Re Cavalaris

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Louis Constantine Cavalaris

2017 IIROC 04

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

Heard: December 19, 2016
Decision: December 19, 2016
Written Reasons: January 24, 2017

Hearing Panel:
Susan Lang, Chair; Mary Savona and Lou D'Souza
Appearances:
Rob DelFrate, Senior Enforcement Counsel
Usman Sheikh, for the Respondent

REASONS FOR DECISION

Introduction

¶ 1 Enforcement Counsel for the Investment Industry Regulatory Organization of Canada (IIROC) and the Respondent, Louis Constantine Cavalaris, put forward a Settlement Agreement for the Hearing Panel's acceptance or rejection. In the Agreement, Mr. Cavalaris acknowledges three aspects of his failure to supervise adequately the accounts of portfolio manager, Krishna Sammy: first, to ensure compliance by Mr. Sammy with his clients' risk tolerance levels; second, to identify and address conflicts of interest between Mr. Sammy and his clients; and third, to ensure that Mr. Sammy divested significant high risk shares from clients' accounts in a timely manner. The parties agree that these failures, which occurred between December 2009 and February 2011, form the basis for the conclusion that the Respondent failed to supervise Mr. Sammy in compliance with the Dealer Member Rules 38.7 and 2500. By way of sanction, the parties jointly propose that the Respondent pay a fine of $60,000 and costs of $5,000 and that he receive a reprimand.

¶ 2 This application regarding the Settlement Agreement was brought pursuant to Section 8215 of the Consolidated Enforcement, Examination and Approval Rules of IIROC.

¶ 3 After reviewing the Settlement Agreement and submissions filed and hearing oral argument, the Hearing Panel accepted the terms of the Settlement Agreement. These reasons explain why we did so.

THE CIRCUMSTANCES

¶ 4 The Settlement Agreement, which sets out in detail the factual background to the proposed settlement, is attached to these Reasons as Appendix A. The following is a summary of that background, as supplemented during submissions.

¶ 5 Mr. Cavalaris was a Chief Compliance Officer and a Supervisor of Mr. Sammy's managed client accounts at DWM Securities Inc. (DWM) during the relevant times between January 2009 and January 2011. In January 2011, the Bank of Nova Scotia (Scotia) acquired DWM. At that point, Mr. Cavalaris became the Chief Compliance Officer for Dundee Securities Ltd. Since May 2016, he has been the Chief Compliance Officer for Echelon Wealth Management Inc. Mr. Cavalaris, who has been employed in the securities business since 1981, has no earlier discipline record.

Risk Tolerance Levels

¶ 6 Over the relevant time, Mr. Sammy purchased high risk speculative securities for several of his clients' managed accounts. Some investments exceeded the clients' levels of risk tolerance. This was exacerbated in the case of the clients' investments in Biosign Technologies Inc. The significant rise in value of that security affected the risk tolerance levels of clients' portfolios. The compliance software system immediately identified this problem. However, Mr. Sammy had asked for and received from the compliance team a "20% variance" or flexibility to the risk tolerance levels in the managed accounts, a variance that all his clients acknowledged on at least one of the New Account Application Form or the Investment Management Agreement form. As a result, when the software identified the risk tolerance problem, a member of the Cavalaris compliance team would only consider the account "off-side" after taking into account that variance. In some cases, accounts exceeded the clients' risk tolerance levels even taking into account the variance and the accounts remained offside for several months. This result reflects Mr. Cavalaris's failure to ensure that Mr. Sammy's clients' managed accounts were maintained within suitable risk tolerance levels.

Conflicts of Interest

¶ 7 At the relevant time, DWM had a dual compliance structure that divided oversight responsibilities. Under this structure, Mr. Cavalaris supervised only Mr. Sammy's managed accounts while the co-Chief Compliance Officer managed Mr. Sammy's retail accounts. The result of this division of oversight was that Mr. Cavalaris was unaware of and failed to identify Mr. Sammy's conflicts of interest.

¶ 8 A disciplinary hearing earlier in 2016 dealt with Mr. Sammy's conduct, including his conflicts of interest. The hearing looked at a period of time that extended beyond the time of Mr. Cavalaris's supervision from January 2009 to December 2011. See Re Sammy, [2016] IIROC 04. Mr. Sammy was found to have purchased (or recommended for purchase) securities in clients' accounts on the same day he sold (or intended to sell) securities of the same issuers in his personal account: a clear conflict of interest. During that extended timeframe, Mr. Sammy was also found to have recommended the purchase of securities to several clients without using due diligence to ensure that the recommendations were in accordance with the clients' risk tolerance. The IIROC hearing panel imposed a fine of $250,000 on Mr. Sammy, a five-year ban from approval with IIROC and costs of $75,000.

¶ 9 At the time of the infractions that occurred under the Respondent's watch, DWM used a software system that the Respondent believed was state of the art. This system, Compliance Explorer, monitored all trading activity and sent alerts to the compliance team. There were over 30 alerts that could be triggered. However, the system was not configured to identify Mr. Sammy's conduct of selling securities to his clients at the same time that he was disposing of securities from the same issuer in his personal account. The Respondent acknowledges that better systems should have been in place to make this identification. In particular, over the relevant time, Mr. Sammy acquired significant shares in both Mahdia Gold Corp. (1.8 million) and Northcore Technologies Ltd. (4.2 million approximately), which were deposited into his personal account. In the same time frame, Mr. Sammy purchased shares in these companies for client accounts: 360,000 shares of Mahdia in 33 managed accounts at an average price of $0.18 per share. During the period, Mr. Sammy sold 240,000 of his personal Mahdia shares at an average price of $0.18. Mr. Sammy purchased over 5 million shares of Northcore in 102 managed accounts at an average price of $0.22 per share. Mr. Sammy's clients sold 367,500 shares of Nortchore at an average price of $0.17 per share. In the period, Mr. Sammy sold over 1.25 million of personal Northcore shares at an average price of $0.21 per share. On five particular days, he sold 441,000 personal Northcore shares and purchased 66,000 shares for his clients managed accounts at an average price of $.0.21 per

share. These trades represented a significant portion of the transactions for these shares on the relevant days. (He also purchased significant amounts of these shares for non-managed accounts.)

¶ 10 Although there were regular communications on other issues, the Respondent did not know about the relevant activity in either the non-managed accounts or in Mr. Sammy's personal account, both of which were under the supervision of the other Co- Chief Compliance Officer. The Respondent did not take any steps to determine whether there was a conflict between Mr. Sammy's personal trading and client trading. He acknowledges that he should have done so.

Divesting High Risk Shares

¶ 11 In September 2009, Mr. Sammy began accumulating shares of Biosign within the risk levels of the managed accounts. By June 2010, Biosign's share price had increased significantly to the point that Biosign shares represented a significant portion of the assets in many client accounts. From then until the Scotia takeover in February 2011, the compliance team, under the supervision of the Respondent, identified the problem and required Mr. Sammy to bring the accounts into compliance. Mr. Sammy did not follow instructions. He provided explanations for his failure to do so such as a lack of liquidity that, in his view, would be resolved when Biosign would soon be listed on the TSX Venture Exchange. He also said his clients were happy. In August 2010, Mr. Sammy made additional Biosign purchases for clients. The Respondent did not cancel those transactions. The listing of Biosign on the TSX Venture Exchange in September 2010 did not remedy the problem. At the end of September, the Respondent escalated the problem to the Managed Accounts Committee, which directed Mr. Sammy to sell Biosign in an orderly manner by selling the lesser of 30,000 shares a day or 25% of the daily volume. Mr. Sammy was monitored for this on a daily basis. He repeatedly fell behind his obligations. By January 2011, Mr. Sammy was 1,153,415 shares short of his targeted sales obligation. Despite regular reminders from the compliance team, Mr. Sammy continued to maintain that he was in contact with clients and that they were happy. Neither the Respondent nor anyone on the institutional compliance team called the clients. In *Re Sammy*, *supra*, the Hearing Panel noted at para 56 that six clients made claims against DWM, which analyzed the claims and offered settlements in four of the cases, although the clients testified that the DWM assessment of their claims (totalling $279,000) was less than the amount at which the clients calculated their losses.

¶ 12 Relevant to the charges before this Hearing Panel, Mr. Cavalaris made no personal gain and, during the relevant period, most accounts were found to be "at about the same level at the end of the period as they were at the beginning (although some were higher in value and others were lower.)" See the Settlement Agreement para 82(ii).

¶ 13 These are the circumstances that form the basis for the Respondent's acknowledgement of his failure to supervise adequately the activity in Mr. Sammy's client managed accounts.

SERIOUSNESS OF THE CONTRAVENTION

¶ 14 Adequate supervision of the accounts of registered representatives is essential to ensure ethical conduct, fair trading and the integrity of the investment industry. Contravention of this obligation must be treated as serious. See *Re Menzel*, [2015] IIROC 6 at para 15 citing *Re Portfolio Strategies Securities,* [2012] IIROC 36, para 7. In describing the supervisory responsibility in *Re Mills*, [2001] IDACD No. 7, the Ontario District Council explains the difficulty with placing too much trust on the explanation of a registered representative and the need to take further steps to "guard against" the "legitimate tendency of managers to trust registered representatives with whom they work closely". Supervisors cannot rely on the word of registered representatives or tracking technology to fulfill their supervisory responsibilities. More is required. Generally, a failure to supervise adequately risks compromising the integrity of the market and may put investors at risk.

DUTY OF A HEARING PANEL UPON A SETTLEMENT HEARING

¶ 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.

¶ 20 Anthony-Cook also sets out a five-step process in situations where the adjudicator has concerns about the substance of the proposed penalty. It was unnecessary to apply those steps in the circumstances of this case as the Hearing Panel did not have substantive concerns.

GUIDELINES AND OTHER DECISIONS

¶ 21 The sanction imposed must be appropriate to the circumstances of the particular conduct and the particular respondent, recognizing the need for specific and general deterrence. The IIROC Sanction Guidelines, while not binding, are useful in providing guidance. The Guidelines provide both general principles as well as a non-exhaustive list of key factors to consider for sanctions. In terms of principles, the Panel recognizes that sanctions are designed primarily to protect the investing public, strengthen market integrity and improve standards and practices. In this sense, the breaches were serious and the sanctions must be ones that promote general and specific deterrence. The Respondent had no disciplinary record in a lengthy industry career that dates back to 1981. A prior disciplinary record would have been an aggravating circumstance. Suspension is not part of the Settlement Agreement and, in keeping with the Guidelines, Enforcement Counsel noted the factors did not lead to the need for a suspension in the circumstances of this case. This is particularly so in light of the inclusion of a reprimand in the Settlement Agreement.

¶ 22 In this case, Enforcement Counsel pointed to several factors including the number, size and character of the transactions, which extended over a 13-month period. In some cases, accounts were allowed to remain outside risk tolerance for up to six months. In many respects, the failures were seen by Enforcement Counsel to be the same as or similar to each other, so that they could not be said to reflect a pattern of misconduct. Counsel

points out that the Respondent did identify the risk tolerance issue and initiated corrective steps, albeit those steps did not result in a timely correction. Counsel point to the assessments and settlement offers towards compensating the claimants affected. As well, during the period of Mr. Cavalaris's supervision, the evidence before the Panel was that the accounts were generally at the same level at the end of the period as they were at the beginning.

¶ 23 The Respondent's conduct was more akin to negligence than malfeasance. There was no evidence of intentional misconduct and certainly no evidence of a financial benefit to the Respondent. In addition, the Respondent acknowledged his failures in the Settlement Agreement and submissions included confirmation that corrective steps were taken.

¶ 24 Other decisions assist in determining the range of reasonableness of the proposed sanction. Other cases involving supervisory failures in other circumstances were brought to our attention. Many were fact specific. Fines ranged from $15,000 to $160,000, depending on the circumstances. Cost consequences also reflected a broad range. Some cases included suspensions or prohibitions, others a rewriting of exams and others no such additional penalty. See Re Deslongchamps, [2006] RSDD No. 3 at p 5 (a fine of $50,000 and a one-year prohibition); Re Menzel, [2015] IIROC 6 (a fine of $20,000 and a 6-month suspension); Re Mills, supra. (A fine of $50,000 and a requirement to rewrite the exam); Re Research Capital, [2005] IDACD No. 36 (a fine of $160,000 and $40,000 costs): Re Johnson, [2012] IIROC 19 (a fine of $20,000 and $1,000 costs); Re Van Hee, [2009] IIROC 34 (a fine of $40,000, $15,000 costs and an exam rewrite – this case also reviews penalties in a number of other supervisory cases); Re Rowan, [2008] LNONOSC 473. The cases reflect the importance of proper supervision to a regulatory regime and that the failure to meet supervisory obligations is a serious matter.

¶ 25 A review of the cases confirms that general principles apply but, in the end, each case must be determined on the basis of its own facts.

¶ 26 In our view, the settlement is consistent with the applicable principles and factors. A reasonably informed person, aware of all the relevant circumstances including those of the offence and the offender, and alert to the importance of promoting certainty in settlement discussions, would not conclude that the resulting sanction was "unhinged" in the sense that it reflected a breakdown in the functioning of the regulatory system or was otherwise not in the public interest.

RANGE OF PENALTY

¶ 27 In accepting the proposed penalty, we took into consideration the specific facts involving Mr. Cavalaris, the nature of his inadequate supervision, and the impact of the sanction for deterrence purposes. The Panel concluded that the Settlement Agreement proposing a fine of $60,000 and costs of $5,000, together with a reprimand, should be accepted in the public interest.

DECISION

¶ 28 These reasons explain why the Panel concluded that the settlement was reasonable and accepted its terms.

Dated at Toronto, Ontario this 24th day of January 2017.

Susan Lang

Chair

Mary Savona

Lou D'Souza

APPENDIX A

THE RULES OF THE INVESTMENT INDUSTRY REGULATORY

ORGANIZATION OF CANADA

AND

LOUIS CONSTANTINE CAVALARIS

SETTLEMENT AGREEMENT

PART I - INTRODUCTION

1. The Investment Industry Regulatory Organization of Canada ("IIROC") will issue a Notice of Application to announce that it will hold a settlement hearing to consider whether, pursuant to Section 8215 of the Consolidated Enforcement, Examination and Approval Rules of IIROC, a hearing panel ("Hearing Panel") should accept the settlement agreement ("Settlement Agreement") entered into between the staff of IIROC ("Staff") and Louis Constantine Cavalaris (the "Respondent").

PART II - JOINT SETTLEMENT RECOMMENDATION

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

PART III - AGREED FACTS

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

A. OVERVIEW

4. The Respondent failed to adequately supervise the accounts managed by a portfolio manager, Krishna Sammy ("Sammy"). Specifically, the Respondent failed to ensure that holdings in Sammy's clients' managed accounts which exceeded the risk tolerance levels that were suitable for these clients were brought onside in a timely manner.

5. The Respondent also failed to ensure that that he properly identified conflicts of interest between Sammy and his clients when he was unaware that Sammy recommended shares of certain issuers while at the same time selling shares of these same issuers from his personal account.

6. Finally, the Respondent failed to ensure in a timely manner that Sammy had divested a significant number of shares in a high risk security that he had acquired in his clients' managed accounts.

B. REGISTRATION HISTORY

7. At all material times, DWM Securities Inc. was a Member of the IDA, and then IIROC, with its head office located in Toronto, Ontario. DWM was acquired by The Bank of Nova Scotia ("Scotia") on February 1, 2011 pursuant to a transaction that was announced in November 2010. DWM was subsequently amalgamated with Scotia Capital Inc. on November 1, 2013.

8. From March 2004 to January 2011, the Respondent was registered as Chief Compliance Officer and a Supervisor with DWM, an IIROC Dealer Member.

9. From February 2011 to September 2015, the Respondent was registered as the Chief Compliance Officer for Dundee Securities Ltd. ("DSL"), an IIROC Dealer Member.

10. From May 2016 until present, the Respondent has been registered as the Chief Compliance Officer for Echelon Wealth Partners Inc., an IIROC Dealer Member.

11. The Respondent had previously been employed in the securities industry in various capacities dating back to 1981. The Respondent has no disciplinary history in the entire period.

C. THE DUNDEE COMPLIANCE STRUCTURE

12. From 2007 to January 2011, the compliance structure at DWM was divided into two groups, each headed by a Co-Chief Compliance Officer. The Respondent was the Co-Chief Compliance Officer in

charge of the institutional compliance team (the "Institutional Compliance Team"). This team was responsible for, among other things, the supervision of accounts managed by registered portfolio managers ("Managed Accounts"). The other Co-Chief Compliance Officer ("OCCO") headed the retail compliance team (the "Retail Compliance Team") responsible for, among other things, the supervision of non-managed accounts ("Non-Managed Accounts").

13. Following the acquisition of DWM by Scotia on February 1, 2011, OCCO and certain members of the Retail Compliance Team remained with DWM and the Respondent joined DSL.

D. KRISHNA SAMMY

14. From August 1999 to December 2011, Sammy was registered as a Registered Representative and Supervisor with a Brampton, Ontario branch of DWM, an IIROC Dealer Member.

15. In May 2005, Sammy became registered as a portfolio manager. Thereafter, several of Sammy's clients opened Managed Accounts at DWM. The Institutional Compliance Team headed by the Respondent was responsible for supervision of all trading in Sammy's Managed Accounts until February 1, 2011.

16. In addition, Sammy had many clients who opened Non-Managed Accounts which were supervised by the Retail Compliance Team. Sammy's personal account was a Non-Managed Account. After February 1, 2011, OCCO was responsible for the supervision of the Managed Accounts, the Non-Managed Accounts and Sammy's personal account.

17. By Amended Notice of Hearing dated March 3, 2015, Staff initiated proceedings against Sammy for:

    (i) Purchasing or recommending the purchase of securities in client accounts on the same day he either had sold or intended to sell the securities of these same issuers from his personal account, thereby placing him in a conflict of interest with those clients which he failed to address appropriately, contrary to Dealer Member Rules 29.1 and National Instrument 31-103;

    (ii) Purchasing securities in Managed and Non-Managed client accounts on the same day he either had sold or intended to sell the securities of these same issuers from his personal account;

        (a) without the written consent of his clients, contrary to Dealer Member Rule 1300.19; and

        (b) in reliance upon information as to trades made or to be made in Managed or Non-Managed Accounts, contrary to Dealer Member Rule 1300.18.

    (iii) recommending the purchase of securities to several clients without using due diligence to ensure that:

        (a) The recommendations were suitable for the clients based on their financial situation, investment knowledge, investment objectives and risk tolerance contrary to Dealer Member Rule 1300.1(q); and/or

        (b) The recommendations were in accordance with the risk tolerance stated on clients' New Account Application Forms and within the bounds of good business practice, contrary to Dealer Member Rules 1300.1(o) and/or (q).

18. A hearing was held, and Sammy was found to be in breach of his obligations. Specifically, the IIROC hearing panel found Sammy to have breached counts (i) and (iii)(b). Following a penalty hearing, the IIROC hearing panel imposed a fine of $250,000, a five year bar from approval with IIROC and costs of $75,000.

E. THE 20% VARIANCE

19. All clients who opened a Managed Account at DWM were required to complete an Investment Management Agreement ("IMA") along with a New Account Application Form ("NAAF"). Both the IMA and the NAAF recorded the risk tolerance level that was appropriate for and agreed to by the clients for the Managed Accounts.

20. During the relevant time, the Institutional Compliance Team allowed Sammy to include a "+/- 20% variance" (the "20% Variance") in determining the risk tolerance levels in the Managed Accounts. Sammy was the only portfolio manager at DWM who employed the 20% Variance. Unbeknownst to the Respondent, the 20% Variance was not permitted by the Retail Compliance Team in Sammy's Non-Managed Accounts.

21. In some instances, a reference to the 20% Variance appeared on both the NAAF and the IMA. In other cases, the 20% Variance appeared on only one or the other of the NAAF or IMA. Both documents were signed by all clients and by someone on the Institutional Compliance Team. In cases where the 20% Variance was not consistent on both the NAAF and the IMA, the Institutional Compliance Team allowed for a 20% variance from the stated risk tolerance levels.

22. The Respondent received no complaints from any client concerning the 20% Variance. When client complaints were received at a time when the Respondent was no longer supervising Sammy, some complaints were about the 20% Variance.

23. On a daily, monthly and quarterly basis, compliance software would review all Managed Accounts and identify any Managed Account whose level of high risk holdings was outside the levels specified in the NAAF or the IMA without considering the 20% Variance. These accounts would then be reviewed by someone on the Respondent's Institutional Compliance Team.

24. The human review would consider specific holdings in the account. Typically, judgment was used to assess if an account was truly off-side and temporary variances were considered acceptable in certain circumstances.

25. Where the 20% Variance parameter was signed-off by the client on either the NAAF or the IMA, an account would only be treated as off-side after human review where the holdings exceeded the risk tolerance levels in the NAAF and/or IMA giving consideration to the 20% Variance. In some cases, as described in more detail below, accounts which exceeded the 20% Variance remained off-side for several months.

F. RISK LEVELS OF MANAGED ACCOUNTS EXCEEDED LEVELS SET OUT IN NAAF AND/OR IMA

26. Between January 2009 and January 2011, Sammy purchased speculative securities in the Managed Accounts of several of his clients.

27. Many of Sammy's clients were also highly concentrated in a small number of individual holdings. These included Mahdia Gold Corp., Northcore Technologies Inc., Petroworth Resources Inc., Intertainment Media Inc. and Biosign Technologies Inc. (collectively, the "Issuers").

28. The securities of the Issuers were all high risk and speculative investments and were considered as such by Sammy and DWM.

29. One of those securities, Biosign, rose significantly in value during the relevant time period, which resulted in the level of risks associated with the securities in many Managed Accounts exceeding the clients' risk tolerance levels as outlined in their respective NAAFs and IMAs.

30. In some instances, the level of risks associated with the securities in the Managed Accounts exceeded the clients' risk tolerance levels as outlined in the respective NAAFs and IMAs prior to the price appreciation in Biosign. In any event, the higher in price Biosign rose, the more Managed Accounts went off-side and by greater amounts.

31. The systems and personnel the Respondent put in place identified immediately when the value of the high risk securities went beyond the acceptable percentage levels originally established for Managed Accounts. However, the Institutional Compliance Team only questioned Sammy about the risk levels in these accounts if it exceeded the 20% Variance.

32. The Institutional Compliance Team requested that Sammy either change the holdings in the Managed Accounts to reflect the risk tolerances set out in the NAAFs and/or IMAs or, if appropriate, to amend the risk tolerance after discussing with the clients.

33. In many cases, despite the requests from the Institutional Compliance Team, no changes were made to either the account holdings or to the risk tolerance levels.

34. In some cases, the risk levels of the Managed Accounts continued to exceed the risk tolerance levels outlined in the NAAFs and/or IMAs for up to six months.

35. In some instances, Sammy purchased additional high risk securities in the Managed Accounts even though the accounts were already offside the clients' risk tolerance levels as outlined in their respective NAAFs and IMAs. Some of these purchases were brought to the attention of the Respondent. This increase in risk was over and above the 20% Variance that Sammy was allowed to employ. None of these trades were cancelled by the Respondent or the Institutional Compliance Team nor did they contact any of the clients to ensure that the clients were willing to accept increased risk.

G. SAMMY'S TRADES THAT WERE IN A CONFLICT OF INTEREST

(1) Trading In Shares Of Mahdia Gold Corp.

Acquisition of Shares by Sammy

36. In October 2009, Sammy received 3.6 million shares of Wintercrest Resources Ltd. into his Canadian margin account. At the time, these shares were valued at $0.10 per share.

37. In December 2009, following a corporate reorganization, Wintercrest changed its name to Mahdia Gold Corp. and each share of Wintercrest was converted into a half share of Mahdia. Following this reorganization, Sammy held 1.8 million shares of Mahdia in his Canadian margin account, valued at $0.20 each.

38. In November 2011, Sammy acquired, via a private placement, an additional 500,000 shares of Mahdia, which were deposited into his Canadian margin account.

Purchase of Shares by Clients and Sale of Shares by Sammy on the Same Day

39. Between December 2009 and January 2011, Sammy purchased shares of Mahdia for his clients in the Managed Accounts and in his Non-Managed Accounts. In total, Sammy purchased over 860,000 shares in 33 Managed Accounts. He also purchased 1.3 million shares in the Non-Managed Accounts. The average cost of the purchases in the Managed Accounts was $0.18 per share, with prices ranging from $0.125 to $0.21 per share. The clients in the Managed Accounts also sold 10,000 shares of Mahdia during this time period at an average price of $0.20 per share.

40. During this period, Sammy sold 1.14 million shares of Mahdia from his personal Canadian margin account. The average price for these sales was $0.18 per share, with prices ranging from $0.16 to $0.20.

41. On two days in particular, as outlined in the table below, Sammy sold a total of 240,000 shares of Mahdia from his Canadian margin account at an average price of $0.18 per share. On those same days, Sammy purchased 360,000 shares of Mahdia in his clients' Managed Accounts at an average price of $0.18 per share.

Date	**Shares purchased in Managed Accounts**	**Average Price**	**Shares Sold in the Sammy's Personal Account**	**Average Price**
November 22, 2010	230,000	$0.18	140,000	$0.18
November 25, 2010	130,000	$0.19	100,000	$0.18
Totals	**360,000**	**$0.18**	**240,000**	**$0.18**

42. The average daily trading volume for Mahdia on these two days was only 407,000 shares. As such, the above trading activity represented a significant portion of the transactions on these days.

43. As part of the daily review of trading in all Non-Managed Accounts, the Retail Compliance Team reviewed Sammy's personal account and his Non-Managed Accounts on a regular basis. The Respondent was never advised by the Retail Compliance Team about the Mahdia trading in Sammy's personal account or his Non-Managed Accounts.

44. Neither the Respondent nor anyone on the Institutional Compliance Team personally examined or took any other manual steps to determine whether Sammy's trading in his personal accounts conflicted with that of his clients in the Managed Accounts.

(2) **Trading in Shares of Northcore Technologies Inc.**

Acquisition of Shares by Sammy

45. By January 2009, Sammy held over 1.4 million shares of Northcore Technologies Inc. in his Canadian margin account. At the time, these shares were valued at $0.20 per share.

46. On December 21, 2009, Sammy received an additional 166,667 shares of Northcore into his Canadian margin account. On October 5, 2010, Sammy received a further 2.5 million shares of Northcore into this account, which were acquired through a private placement.

Purchase of Shares by Clients and Sale of Shares by Sammy on the Same Day

47. Between January 2009 and January 2011, Sammy purchased shares of Northcore for his clients in the Managed Accounts and his Non-Managed Accounts. In total, Sammy purchased over 5 million shares in 102 Managed Accounts and purchased 4.8 million shares in Non-Managed Accounts. The average cost of the purchases in the Managed Accounts was $0.22 per share, with prices ranging from $0.09 to $0.32 per share. These clients also sold 367,500 shares of Northcore during this time period at an average price of $0.17 per share.

48. During this period, Sammy sold over 1.25 million shares of Northcore from his Canadian margin account. The average price for these sales was $0.21 per share, with prices ranging from $0.15 - $0.25. Sammy did not purchase any shares of Northcore on the market during this period.

49. On five days in particular, as outlined in the table below, Sammy sold a total of 441,000 shares of Northcore from his Canadian margin account at an average price of $0.21. On those same days, Sammy purchased 66,000 shares of Northcore in his clients' Managed Accounts at an average price of $0.21 per share.

Date	**Shares purchased in Managed Accounts**	**Average Price**	**Shares Sold in Sammy's Personal Account**	**Average Price**
December 21, 2009	29,500	$0.20	130,000	$0.21
December 29, 2009	13,000	$0.23	136,000	$0.22
January 7, 2010	3,000	$0.20	50,000	$0.21
June 16, 2010	20,000	$0.23	50,000	$0.23
July 12, 2010	500	$0.20	75,000	$0.20
Totals	**66,000**	**$0.21**	**441,000**	**$0.21**

50. The average daily trading volume for Northcore on these five days was only 347,271 shares. As such, the above trading activity represented a significant portion of the transactions on each of these days.

51. The Respondent was never advised by the Retail Compliance Team about the trading in Northcore in Sammy's personal account or his Non-Managed Accounts.

52. Neither the Respondent nor anyone on the Institutional Compliance Team personally examined or took any other manual steps to determine whether Sammy's trading in his personal accounts conflicted with that of his clients in the Managed Accounts.

(3) **Systems in Place**

53. Each of the transactions in the Managed Accounts was reviewed by the Institutional Compliance Team.

54. However, at no time did the Institutional Compliance Team query the sales of Mahdia or Northcore by Sammy (of which they were unaware) and purchases by his clients in the Managed Accounts to ascertain whether a potential conflict of interest existed.

55. DWM used a software system called Compliance Explorer (now SMARTS Broker) that the Respondent considered to be state of the art. The Respondent and the Institutional Compliance Team were responsible for implementing and administering Compliance Explorer for all of DWM. Compliance Explorer monitored all trading on a real time basis and sent alerts to the Institutional Compliance Team when it detected possible IIROC trading violations. The Institutional Compliance Team would then inform the appropriate team or person at DWM of the alert.

56. One of these alerts dealt with "Employee trading with Client". This was an information alert that highlighted any trade where an employee traded directly with a client. Sammy never crossed shares directly with his clients in the various issues reviewed above, so no alert was triggered.

57. There were over 30 alerts being used to monitor the trading at the relevant time. Other alerts included (a) "Price Improvement"; (b) "Precedence (Proprietary/Employee)"; (c) "Possible Front-running of Large Client Order", all of which were operating to ensure that possible conflict of interest concerns were being addressed in a timely manner. None of these alerts were triggered as a result of Sammy's trading.

58. The Respondent agrees that even better systems should have been in place to identify potential conflicts of interest between Sammy's trading in his personal accounts and his Managed Accounts. The Respondent does not believe that any such automated systems existed at that time.

59. DWM had policies and procedures in place at the time. Policy 9.7.2 stated:

> The individual performing the daily review of Managed Account activity must ensure that any investment constraints imposed by a client are adhered to and must retain a copy of the constraints of each client recorded in writing in the Managed Account Agreement. In addition, the individual performing the daily review will check to ensure that no Managed Account has contravened any part of IIROC rules unless the client has given written consent to do so. Among other things, the supervision of daily account activity must include:
>
> - A review to ensure client orders are given priority, except in the case of Managed Accounts where investment decisions are made centrally and applied across a number of accounts. This should be done by producing a report which records trades on inventory and by pros and should be matched against client trades.
> - A review of trading activity against a list of specified issuers, covering all related entities and issuers related to responsible persons.
> - A review of Pro Accounts to ensure that there is no selling to, or buying from, Managed Accounts as well as ensuring Client Priority.
>
> Any issues or problems will be addressed by the Supervisor or Compliance personnel directly with the PM. The initial inquiry will be noted and the follow up and decision will also be noted and recorded.

60. There were regular communications between the Respondent and the Retail Compliance Team. The Respondent does not recall any red flag ever being raised concerning Sammy's trading in either his

personal account or in the Non-Managed Accounts.

61. The Respondent agrees that if he was aware of the trading of Mahdia and Northcore described above, he would have questioned Sammy about the trades. Further to Policy 9.7.2, "the individual performing the daily review of Managed Account activity" (who was a member of the Institutional Compliance Team) had responsibility to "review Pro Accounts" but because Sammy's Pro Account was not a Managed Account it was never examined by the Institutional Compliance Team but only by the Retail Compliance team. The Respondent ought to have taken steps to ensure that the Institutional Compliance Team reviewed Sammy's personal trading.

H. SAMMY'S FAILURE TO SELL BIOSIGN SHARES

62. In or around September 2009, Sammy began accumulating shares of Biosign in both the Managed Accounts and Non-Managed Accounts of many of his clients.

63. By June 2010, the share price of Biosign had increased significantly. As a result, Biosign now represented a significant portion of the assets in many Managed and Non-Managed Accounts.

64. From June 2010 to January 2011, on a regular basis, the Institutional Compliance Team identified that many of Sammy's Managed Accounts were off-side primarily due to the rise in price of Biosign shares and notified Sammy accordingly, requiring that he bring the accounts back into compliance.

65. In July and August 2010, Sammy acknowledged that accounts were off-side. He advised it was because of the rise in price of Biosign. He advised that the market for Biosign was quite illiquid and that he was trying to identify a potential block purchase. He noted that Biosign would soon be listed on the Venture Exchange, which would likely add liquidity. He stated that he would resolve the compliance issues and keep the Institutional Compliance Team posted on his progress. He also advised that clients were happy with the Biosign performance although at no time did the Respondent or anyone on the Institutional Compliance Team contact clients to confirm this. The Institutional Compliance Team provided additional time to Sammy to address the Biosign issues.

66. In August 2010, Sammy made additional purchases of Biosign in some Managed Accounts. Despite concerns about clients' exposure to Biosign, the Respondent did not cancel any of these transactions nor did he, or anyone on the Institutional Compliance Team, contact any clients.

67. In early September 2010, a senior person on the Institutional Compliance Team contacted Sammy about the failure to rectify the Biosign situation. Sammy advised that he would be reducing the exposure once the securities were listed. He advised that he had discussed this process with clients. According to Sammy, the clients were aware that Biosign represented a large percentage of their accounts and were pleased to see in their monthly statements the significant rise in the value of their accounts (some of which were up 40% for the month).

68. Neither the Respondent nor anyone on the Institutional Compliance Team contacted clients to confirm this.

69. Biosign was listed on the TSX-Venture Exchange in September 2010. When Biosign shares were not sold, Sammy was again contacted by the Institutional Compliance Team about addressing the Managed Accounts. Sammy advised that he continued to work on reducing the Biosign holdings in client accounts as liquidity picked up.

70. When Sammy had still not sold Biosign shares by the end of September, the Respondent escalated the Biosign situation to the Managed Accounts Committee ("MAC") at DWM, of which the Respondent was a member and which included other members of DWM senior management.

71. At the end of October, MAC directed Sammy to sell Biosign in an orderly manner (something which the Respondent states he did not have authority to do). Sammy was directed to sell the lesser of 30,000 shares a day or 25% of the daily volume. The Institutional Compliance Team was responsible for

monitoring Sammy's compliance with MAC's directions.

72. Between October 28, 2010 and November 13, 2010, the Institutional Compliance Team monitored Sammy's compliance with MAC's direction on a daily basis. While Sammy sold some shares, he repeatedly failed to meet the sales obligations and fell behind the dictated schedule.

73. By email dated November 15, 2010, the Institutional Compliance Team advised Sammy that he had sold only 179,000 Biosign shares in the Managed Accounts, whereas, in accordance with the directive of the MAC, he was required to have sold 305,750 Biosign shares, leaving him 126,750 shares short of the target.

74. On November 15, 2010, Sammy sold shares of Biosign in a client's Managed Account, but then purchased a different high risk, speculative security in his Non-Managed Account.

75. By email dated November 25, 2010, the Institutional Compliance Team again emailed Sammy to advise that he remained short of this required sales target for Biosign shares. The email noted that he was now short by 263,853 shares and that he had not sold any shares for 5 consecutive days.

76. Given the matter was still not resolved, the Respondent again escalated the Sammy situation with MAC. This time, two other members of MAC spoke to Sammy directly about Biosign and the need to comply with its direction. Sammy responded indicating that he had sold 400,000 shares of Biosign between October 23 and November 25, 2010. Sammy acknowledged that he was behind schedule but undertook to address the matter by selling shares. Sammy advised that "we will continue to manage the process of reducing our holdings in managed accounts while keep our clients happy". According to the Respondent, these two other members of MAC ordered Sammy to follow their original direction.

77. In November, 2010, it was announced that DWM was being acquired by Scotia.

78. Between November 25, 2010 and January 24, 2011, the Institutional Compliance Team repeatedly reminded Sammy of his obligation to divest the Biosign shares in accordance with the MAC directive. When he was still behind, and in fact purchased some additional shares, Sammy advised that he remained in contact with his clients, and that the acquisition of DWM by Scotia would result in either changes to account holdings or re-papering of accounts.

79. Neither the Respondent nor anyone on the Institutional Compliance Team contacted clients to confirm this. Clients received regular monthly account statements and not one complained to or contacted the Respondent.

80. Sammy's failure to sell sufficient shares as directed by MAC was escalated again at MAC's January meeting, which was attended by those who would be supervising Sammy in the upcoming weeks when DWM became part of Scotia.

81. By January 24, 2011, Sammy was 1,153,415 shares short of his targeted sales obligation.

PART IV - ADDITIONAL FACTS

82. Mitigating factors are contained in Part III and Part IV of this agreement, including at paragraphs 11, 23, 24, 29, 31, 32, 43, 51, 53, 55-57, 60, 64, 65, 67, 70, 76, 77, 78 and 80. In addition,

    (i) The Respondent made no personal gain by engaging in the conduct described above;

    (ii) During the relevant period, while the overall value of the Managed Accounts fluctuated, most accounts were at about the same level at the end of the period as they were at the beginning (although some were higher in value and others were lower).

PART V - CONTRAVENTION

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

(i) Between December 2009 and February 2011, the Respondent failed to adequately supervise the activities of Krishna Sammy, a portfolio manager at DWM, to ensure compliance with the Dealer Member Rules, contrary to IIROC Dealer Member Rules 38.7 and 2500.

PART VI - TERMS OF SETTLEMENT

84. The Respondent agrees to the following sanctions and costs:

(i) a fine in the amount of $60,000;

(ii) a reprimand; and

(iii) costs in the amount of $5,000.

PART VII - STAFF COMMITMENT

85. If the Hearing Panel accepts this Settlement Agreement, Staff will not initiate any further action against the Respondent in relation to the facts set out in Part III and the contravention in Part V of this Settlement Agreement, subject to the provisions of paragraph 86 below.

86. If the Hearing Panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, 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 VIII - PROCEDURE FOR ACCEPTANCE OF SETTLEMENT

87. This Settlement Agreement is conditional on acceptance by the Hearing Panel.

88. This Settlement Agreement shall be presented to a Hearing Panel at a settlement hearing in accordance with the procedures described in Sections 8215 and 8428, in addition to any other procedures that may be agreed upon between the parties.

89. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing, unless the parties agree that additional facts should be submitted at the settlement hearing. If the Respondent does not appear at the settlement hearing, Staff may disclose additional relevant facts, if requested by the Hearing Panel.

90. If the Hearing Panel accepts the Settlement Agreement, the Respondent agrees to waive all rights under the IIROC Rules and any applicable legislation to any further hearing, appeal and review.

91. 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 based on the same or related allegations.

92. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.

93. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IIROC will post a full of copy of this Settlement Agreement on the IIROC website. IIROC will also publish a summary of the facts, contravention, and the sanctions agreed upon in this Settlement Agreement.

94. If this Settlement Agreement is accepted, the Respondent agrees that neither he nor anyone on his behalf, will make a public statement inconsistent with this Settlement Agreement.

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

PART IX - EXECUTION OF SETTLEMENT AGREEMENT

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

binding agreement.

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

DATED _14th day of December, 2016.

"Witness"	"Louis Cavalaris"
Witness	**Louis Cavalaris**
"Witness"	"Rob DelFrate"
Witness	**Rob DelFrate** Enforcement Counsel on behalf of Enforcement Staff of the Investment Industry Regulatory Organization of Canada

This Settlement Agreement is hereby accepted this 19th day of December, 2016 by the following Hearing Panel:

Per: "Susan Lang"
Panel Chair

Per: "Mary Savona"
Panel Member

Per: "Lou D'Souza"
Panel Member