESPONSE TO NOTICE OF HEARING

TAKE FURTHER NOTICE that the Respondents must serve upon Staff a Response to the Notice of Hearing in accordance with Rule 7 of the *Rules of Practice and Procedure* within twenty (20) days (for a Standard Track disciplinary proceeding) or within thirty (30) days (for a Complex Track disciplinary proceeding) from the effective date of service of the Notice of Hearing.

FAILURE TO RESPOND OR ATTEND HEARING

TAKE FURTHER NOTICE that if a Respondent fails to serve a Response or attend the hearing, the Hearing Panel may, pursuant to Rules 7.2 and 13.5 of the *Rules of Practice and Procedure*:

(a) proceed with the hearing as set out in the Notice of Hearing, without further notice to the Respondent;

(b) accept as proven the facts and contraventions alleged by Staff in the Notice of Hearing; and

(c) order penalties and costs against a Respondent pursuant to IIROC Dealer Member Rules 20.33 and 20.49.

PENALTIES & COSTS

TAKE FURTHER NOTICE that if the Hearing Panel concludes that a Respondent did commit any or all of the contraventions alleged by Staff in the Notice of Hearing, the Hearing Panel may, pursuant to IIROC Dealer Member Rule 20.33 impose any one or more of the following penalties:

(a) a reprimand;

(b) a fine not exceeding the greater of:

(i) $1,000,000 per contravention; and

(ii) an amount equal to three times the profit made or loss avoided by such Approved Person by reason of the contravention;

(c) suspension of approval for any period of time and upon any conditions or terms;

(d) terms and conditions of continued approval;

(e) prohibition of approval in any capacity for any period of time;

(f) termination of the rights and privileges of approval;

(g) revocation of approval;

(h) a permanent bar from approval with IIROC; or

(i) any other fit remedy or penalty.

TAKE FURTHER NOTICE that if the Hearing Panel concludes that a Respondent did commit any or all of the contraventions alleged by the Staff in the Notice of Hearing, the Hearing Panel may pursuant to IIROC Dealer Member Rule 20.49 assess and order any investigation and prosecution costs determined to be appropriate and reasonable in the circumstances.

DATED at Vancouver, British Columbia this 17th day of May, 2013.

"Warren Funt"

Warren Funt

Vice-President, Western Canada

Investment Industry Regulatory Organization of Canada

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