

Re Savard

IN THE MATTER OF:

**The Rules of the Investment Industry Regulatory Organization of
Canada**

and

The By-Laws of the Investment Dealers Association of Canada

and

Michel Savard

2014 IIROC 32

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

Hearing and decision rendered: June 5, 2014
Reasons issued: July 21, 2014

Hearing Panel

Me Claire Richer (Chair), Ms. Éloïse Cousineau Phénix and Mr. Daniel Houle

Appearances

Me S. Tisserand, Legal Counsel for IIROC, and Mr. Yanick Béland, Investigator

Mr. Michel Savard, Respondent, and his legal counsel, Me R. Vokey

DECISION APPROVING A SETTLEMENT AGREEMENT

¶ 1 A hearing was held on June 5, 2014 before this Hearing Panel, pursuant to IIROC's Dealer Member Rules, to consider and, if deemed appropriate, accept a settlement agreement entered into in April 2014 between IIROC Staff and the Respondent (the Agreement) regarding the latter's conduct while he was a registered representative with Laurentian Bank Securities (LBS). The Settlement Agreement is attached and is deemed to be an integral part of this decision. As a point for information, it should be noted that an initial offer of settlement was made and accepted by the parties in February 2014, but was dismissed by the Hearing Panel that analyzed it at a hearing held on February 25, 2014. (1)

¶ 2 The Respondent has admitted that, between August 2010 and December 2011, he was part of manipulative or deceptive methods, acts and practices involving the Capital VTech Lab/Capital DGMC Inc. (VTC.P) security, even though he knew or ought reasonably to have known that these manipulative or deceptive methods, acts and practices were intended to maintain the sale price, ask price or bid price within a predetermined range, the whole contrary to UMIR 2.2 and UMIR Policy 2.2.

¶ 3 In summary, Respondent helped maintain a high ask price for the VTC.p security during a 16-month period, at the request of a client and business acquaintance who had set up a capital pool company in order to find financing for his product. The facts, as admitted by the Respondent, demonstrate that trading in the security

was done via an account opened by the client's spouse, at the client's request and using his assets.

(1) Decision of February 28, 2014

¶ 4 In January 2013, LBS opened an internal investigation into the dealings and trades executed by the Respondent, pursuant to an investigation initiated by IIROC and the latter's requests for information. Respondent was subsequently dismissed by LBS. Since July 2013, Respondent has been a registered representative with Rothenberg Capital Management Inc. on the condition of close supervision.

¶ 5 The Hearing Panel heard the arguments of counsel for IIROC, including a jurisprudential analysis, as well as those of counsel for the Respondent.

¶ 6 After deliberation, the Hearing Panel informed the parties that it was accepting the Agreement forthwith, that it would become binding that same day, and that the reasons for its acceptance would follow later.

¶ 7 Under the Agreement, the Hearing Panel imposed the following penalties on the Respondent, namely:

- a) suspension of his market access for a period of 30 days;
- b) a fine in the amount of \$25,000; and
- c) strict supervision for a period of six (6) months from the penalty date, with the transmission of monthly reports to IIROC attesting that supervision was performed, followed by 12 months of close supervision, with the transmission of a monthly report to IIROC attesting that supervision was performed.

The Respondent agreed to pay IIROC costs in the amount of \$5,000.

¶ 8 Although the facts reveal that Respondent helped maintain the ask price of the security due to neglect rather than deliberate manipulation, the Hearing Panel considers the misconduct of the Respondent, who has more than 23 years of experience in the marketplace, a violation of the rules of business conduct, which he should have known as a registered representative, and therefore inexcusable.

¶ 9 The Hearing Panel furthermore took note that the Respondent had no prior disciplinary history and that he accepted responsibility early on in the investigation process. Also, the Respondent derived no direct personal benefit from his dealings.

¶ 10 The Hearing Panel is of the opinion that the penalties imposed in the Settlement Agreement reflect the seriousness of the Respondent's misconduct and are therefore within the bounds of the acceptable, based on IIROC's Disciplinary Sanction Guidelines and the past decisions that were examined by Counsel for IIROC at the hearing.

¶ 11 For these reasons, the Hearing Panel accepted the Settlement Agreement, with effect on June 5, 2014.

Montréal, July 21, 2014.

Claire Richer, Panel Chair

Élaine Cousineau Phénix, Panel Member

Daniel Houle, Panel Member

OFFER OF SETTLEMENT

1. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada and Market Regulation Services Inc. (RS). Pursuant to the Administrative and Regulatory Services Agreement between RS and IIROC, effective June 1, 2008, RS has retained IIROC to provide services for RS to carry out its regulatory functions.
2. The Enforcement Department Staff (Staff) of the Investment Industry Regulatory Organization of

Canada (IIROC) has conducted an investigation (the Investigation) into the conduct of Michel Savard (the Respondent).

3. The Investigation has disclosed matters for which IIROC seeks certain sanctions against the Respondent pursuant to Rule 10.5 of the Universal Market Integrity Rules (UMIR).
4. If this Offer of Settlement is accepted by the Respondent, the resulting settlement agreement (the Settlement Agreement), which has been negotiated in accordance with Part 3 of UMIR Policy 10.8, is conditional upon its approval by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1 (the Hearing Panel).
5. The Respondent agrees to waive all rights under UMIR to a hearing or to an appeal or review if the Settlement Agreement is approved by the Hearing Panel.
6. The Respondent consents to be subject to the jurisdiction of IIROC and its relevant disciplinary process and rules in relation to this matter.
7. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

A. AGREEMENT AS TO REQUIREMENTS CONTRAVENED

8. The Respondent admits to the following contraventions of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:
 - a) Between August 2010 and December 2011, the Respondent was part of manipulative or deceptive methods, acts or practices involving the Capital VTech Lab/Capital DGMC Inc. (VTC.P) security, even though he knew or ought reasonably to have known that these manipulative or deceptive methods, acts or practices were intended to maintain the sale price, ask price or bid price within a predetermined range, the whole contrary to UMIR 2.2 and UMIR Policy 2.2.

B. ADMITTED FACTS

9. For the purposes of this Settlement Agreement, Staff and the Respondent agree with and rely upon the admitted facts and conclusions which are set out in the Statement of Allegations attached as Schedule "A" to this Settlement Agreement.

C. TERMS OF SETTLEMENT

10. For the contravention in paragraph 8 above, Staff and the Respondent have agreed upon the following terms of settlement:
 - a) suspension of his market access for a period of 30 days;
 - b) a fine in the amount of \$25,000;
 - c) Strict supervision for a period of six (6) months from the penalty date, with the transmission of monthly reports to IIROC attesting that supervision was performed, followed by 12 months of close supervision, with the transmission of a monthly report to IIROC attesting that supervision was performed.
11. The Respondent agrees to pay IIROC costs in the amount of \$5,000.

D. PROCEDURES FOR ACCEPTANCE OF OFFER OF SETTLEMENT AND APPROVAL OF SETTLEMENT AGREEMENT

12. The Respondent shall have until the close of business on Friday April 11, 2014 to accept the Offer of Settlement and serve an executed copy thereof on Staff.
13. This Settlement Agreement shall be presented to a Hearing Panel at a public hearing (the Approval Hearing) held for the purpose of approving the Settlement Agreement, in accordance with the procedures described in UMIR Policy 10.8 in addition to any other procedures as may be agreed upon

between the parties. The Respondent acknowledges that IIROC shall notify the public and media of the Approval Hearing in such manner and by such media as IIROC sees fit.

14. Pursuant to Part 3.4 of UMIR Policy 10.8, the Hearing Panel may accept or reject this Settlement Agreement.
15. In the event the Settlement Agreement is accepted by the Hearing Panel, the matter becomes final, there can be no appeal or review of the matter, the disposition of the matter agreed upon in this Settlement Agreement will be included in the permanent record of IIROC in respect of the Respondent and IIROC will publish a summary of the Requirements contravened, the facts, and the disposition agreed upon in the Settlement Agreement.
16. In the event the Hearing Panel rejects the Settlement Agreement, IIROC may proceed with a hearing of the matter before a differently constituted Hearing Panel pursuant to Part 3.7 of UMIR Policy 10.8 and this Settlement Agreement may not be referred to without the consent of both parties.
17. The Respondent agrees that, in the event that he fails to comply with any of the terms of the Settlement Agreement, IIROC may enforce this settlement in any manner it deems appropriate and may, without limiting the generality of the foregoing, suspend the Respondent's access to marketplaces regulated by IIROC until IIROC determines that the Respondent is in full compliance with all terms of the Settlement Agreement.
18. The Respondent agrees that neither he, nor anyone on his behalf, will make a public statement inconsistent with this Settlement Agreement.

IN WITNESS WHEREOF the parties have signed this Settlement Agreement on the dates noted below.

DATED at Montréal, Québec, on the 25th day of April 2014.

(s) Michel Savard

Michel Savard

Respondent

DATED at Montréal, Québec, on the 28th day of April 2014.

(s) Carmen Crépin

Carmen Crépin

Vice-President, Québec

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

**INVESTMENT INDUSTRY
REGULATORY ORGANIZATION OF CANADA**

IN THE MATTER OF:

**THE RULES OF THE INVESTMENT INDUSTRY
REGULATORY ORGANIZATION OF CANADA
AND
THE UNIVERSAL MARKET INTEGRITY RULES
AND
MICHEL SAVARD**

STATEMENT OF ALLEGATIONS

I. CONTRAVENTION

1. Between August 2010 and December 2011, the Respondent was part of manipulative or deceptive methods, acts or practices involving the Capital VTech Lab/Capital DGMC Inc. (VTC.p) security, even though he knew or ought reasonably to have known that these manipulative or deceptive methods, acts or practices were intended to maintain the sale price, ask price or bid price within a predetermined range, the whole contrary to UMIR 2.2 and UMIR Policy 2.2.
2. Schedule "A" sets out the text of the relevant provisions of the UMIR;

II. RELEVANT FACTS AND CONCLUSIONS

Summary

3. Respondent, out of negligence, helped an insider maintain the ask price of the VTC.p security during the period of August 2010 to December 2011.

Registration background of respondent

4. From March 1987 to December 1987, Respondent was a mutual funds advisor for Investissements G.R. Sogecar inc.;
5. From December 1987 to May 1990, Respondent was a registered representative with retail broker Midland Doherty Ltd./ Midland Capital Corporation;
6. From June 1990 to January 1998, Respondent was a registered representative with full-service broker Tassé & Associates;
7. From January 1998 to May 2013, Respondent was a registered representative with full-service broker Laurentian Bank Securities Inc. (LBS);
8. On April 15, 2013, LBS dismissed the Respondent due to the facts surrounding this matter;
9. Since about July 30, 2013, Respondent has been a registered representative with Rothenberg Capital Management Inc., on the condition of close supervision and submission of monthly reports to IIROC.

The facts

10. The material facts occurred while Respondent was a registered representative with LBS, at the Longueuil Branch;
11. At the material time, Mr. A, an insider in the capital pool company Capital Vtech Lab, was a business contact of the Respondent. Mr. A was also a client of the Respondent at LBS, but there had not been any trading in his accounts since 2005;
12. In summer 2010, Mr. A approached the Respondent to introduce him to the new company, Capital Vtech Lab, and to propose that he participate in its initial public offering on the TSXV.
13. On or around August 26, 2010, the Capital Vtech Lab securities were listed on the TSXV, under the symbol VTC.p;
14. That same day, Respondent placed a personal buy order for 500,000 shares at \$0.01 and arranged with Mr. A to invite other participants to invest in the VTC.p security, via new customer accounts with LBS;
15. At the time, Capital Vtech Lab was a capital pool company (CPC) set up to enable Mr. A to find financing for his product;
16. During the same period, Mr. A forwarded his wife Mrs. B's personal information and insisted that Respondent meet her at his office in order to open a brokerage account at LBS;
17. On or around August 27, 2010, Mrs. B signed a new client application form with LBS, with the Respondent. The form states notably that Mrs. B has no other brokerage accounts, that no other person

- has trading authority over this account and that no other person has a financial interest in this account;
18. Mrs. B has an annual income of \$38,000, but a net worth of \$1 million. This net worth corresponds in fact to the net worth of her husband, Mr. A. Mrs. B's knowledge of investing, according to the form, is "good", her risk tolerance is high and her investment objectives are 100% speculative. For all practical purposes, Mrs. B's account will only be used to purchase VTC.p securities;
 19. During the month of September 2010, Respondent and Mr. A continued to communicate with each other regarding the VTC.p security while Mr. A was in China completing a qualifying transaction;
 20. On or around September 29, 2010, the Respondent again communicated with Mr. A to confirm to him a buy order from Mrs. B for 3000 shares of VTC.p at \$0.15 a share, and to inquire about the percentage of VTC.p shares held by Mr. A and Mrs. B. Respondent wanted to confirm that the couple did not hold more than 10% of the outstanding shares;
 21. That same day, Mr. A confirmed that he himself held 13% of the shares currently, but through a numbered company. It was also arranged that the purchase should not be made at \$0.15, as Respondent had proposed, but at \$0.20, so that the security would close with "another trade at \$0.20". In actual fact, Respondent was to execute the trade in Mrs. B's account according to Mr. A's instructions;
 22. On or around June 22, 2011, Mr. A communicated with the Respondent to find out who caused the VTC.p price to drop to \$0.05 and to ask him to buy on Mrs. B's account "to reposition the stock";
 23. Respondent then informed Mr. A that, according to the trading in the VTC.p security since May 2011, it was apparently an LBS client who was selling the security at \$0.13 and that he did not know who was selling at \$0.12. It was then arranged that Mrs. B was to buy \$500 worth at \$0.12 and that a cheque in that amount would be mailed to the Respondent. This trade would also be executed at Mr. A's request;
 24. On June 23, 2011, Respondent entered a note on Mrs. B's account in the LBS computer system, that it was "agreed in March to purchase 30,000 shares at irregular interval [sic], the client calls me or I call her. disc. on commission [sic]";
 25. On or around July 7, 2011, Respondent entered a new note in the LBS computer system relative to Mrs. B's account: (full version, translation) "her call agreed to purchase 2000 vpc at .13 after non-soll. after she saw a sale at .05. mention to her every time that I am on the .05 bid. she wants to maintain the stock";
 26. The same day, the LBS Compliance Department also questioned the Respondent regarding his \$0.05 purchase transaction on the VTC.p security, compared to that of Mrs. B at \$0.13. Respondent informed Compliance that his transaction was the result of an open order limit of \$0.05 and that the client is informed of the situation and "wishes to maintain the stock";
 27. On or around August 11, 2011, the LBS Compliance Department again questioned the Respondent regarding a purchase transaction of 1500 shares of VTC.p at \$0.05 for his own personal account, whereas Mrs. B had also purchased 1700 shares of VTC.p that same day, but at \$0.145 a share. The LBS Compliance Department wanted to make sure that Respondent's trading had prioritized Mrs. B;
 28. Respondent confirmed to the Compliance Department that his purchase transaction is still the result of his open order limit of \$0.05 and that the client is informed of the situation;
 29. On or around November 22, 2011, Respondent entered a note on Mrs. B's account in the electronic trading system of LBS, to the effect that he communicated with her following a sale transaction by a client of National Bank Financial Inc. (NBF) so that she might purchase VTC.p in an unsolicited manner "since she does not wish to see the security close at 0.5 as usual";
 30. The same day, Respondent communicated with the LBS Compliance Department to answer "tomorrow morning's questioning" relative to his personal purchase transaction of VTC.p at \$0.05, pursuant to his open order, and Mrs. B's purchase of the VTC.p security at \$0.135, by referring the Compliance Department to the electronic note he entered in Mrs. B's file;

31. On December 13, 2011, Mr. A contacted the Respondent to confirm to him that Mrs. B could still purchase approximately \$250 worth of VTC.p securities. Respondent then informed Mr. A that a client of NBF had “dumped” the VTC.p security. Mr. A then asked the Respondent to get “others” to buy the security and that the “qualifying transaction was to be officially announced for early January” and also asked him to “keep this information to himself”;
32. On or around May 10, 2012, an announcement was made public concerning the agreement in principle to acquire Footech Inc. (Footech) as a qualifying transaction on the TSXV;
33. That same day, Mr. A forwarded the information to the Respondent;
34. On December 4, 2012, a second announcement was made public regarding the completion of the qualifying transaction involving Footech and the establishment of a private placement of \$835,000, namely the issue of 4,175,000 common shares at a unit price of \$0.20. Mr. A relayed the information to the Respondent the very next day;
35. On or around January 13, 2013, LBS launched an internal investigation into the dealings and trades executed by the Respondent pursuant to the investigation initiated by IIROC and the latter’s requests for information;
36. On or around April 15, 2013, LBS dismissed the Respondent on grounds that the results of the internal investigation revealed numerous breaches of the securities legislation, the firm’s code of ethics and internal control procedures manual, as well as the principles of the Conduct and Practices Handbook, and that the bond of trust had been irrevocably broken;

Factors taken into consideration in determining the sanction

37. Respondent has over 23 years of experience in the securities industry and no disciplinary sanction was ever imposed on him by IIROC, or by its predecessor, the IDA.
38. The Respondent knew or ought reasonably to have known that it was Mr. A, an insider, who was in fact controlling the account of his wife, Mrs. B, who was merely acting as a nominee to enable him to buy VTC.p securities, thereby constituting a serious “red flag” and an increased risk of potential manipulation;
39. The Respondent knew or ought reasonably to have known, given his long experience in the securities industry, that the purpose of Mr. A’s dealings was to maintain the price of the security until the qualifying transaction (QT) and the private placement could be completed, a practice that is prejudicial to the integrity of the markets;
40. The Respondent did not gain personally from Mr. A’s dealings.
41. The Respondent accepted his responsibility early on in the investigation process.
42. The Respondent lost his job as a result of his dealings and was unable to find new employment for a period of three (3) months.
43. The Respondent was only granted reapproval on the condition of close supervision with communication of monthly supervision reports by the dealer member.
44. The Respondent has, to date, always been subject to close supervision by his employer and no other breach of IIROC rules has been observed.

March 28, 2014

Investment Industry Regulatory Organization of Canada

5 Place Ville-Marie, Suite 1550

Montréal, Québec H3B 2G2

SCHEDULE "A"

EXCERPTS FROM THE UNIVERSAL MARKET INTEGRITY RULES

2.2 Manipulative and Deceptive Activities

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

POLICY 2.2 – MANIPULATIVE AND DECEPTIVE ACTIVITIES

Part 1 – Manipulative or Deceptive Method, Act or Practice

There are a number of activities which, by their very nature, will be considered to be a manipulative or deceptive method, act or practice. For the purpose of subsection (1) of Rule 2.2 and without limiting the generality that subsection, the following activities when undertaken on a marketplace constitute a manipulative or deceptive method, act or practice:

- (a) making a fictitious trade;
- (b) effecting a trade in a security which involves no change in the beneficial or economic ownership;
- (c) effecting trades by a single interest or group with the intent of limiting the supply of a security for settlement of trades made by other persons except at prices and on terms arbitrarily dictated by such interest or group; and

[...]

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

Part 2 – False or Misleading Appearance of Trading Activity or Artificial Price

For the purposes of subsection (2) of Rule 2.2 and without limiting the generality of that subsection, if any of the following activities are undertaken on a marketplace and create or could reasonably be expected to create a false or misleading appearance of trading activity or interest in the purchase or sale of a security or an artificial ask price, bid price or sale price, the entry of the order or the execution of the trade shall constitute a violation of subsection (2) of Rule 2.2:

- (a) entering an order or orders for the purchase of a security with the knowledge that an order or orders of substantially the same size, at substantially the same time and at substantially the same price for the sale of that security, has been or will be entered by or for the same or different

- persons;
- (b) entering an order or orders for the sale of a security with the knowledge that an order or orders of substantially the same size, at substantially the same time and at substantially the same price for the purchase of that security, has been or will be entered;
 - (c) making purchases of, or offers to purchase, a security at successively higher prices or in a pattern generally of successively higher prices;
 - (d) making sales of or offers to sell a security at successively lower prices or in a pattern generally of successively lower prices;
 - (e) entering an order or orders for the purchase or sale of a security to:
 - (i) establish a predetermined sale price, ask price or bid price,
 - (ii) effect a high or low closing sale price, ask price or bid price, or
 - (iii) maintain the sale price, ask price or bid price within a predetermined range;
 - (f) entering an order or a series of orders for a security that are not intended to be executed;
 - (g) entering an order for the purchase of a security without, at the time of entering the order, having the ability or the reasonable expectation to make the payment that would be required to settle any trade that would result from the execution of the order;
 - (h) entering an order for the sale of a security without, at the time of entering the order, having the reasonable expectation of settling any trade that would result from the execution of the order; and
 - (i) effecting a trade in a security, other than an internal cross, between accounts under the direction or control of the same person.

If persons know or ought reasonably to know that they are engaging or participating in these or similar types of activities those persons will be in breach of subsection (2) of Rule 2.2 irrespective of whether such activity results in a false or misleading appearance of trading activity or interest in the purchase or sale of a security or an artificial ask price, bid price or sale price for a security or a related security.

Part 3 – Artificial Pricing

For the purposes of subsection (2) of Rule 2.2, an ask price, bid price or sale price will be considered artificial if it is not justified by real demand or supply in a security. Whether or not a particular price is "artificial" depends on the particular circumstances.

Some of the relevant considerations in determining whether a price is artificial are:

- (a) the prices of the preceding trades and succeeding trades;
- (b) the change in the last sale price, best ask price or best bid price that results from the entry of the order on a marketplace;
- (c) the recent liquidity of the security;
- (d) the time the order is entered and any instructions relevant to the time of entry of the order; and
- (e) whether any Participant, Access Person or account involved in the order:
 - (i) has any motivation to establish an artificial price, or
 - (ii) represents substantially all of the orders entered or executed for the purchase or sale of the security.

The absence of any one or more of these considerations is not determinative that a price is or is not artificial.

