Unofficial English Translation

Re Groome

IN THE MATTER OF:

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

and

The By-Laws of the Investment Dealers Association of Canada

and

Reginald Alfred Groome

2013 IIROC 28

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

Hearing and Decision rendered: April 4, 2013
Reasons issued: May 27, 2013

Hearing Panel
Me Jean Martel Ad. E., Chair; Lise Casgrain, Panel Member and Danielle LeMay, Panel Member
Appearances
Me Martin Hovington, Counsel for IIROC
Me Marylène Robitaille, Corporation d'avocats Mathieu inc., Counsel for the Respondent.

UNANIMOUS DECISION ON PENALTY

¶ 1 Following an investigation into certain actions and omissions by Reginald Alfred Groome (the **Respondent**), Staff of the Investment Industry Regulatory Organization of Canada (**IIROC**) initiated disciplinary proceedings against the Respondent, during which Staff of IIROC negotiated and concluded a settlement agreement (the **Settlement Agreement**, or the **Agreement**) with the Respondent on March 28, 2013, the whole in accordance with IIROC Dealer Member Rule 20.35, *Corporation Hearing Processes* (**Rule 20**) and Rule 14 of the *Rules of Practice and Procedure*.

¶ 2 In the Agreement, Respondent admits having contravened IIROC Rules and Guidance, as well as the By-Laws, Regulations or Policies of the Investment Dealers Association of Canada (**IDA**). Specifically, Respondent admits to the contraventions described in the Agreement under the following three counts:

a) Between November 1, 2006 and June 30, 2008, while a registered representative with Union Securities Ltd., Respondent failed to use due diligence to learn and remain informed of the essential facts relative to his clients who invested in Millenia Hope Bio-Pharma, thus contravening IIROC Dealer Member Rule 1300.1 a) (IDA Regulation 1300.1 a) prior to June 1, 2008);

b) Between November 1, 2006 and July 31, 2008, while a registered representative with

Union Securities Ltd., Respondent failed to use due diligence to ensure that the acceptance of orders from his clients to invest in Millenia Hope Bio-Pharma were appropriate to these clients given their financial circumstances, their knowledge of investing, their investment objectives and their risk tolerance, thus contravening IIROC Dealer Member Rule 1300.1 p) (IDA Regulation 1300.1 p) prior to June 1, 2008);

c) Between November 1, 2007 and July 31, 2008, while a registered representative with Union Securities Ltd., Respondent engaged in business conduct or practice unbecoming or detrimental to the public interest and failed to fulfill his role as a gatekeeper, by allowing his clients to make a private investment in Millenia Hope Bio-Pharma, whereas the company was under a cease trade order and, subsequently, an agreement not to seek financing from the public, thus contravening IIROC Dealer Member Rule 29.1 (IDA By-law 29.1 prior to June 1, 2008)."[1]

¶ 3 The parties agreed that the violations committed by the Respondent should be sanctioned as follows:

(i) a fine of $65,000: $15,000 for count a), $15,000 for count b), and $35,000 for count c);

(ii) disgorgement of $24,198, representing the profit realized by reason of the violations;

(iii) a 3-year suspension of approval in the securities field in any capacity;

(iv) a 24-month period of strict supervision once the suspension is lifted;

(v) successful completion of the Conduct and Practices Handbook Course as a condition for re-approval;[2]

¶ 4 Respondent also agreed to pay IIROC costs in the matter, in the amount of $5,000.

¶ 5 Effective June 1, 2008, the self-regulatory activities previously carried out by the IDA were taken over by IIROC. *Transition Rule No. 1* allows IIROC inter alia to initiate settlement proceedings on behalf of the IDA in connection with events that occurred prior to this date, when the Respondent in these proceedings was governed by IDA regulations.[3] Such is the case here for the violations committed by the Respondent before June 1, 2008. Moreover, the Respondent consents and agrees to be subject to this Panel's jurisdiction for purposes of these proceedings.[4]

¶ 6 On April 4, 2013, a hearing was accordingly held before this Hearing Panel pursuant to Rule 20.36 (1), to consider whether the Hearing Panel should accept the Settlement Agreement recommended for our acceptance.

¶ 7 After having considered the terms and conditions of this Agreement and heard the submissions of counsel for both parties, the Hearing Panel announced its decision to accept the Agreement, with reasons to follow. Here are those reasons.

Statement of essential facts

¶ 8 At the material time, more specifically from April 2006 and January 2009, Respondent was acting as a representative with unrestricted practice with Union Securities Ltd. (USL), an IIROC-regulated firm, and, formerly, an IDA Member firm. He was also approved as a branch manager at USL in August and September 2006.

¶ 9 Prior to his employment with USL, Respondent worked as a representative with unrestricted practice with Marleau Lemire Securities Inc. (1993-1996), Deacon Capital Inc. (1996-1998), Groome Capital Inc.

---

[1] Settlement Agreement, Part II, par. 7.
[2] Settlement Agreement, Part II, par. 8.
[3] In this case, according to *Schedule C.1 to Transition Rule No. 1, Hearing Committees and Hearing Panels Rule* (subsection 1.9(2)), IDA rules in force at the relevant time shall apply, to the extent they are consistent with IIROC practices and procedures at the time the enforcement proceedings are commenced.
[4] Settlement Agreement, Part I, par. 4.

(1998-2001), Desjardins Securities Inc. (2001-2002) and IPC Securities Inc. (2002-2006), where he was also the officer responsible for Québec (2003-2006).

¶ 10 The alleged violations occurred in the context of a private distribution (the **private distribution**) made by Millenia Hope Bio-Pharma Inc. (**MHBP**) over the course of 2007 and 2008 to residents of Québec, Alberta, British Columbia and Ontario. In order to carry out a distribution without prospectus, which requires a receipt from the AMF, MHBP relied on the registration and prospectus exemption for trading with "**accredited investors**".[5]

Failure to respect the Know-Your-Client rule, and suitability of clients' orders

¶ 11 Twenty-six (26) of Respondent's clients participated in the private distribution and, through the Respondent, invested in a convertible debenture of MHBP (the **MHBP debenture**), which notably guaranteed an annual return of 10% (payable in cash or in additional units) maturing November 24, 2009, and which generated total gross proceeds at issue of slightly more than $2 million. The parties admit that acquisition of such an interest in a debt security issued by a small pharmaceutical research company represented a high-risk investment.[6]

¶ 12 A vast majority of these clients were recruited by Claude-Yvon Provost (**Provost**), Pierre Couture (**Couture**) and/or two other people, MP and CV (the **promoters**), through a classified ad published in newspapers. The ad was written in such a way as to attract people with an urgent need for cash and offered to lend them cash "against" one or another form of retirement savings or income plan (RRSP, LIF, LIRA) (a **retirement plan**).

¶ 13 The promoters, Provost among them, as Counsel for IIROC has emphasized, followed a fairly consistent *modus operandi*. They would meet with the potential clients who responded to the ads. They would offer to lend them money in return for investing funds from their retirement plan in the MHBP debenture. In this manner, consumers were encouraged to cash in and immediately make available part of the equity in their retirement plan with no adverse fiscal effect. This scenario of *a posteriori* financing by the investor with his own money was, of course, practiced in very few cases before MHBP went bankrupt in 2009.[7]

¶ 14 At the first meeting, the promoters might fill out the client records and new account application forms of the future investors, using USL letterhead, without the Respondent being present. But in all cases, they (Provost among them) would subsequently accompany the future investors to Respondent's office for a second meeting, which was usually brief. This is where Respondent would intervene, essentially to finalize the opening of their brokerage accounts along with the documentation that would enable them to invest in the private distribution. But, in so doing, was Respondent discharging his ethical duty as a registered representative as he should in regard to his client? The answer is no.

¶ 15 The agreed-upon facts demonstrate that, for some clients at least, Respondent would finalize the new accounts without adequately verifying the information that should have allowed him to gather sufficient knowledge and confirm the accuracy of the facts relative to these individuals (income, employment, assets, investment objectives, and general investor profile), in circumstances where these facts were of particular importance in order to qualify the clients to invest without an approved prospectus. As such, Respondent acted contrary to IIROC Dealer Member Rule 1300.1 (a) (IDA Regulation 1300.1 a) prior to June 1, 2008).

¶ 16 The investigation by Staff of IIROC further reveals that, of the 26 clients the promoters referred to the Respondent and who invested in the private distribution, at least twelve (12) (who, in total, invested

---

[5] Here, "*accredited investor*" means *"an individual who, either alone or with a spouse, beneficially owns financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds $1,000,000"; "an individual whose net income before taxes exceeded $200,000 in each of the two most recent calendar years or whose net income before taxes combined with that of a spouse exceeded $300,000 in each of the two most recent calendar years and who, in either case, reasonably expects to exceed the net income level in the current calendar year"*; or *"an individual who, either alone or with a spouse, has net assets of at least $5 million."* : *Regulation 45-106 respecting Prospectus and Registration Exemptions*, s. 1.1 *"accredited investor"* pars. j), k) and l), and ss. 2.3 and 3.3.

[6] Settlement Agreement, Part III, par. 50.

[7] Stenographer' s Notes, pp. 14 to 16.

approximately $800,000) were not really accredited investors even if, in some cases, their client records showed information that was intended to give the false impression that they were.

¶ 17 In reality, this information was inaccurate and incomplete and, sometimes, the clients had even been prompted by the promoters, precisely in order to give the impression on paper that they met the criteria of an accredited investor as defined under Regulation 41-106.

¶ 18 If Respondent had shown due diligence in checking this information, he might have prevented the private distribution by MHBP from being made accessible to clients whose financial circumstances were unsuited to such a very risky investment and who, in some cases, did not understand the nature of the investment that was being offered them and its inherent risks, and in others, had no real idea what an accredited investor was. These were precisely the clients who needed the Respondent to discharge his duties as an investment professional on their behalf, to protect them, a duty that he could not help but be aware of. Yet, Respondent did not verify, did not inform, and did not try to see what was reasonably apparent, in order to serve his clients well.

¶ 19 The prosecution cites as evidence of this lack of diligence by the Respondent that certain of his clients made statements in their new account application forms that, even on the face of things, should have aroused suspicions and led to verifications by a minimally conscientious Approved Person.

¶ 20 We agree that under this category should be placed, as was suggested to us, any statement that an individual who has been working for a few months as a Tim Horton's manager or as a floor cleaner in a supermarket produce department could be earning over $200,000 a year. This was certainly cause enough to arouse some serious questioning, and even some elemental doubt, concerning the declarant's status as an accredited investor.

¶ 21 For these reasons, we conclude that Respondent did not use due diligence to ensure that the acceptance of orders from his clients to invest in the private distribution was suitable for these clients, thus contravening IIROC Dealer Member Rule 1300.1 p) (IDA Regulation 1300.1 p) prior to June 1, 2008)

¶ 22 We should mention that Respondent received a total net commission of $24,198 for the investments made by the above-mentioned Group of 12 in the MHBP debenture.

Placements in a company that was under a cease trade order

¶ 23 On November 1, 2007, following a first decision by the Bureau de décision et de révision en valeurs mobilières (**BDRVM**), MHBP was ordered to cease trading.

¶ 24 The decision provided for similar orders against other companies in the same group as MHBP, including the promoters Provost and Couture. Notably, it prohibited Provost from engaging, for and in the name of MHBP, in any activity with a view to executing any form of investment under the *Securities Act* (Québec) and from acting as an investment advisor.

¶ 25 Later, in the context of a second decision rendered on November 30, 2007, the BDRVM lifted the cease trade order against MHBP, conditionally on not seeking financing from the public until a receipt for the prospectus was obtained from the Autorité des marchés financiers. The November 1, 2007 order was, however, maintained against Provost.

¶ 26 To comply with the terms and conditions of the second decision, MHBP carried on its financing operations without an approved prospectus by relying on the registration and prospectus exemption for accredited investors.[8]

¶ 27 Beginning November 30, 2007, even though he was well aware of the BDRVM's November 30, 2007 decision, Respondent persuaded 19 clients who were not accredited investors – which he would no doubt have discovered had he bothered to check – to invest in the private distribution through the subscription and acquisition of an interest in the MHBP debenture.

[8] See supra, note 5. Indeed, that is what was reflected in its debenture subscription agreements: see Settlement Agreement, Part III, par. 24.

¶ 28 Despite the BDRVM's November 1, 2007 cease trade order against Provost, Respondent moreover continued to deal with the latter and allowed him to interact with his clients as we have described. He had to have known that in so doing, he was acting in contravention of this order.

¶ 29 Consequently, Respondent admits having failed to fulfill his role as a gatekeeper by allowing his clients to make a private investment in MHBP, whereas the company was under a cease trade order and, subsequently, an agreement not to seek financing from the public, contrary to IIROC Dealer Member Rule 29.1 (IDA By-law 29.1 prior to June 1, 2008).

Analysis

¶ 30 Rule 20.36(1) states that upon conclusion of a settlement hearing, the Hearing Panel may only accept or reject the settlement agreement submitted for its consideration.

¶ 31 When evaluating which decision to render at such a hearing, a hearing panel must not interfere lightly in the settlement negotiated between the parties. As established in *Re Milewski* [1999] I.D.A.C. No. 17, it must accept the settlement agreement if, after consideration of the agreed-upon facts, it can conclude that the disciplinary measures that it proposes appear to fall within "a reasonable range of appropriateness" given the misconduct in question.[9] This standard, which has been consistently applied since then, and again most recently in *Re BMO Nesbitt Burns* [2012] IIROC No. 21, has guided our Hearing Panel in this instance.

¶ 32 We have also considered the *IIROC Dealer Members Disciplinary Sanction Guidelines* (March 2009 edition), along with the case-law submitted by the parties regarding similar infractions to those committed by the Respondent: *Re Loughery* [2002] I.D.A.C.D. No. 36, *Re Leung* [2005] I.D.A.C.D. No. 45, *Re Georgakopoulos* [2009] IIROC No. 25 and 41, *Re Lamothe* [2009] IIROC No. 33, *Re Cornacchia* [2011] IIROC No. 25, *Re Morrison* [2011] IIROC No. 44, *Re Gareau* [2011] IIROC No. 53 and 72, *Re Kasten-Brown* [2011] IIROC No. 73 and *Re Jiwa* [2012] IIROC No. 9.

¶ 33 Finally, we have also taken into account the mitigating circumstances, as well as certain aggravating factors arising from the agreed-upon facts, which we discuss more fully below.

¶ 34 In the circumstances of this case, the Hearing Panel concluded finally that the penalties agreed upon in the Settlement in every respect satisfied the criteria of fairness and reasonable appropriateness, allowing it to accept the Settlement Agreement.

Mitigating circumstances

¶ 35 Respondent cooperated with Staff of IIROC when asked to provide assistance or information in the course of the investigation, an attitude for which he deserves credit.

¶ 36 In addition, we estimate that the acceptance of responsibility by the Respondent facilitated the disciplinary process and reduces the costs ultimately borne in this regard by IIROC members.

¶ 37 Respondent admitted his misconduct by signing the Settlement Agreement, a fundamentally positive point. However, as the Guidelines rightly state, the faster the offender admits his misconduct and expresses regret, the more it should be viewed as a convincing sign that the regret is real. In this instance, the admission came somewhat belatedly, after disciplinary proceedings were initiated, and this is why we assign it less probative value.

¶ 38 We note moreover that the damaging repercussions of the Respondent's misconduct are not exclusively attributable to him, even though he clearly contributed. His conduct does not make him solely responsible for the losses incurred by the investors. Indeed, the new account application forms for each of the 26 clients who invested in the private distribution were reviewed by the branch manager and compliance officer at USL.

¶ 39 Moreover, some of the injured clients willfully gave the Respondent false information when filling out the client files – occasionally even on the promoters' recommendation – in order to establish that they were

[9] *Re Milewsky* [1999] I.D.A.C. No. 17, on p. 11.

accredited investors. This factor, though admittedly important, has a certain exculpatory value that is worthy of consideration because, as we will see later, Respondent willfully turned a blind eye when appraising the information that was provided to him in this regard.

Aggravating factors

¶ 40 We cannot ignore the fact that the Respondent's conduct helped cause considerable financial prejudice to numerous clients, specifically to 12 of them for counts a) (duty to know his clients) and b) (duty to ensure suitability of investments), and to 19 of them for count c) (duty to protect the public (*gatekeeper*)). Following MHBP's bankruptcy, these clients lost almost all of their investment, approximately $800,000 for the the above-mentioned Group of 12.

¶ 41 Respondent failed in his duty to know his clients, a fundamental rule of the securities industry and, consequently, he invested in securities that were unsuitable for his clients and did not coincide with their investment objectives, or their risk tolerance.

¶ 42 The facts clearly show that many of Respondent's clients who invested in the private distribution did not have a high-risk investor profile, due to their age, their modest portfolio, and their long-term objectives.

¶ 43 On the contrary, these were unsophisticated investors whose knowledge of finance and investing was limited and who depended on the Respondent to perform his professional duties faithfully. Some of these clients had never even invested in the stock market or in products that remotely resembled the MHBP debenture.

¶ 44 It is a fundamental duty of the representative of an investment dealer to make suitable recommendations to his clients, with regard to their objectives and risk profile, and to obtain appropriate instructions from them before executing trades in their name. When the client relies entirely on the representative, as was the case here, these duties are all the more important.[10]

¶ 45 Our Hearing Panel also attaches a great deal of importance to the fact that some of these clients were of modest means and had invested all of their retirement funds in MHBP, having believed the representations that were made to them and the impression they gave that the investment in MHBP was guaranteed and, consequently, that it was safer than it really was.

¶ 46 The evidence also reveals that minimal questioning would have awakened doubt as to whether some of the clients, despite their statements, really were accredited investors. A person such as the Respondent, who had been approved in the securities industry for over 13 years, had he shown a modicum of care in the performance of his duties, should have questioned a new account application form that indicated that an investor whose stated occupation was manager at Tim Horton's had an annual gross employment income of $200,000.

¶ 47 In our eyes, these actions of the Respondent were not the fruit of ignorance or even mere negligence; the notions of "accredited investor" and "prospectus exemption", as well as their importance in regulating the securities industry were well known to the Respondent. Even though we would not go so far as to say that the latter's conduct was fraudulent, we believe however that the Respondent willfully turned a blind eye in circumstances where he should have been particularly diligent.

¶ 48 Indeed, at the time the violations occurred, Respondent was aware that the BDRVM had issued decisions regarding MHBP on November 1 and 30, 2007. He understood full well, consequently, that MHBP had to distribute its securities under cover of the registration and prospectus exemption for accredited investors if it was to comply with these decisions.

¶ 49 For the same reasons, Respondent should have refused to deal with Provost as soon as the cease trade order was issued against the latter, and he should have informed the clients who had dealt with Provost about the order against him.

¶ 50 Respondent failed to fulfill his role as a gatekeeper, for it was his ethical duty to detect, in regard to

[10] *Re Gareau* [2011] IIROC 72, p.4

private investments, any potentially inappropriate or illegal activity likely to cause losses to his clients.[11] As such, he engaged in business conduct or practice unbecoming or detrimental to the public, contrary to IIROC Dealer Member Rule 29.1 (IDA By-law 29.1 prior to June 1, 2008).

¶ 51 The facts show that Respondent's actions are not the result of a temporary or impetuous lack of judgment. Rather, they indicate repeated and generalized actions that went on for a long time.

¶ 52 We also noted that Respondent had a disciplinary history with the IDA, for two violations that occurred in 1994, and which are identical to the matter at hand, namely the duty to know your client and the obligation to ensure the suitability of investments.[12] This is therefore a repeat offense on his part.

¶ 53 Respondent profited from the commissions that he earned on the private placements he made. These commissions, which total $24,198 for the trades made for the 12 clients who were injured by the misconduct described in counts a) and b), were never refunded by the Respondent and, in our opinion, he should not be allowed to keep them.

The Penalties

¶ 54 Paragraph 4.2 of the General Principles of the Disciplinary Sanction Guidelines enumerates five factors that might justify a suspension of approval in the securities sector. Of these five factors, three fully apply to the Respondent: (i) there were several major contraventions; (ii) Respondent has a disciplinary history; and (iii) his misconduct was prejudicial to the integrity of the profession as a whole. Therefore the Settlement Agreement rightly imposes a three-year suspension of approval in any capacity. This suspension does not seem unreasonable in light of the precedents invoked before us in this regard (in particular, the *Loughery* and *Georgakopoulos* matters).

¶ 55 We note, relative to the fines agreed between the parties, that paragraph 3.1 (*Inappropriate recommendations*) and paragraph 3.2 (*Failure to "know your client"*) of the Guidelines each provide for a minimum fine of $10,000 in case of an offense.

¶ 56 The Hearing Panel concludes, in regard to the agreed-upon facts, that the higher fines provided in the Settlement Agreement – $15,000 for count a) (duty to know his client) and $15,000 for count b) (duty to ensure the suitability of investments) – are in agreement with these parameters. If we add in the $35,000 fine for count c), we arrive at a grand total of $65,000, which is not inconsistent with the precedents that were invoked before us (*Morrison*, *Lamothe*, *Loughery*, *Jiwa* and *Georgakopoulos*) and fully addresses the situation that was outlined to us.

¶ 57 Finally, other than disgorgement of the profits stemming from the $24,198 in commissions, a fairly lengthy period of strict supervision (2 years) once the suspension has been lifted, and the requirement to successfully complete the Conduct and Practices Handbook Course before he can seek reapproval are additional sanctions which to us seem fully justified under the circumstances.

Conclusions

¶ 58 For all of these reasons, we allow the joint recommendation of the parties and accept the Settlement Agreement before us. We believe that the penalties agreed upon in the Settlement in every respect satisfy the criteria of fairness and reasonable appropriateness, allowing us to rule in this manner.

NOW THEREFORE THE HEARING PANEL:

REITERATES ITS DECISION TO ACCEPT effective April 4, 2013, the Settlement Agreement appended to this decision and notably assesses the following penalties against Respondent:

1) a fine of $65,000: namely $15,000 for the first count, $15,000 for the second count, and $35,000 for the third count;

[11] *Re Georgakopoulos* [2009] IIROC No. 25 and 41
[12] *Re Groome* [2000] I.D.A.C.D. No. 3

2) disgorgement of $24,198, representing the profit realized by reason of the violations;

3) a 3-year suspension of approval in any capacity with IIROC;

4) a 24-month period of strict supervision once the suspension is lifted;

5) successful completion of the Conduct and Practices Handbook Course as a condition for re-approval; and

6) costs in the amount of $5,000, to be applied to the costs incurred by IIROC in this matter.

Montréal, May 27, 2013.

Jean Martel, Chair

Lise Casgrain, Panel Member

Danielle LeMay, Panel Member

SETTLEMENT AGREEMENT

I. BACKGROUND

1. Enforcement Staff of the Investment Industry Regulatory Organization of Canada (Staff) and Reginald Groome (the Respondent) consent and agree to the settlement of these matters by way of this settlement agreement (Settlement Agreement);
2. The Enforcement Department of the Investment Industry Regulatory Organization of Canada (IIROC) has conducted an investigation (the Investigation) into the conduct of the Respondent.
3. 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, which came into force June 1, 2008, the IDA has retained IIROC to provide the necessary services for the IDA to carry out its regulatory functions;
4. The Respondent consents and agrees to be subject to IIROC's jurisdiction;
5. The Investigation disclosed matters for which the Respondent may be disciplined by a Hearing Panel appointed pursuant to Part C of Schedule C.1 to Transition Rule No. 1 of IIROC (the Hearing Panel).

II. JOINT SETTLEMENT RECOMMENDATION

6. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement;
7. The Respondent admits to the following contraventions of IIROC Rules and Guidance and IDA By-Laws, Regulations or Policies:

   a) Between November 1, 2006 and June 30, 2008, while a registered representative with Union Securities Ltd., Respondent failed to use due diligence to learn and remain informed of the essential facts relative to his clients who invested in Millenia Hope Bio-Pharma, thus contravening IIROC Dealer Member Rule 1300.1 a)[IDA Regulation 1300.1 a) prior to June 1, 2008];

   b) Between November 1, 2006 and July 31, 2008, while a registered representative with Union Securities Ltd., Respondent failed to use due diligence to ensure that the acceptance of orders from his clients to invest in Millenia Hope Bio-Pharma was appropriate to these clients given their financial circumstances, their knowledge of investing, their investment objectives and their risk tolerance, thus contravening IIROC Dealer Member Rule 1300.1 p) [IDA Regulation 1300.1 p) prior to June 1, 2008];

   c) Between November 1, 2007 and July 31, 2008, while a registered representative with Union Securities Ltd., Respondent engaged in business conduct or practice unbecoming or detrimental to the public interest and failed to fulfill his role as a gatekeeper, by allowing his clients to make a private investment

in Millenia Hope Bio-Pharma, whereas the company was under a cease trade order and, subsequently, an agreement not to seek financing from the public, thus contravening IIROC Dealer Member Rule 29.1 [IDA By-law 29.1 prior to June 1, 2008].

8. Staff and the Respondent have accepted the following terms of settlement:
   a) A fine of $65,000: $15,000 on count A, $15,000 on count B, $35,000 on count C;
   b) Disgorgement of $24,198 representing the profit realized by reason of the violations;
   c) A three(3)-year suspension of approval in any capacity;
   d) A 24-month period of strict supervision once the suspension is lifted;
   e) Successful completion of the Conduct and Practices Handbook Course as a condition for re-approval;
9. The Respondent agrees to pay IIROC costs in the amount of $5,000.

III. STATEMENT OF FACTS

(i) Acknowledgment

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

(ii) Factual Background

SUMMARY

11. It is alleged that Respondent opened accounts for certain clients without having verified the necessary information with them so that he might have adequate knowledge of the essential facts regarding these clients, especially since the information was pivotal in determining whether they were accredited investors.
12. Respondent thus allowed these clients to make private placements with Millenia Hope Bio-Pharma Inc. (MHBP) without ensuring that these placements were suitable given the clients' financial circumstances and their investment objectives, and without making sure that they understood the risks inherent in these investments.
13. On November 1, 2007, the Bureau de décision et de révision en valeurs mobilières (BDRVM) issued a cease trade order and prohibition from acting as a securities advisor against Millenia Hope, Millenia Hope Bio-Pharma, MD Multimédia inc. (MD Multimédia), Pierre Couture (Couture) and Claude-Yvon Provost (Provost).
14. On November 30, 2007, the BDRVM lifted the cease trade orders against Millenia Hope and Millenia Hope Bio-Pharma, conditionally on not seeking financing from the public until a receipt for the prospectus was obtained from the Autorité des marchés financiers (AMF); however, the order against Couture and Provost was maintained.
15. After November 30, 2007, the Respondent executed private placements for his clients in the convertible debenture of MHBP with Union Securities Ltd., without ascertaining that these clients were accredited investors.
16. Moreover, Respondent continued to allow Provost to interact with his clients after the November 1st, 2007 decision of the BDRVM, in spite of the order against Provost;

THE RESPONDENT

17. The Respondent was a representative with unrestricted practice with Union Securities from April 2006 to January 2009. In August and September 2006, he was also approved as a branch manager at Union Securities. Prior to that, he worked as a representative with unrestricted practice with Marleau Lemire (1993 – 1996), Deacon Capital (1996 – 1998), Groome Capital (1998 – 2001), Desjardins Securities (2001 – 2002) and IPC Securities (2002 – 2006), where he was also the officer responsible for Québec (2003 – 2006).

THE MILLENIA HOPE BIO-PHARMA (MHBP) INVESTMENT

18. Over the course of 2007 and 2008, Provost referred several clients to the Respondent.

19. Many of these clients had been recruited by Couture, Provost, MP and/or CV (the promoters) through a small advertisement placed in newspapers to attract individuals who needed money fast, as appears from the following excerpt from one of the ads:

> [TRANSLATION]
>
> *NEED cash fast?*
>
> *Before you lose everything, we lend against*
>
> *RRSP, LIF, LIRA (first and second mortgage)*
>
> *Credit rehabilitation, CAN/USA credit cards*
>
> *Fast professional service*

20. Subsequently, the promoters would urge the clients to invest in a company by the name of MHBP.

21. MHBP was a pharmaceutical research company, a subsidiary of Millenia Hope Inc., which was a public company listed on the OTCBB.

22. The placements were in a product that was a convertible debenture of MHBP, guaranteeing an annual return of 10% payable in cash or in additional units, and maturing November 24, 2009.

23. The debenture provided that the investors were third (3rd) secured creditors and that they agreed to assign their rank to potential hypothecary lenders of an amount not to exceed $600,000:

> *"3.1 The Issuer owns the mortgaged property and the mortgaged property is free and clear of all rights, hypothecs or security, except the following:*
>
> *(i) conventional hypothec on the universality of the Issuer's movable property in the amount of $400,000 in favour of Primatlantis Capital S.E.C. and registered at the Register of Personal and Movable Real Rights ("RPMRR") on August 23, 2006 under number 06-0487979-000l (the "Original Hypothec");*
>
> *(ii) conventional hypothec on the universality of the Issuer's movable property (excluding research and development tax credits that the Issuer will be entitled to receive) in the amount of $75,000 in favour of Mr. Farid Abdelahad and registered at the RPMRR on December 6, 2006 under number 06-0701707-0001;*
>
> *(iii) conventional hypothecs on the universality of the Issuer's movable property (excluding research and development tax credits that the Issuer will be entitled to receive) in favour of all other debenture holders.*
>
> *3.2 The Subscriber agrees to assign its priority rank in favour of Primatlantis Capital S.E.C. (or any other recognized financia1 institution) should the Issuer grant a new conventional hypothec on the universality of the Issuer's movable property in the future in favour of Primatlantis Capital S.E.C. (or any other recognized financial institution) in replacement of the above hypothec mentioned in 3.1(i) for an amount that shall not exceed $600,000. For greater certainty, the present assignment will not exceed an amount of $600,000 including Primatlantis Capital S.E.C.'s current conventional hypothec."*

24. According to the subscription agreement, the debenture could be sold to accredited investors in Québec, Alberta, British Columbia, and Ontario.

25. The promoters turned to the Respondent to facilitate private investment in MHBP.

26. In all, 26 clients invested in the MHBP debenture through the Respondent, for a total of slightly more than $2M.

27. Of these 26 clients, at least 12 were not accredited investors, with client files showing inaccurate and/or incomplete information regarding their income, their employment, their assets, their investment objectives

and their general investor profile.

28. These 12 clients invested a little over $800,000 in the MHBP convertible debenture, an amount that was completely lost in MHBP's subsequent bankruptcy.

29. Respondent's net commission for these 12 clients was $24,198.

FAILURE TO RESPECT THE KNOW-YOUR-CLIENT RULE

30. The Respondent failed in his duty to know the clients referred to him for the purpose of investing in the debenture of MHBP.

31. He failed to use due diligence in order to know said clients.

32. Some clients only met the Respondent when their accounts were opened, at brief meetings during which the bulk of the time was spent signing the necessary forms to open the account and formalize the investment.

33. In some cases, the information necessary to open the account and execute the investment was obtained by the promoters, and not by the Respondent.

34. The Respondent did not determine with the clients and/or did not ensure that the facts entered on the new account application forms were true and accurate as regards their financial circumstances, their knowledge of investing, their investment objectives, and their tolerance for risk.

35. The new account application forms contain erroneous information that is the opposite of the actual situation of some clients, in terms of their financial circumstances, their knowledge of investing, their investment objectives and their risk tolerance.

36. If the Respondent had fulfilled his duty of care he would have observed that, for certain clients, their investment objectives and risk tolerance were incompatible with their personal and financial circumstances.

37. If the Respondent had fulfilled his duty of care and done the required verifications, he would have observed that, for some clients, the financial information that appeared on the new account application form and the subscription agreement was inaccurate.

38. Notwithstanding the questions that the Respondent should have asked in order to know his clients, in some situations it should have been apparent to the Respondent, simply from reading the new account application forms, that the veracity of the financial information was questionable, for example:

    i. the majority of new account application forms report annual incomes of exactly $200,000;

    ii. one new account application form indicates that the investor was employed and that he had an annual income greater than $200,000 whereas, in fact, he was retired and his annual income was around $19,000;

    iii. one new account application form states that the investor was a manager at Tim Horton, but that he had an annual income of over $200,000;

    iv. one new account application form states that the investor was a sales clerk in a jewelry store, but that he had an annual income of more than $200,000;

    v. one new account application form states that the investor was a grocery store manager, but that he had an annual income of $215,000, with $160,000 in net liquid assets and no fixed assets.

39. Moreover, since the placement was made by virtue of an exemption, the Respondent should have been all the more diligent, considering that the investors' financial position was a requirement in order to qualify for the exemption.

40. In some cases, the clients did not know and did not understand the notion of accredited investor, which notion the Respondent did not explain to them.

41. The duty to know your client is a fundamental rule that is at the core of the rules applicable to investment dealers.

42. Similarly, the notions of accredited investor and prospectus exemption, along with their importance to the regulation of the securities industry, were known to the Respondent.

43. These failings are significant considering that:

    i. they constitute breaches of a fundamental rule aimed at protecting investors;

    ii. they constitute breaches of a rule that is well-established by IIROC;

    iii. they are breaches that concern numerous clients;

    iv. minimal questioning would have revealed the incongruities between the financial information and the other information appearing on the new account application forms;

    v. minimal questioning would have made clear that the clients could not have held the status of accredited investors by virtue of the Securities Act and Regulation 45-106 respecting prospectus and registration exemptions .

44. Consequently, Respondent failed to use due diligence to learn and remain informed of the essential facts relative to certain of his clients, notably when the accounts were opened, contrary to his obligations as a registered representative.

SUITABILITY OF CLIENTS' ORDERS

45. The Respondent failed to ensure that the acceptance of orders from his clients and/or his recommendation to invest in the convertible debenture of MHBP was appropriate for his clients given their financial circumstances, their knowledge of investing, their investment objectives and their risk tolerance.

46. As stated in the introduction, the product that was invested in was a convertible debenture guaranteeing an annual return of 10% payable in cash or in additional units and maturing on November 24, 2009. According to the subscription agreement, it was a private placement that could be sold to accredited investors in Québec, Alberta, British Columbia, and Ontario.

47. The Respondent's clients had only fragmentary and limited information about the debenture that they were acquiring as part of a private placement.

48. They therefore deferred to the representations of the Respondent and the promoters.

49. However, the Respondent knew or should have known that these investments were unsuitable for his clients.

50. Indeed, the Respondent's clients did not fully understand that the placement in the debenture was a high-risk investment in a product issued by a small pharmaceutical research company.

51. Some clients had understood from the representations that were made to them that the placement was guaranteed.

52. Yet such a high-risk, highly speculative placement could not have coincided with the actual profile of the Respondent's clients.

53. The 12 clients referenced previously had been invested in registered retirement accounts, namely RRSPs, LIRAs and LIFs.

54. Minimal questioning would have allowed the Respondent to see that this investment was unsuitable for his clients.

55. Minimal questioning would also have shown that some clients did not have the required knowledge to understand the nature of the product in which they were investing.

56. Consequently, the Respondent failed in his duty to ensure that the acceptance of orders from his clients and/or his recommendation to invest in the convertible debenture of MHBP were appropriate for his clients given their financial circumstances, their knowledge of investing, their investment objectives and their risk tolerance, contrary to his duties as a registered representative.

PLACEMENTS IN A COMPANY THAT WAS UNDER A CEASE TRADE ORDER AND AN AGREEMENT NOT TO SEEK

FINANCING FROM THE PUBLIC

57. On November 1, 2007, the Bureau de décision et de révision en valeurs mobilières (BDRVM) ordered the following against Millenia Hope, Millenia Hope Bio-Pharma, MD Multimédia, Pierre Couture and Claude-Yvon Provost :

> [TRANSLATION]
>
> "prohibits L'Espoir de Millénaire inc. (Delaware) (Millenia Hope inc.), Espoir du Millénaire Pharmaceutique inc. (Millenia Hope Bio-Pharma) and MD Multimédia inc. from engaging in any and all activity relative to the trade of securities in all investment forms under the Securities Act;
>
> prohibits Pierre Couture from any and all activity with a view to trading securities in all investment forms under the Securities Act for and in the name of L'Espoir de Millénaire inc. (Delaware) (Millenia Hope inc.), Espoir du Millénaire Pharmaceutique inc. (Millenia Hope Bio-Pharma) and MD Multimédia inc. ;
>
> prohibits Claude-Yvon Provost from any and all activity with a view to trading securities in all investment forms under the Securities Act for and in the name of L'Espoir de Millénaire inc. (Delaware) (Millenia Hope inc.), Espoir du Millénaire Pharmaceutique inc. (Millenia Hope Bio-Pharma) and MD Multimédia inc. ; and
>
> prohibits Pierre Couture and Claude-Yvon Provost from acting as investment advisors, as defined in section 5 of the Securities Act."

58. The same day, the BDRVM decision was served on Couture and Provost at an investors meeting the latter had organized, as detailed in the BDRVM decision.

59. The Respondent was at the meeting to make introductions. He witnessed the decision being served on Couture and Provost and became aware of the cease trade orders issued by the BDRVM.

60. On November 30, 2007, the BDRVM lifted the cease trade orders against Millenia Hope and Millenia Hope Bio-Pharma, but not against Couture and Provost, conditionally on not seeking financing from the public until a receipt for the prospectus was obtained from the Autorité des marchés financiers (AMF) :

> [TRANSLATION]
>
> The AMF approves the lifting by the BDRVM of the cease trade order against the respondent companies on condition that the latter formally undertake not to seek financing from members of the public until a receipt for the prospectus has been issued by the AMF. At the hearing, Joseph Daniele, as agent for the respondent companies, made a formal agreement with the AMF to comply with the securities legislation. [Our emphasis]

61. Under the circumstances, and even though he had been aware of the cease trade orders from the BDRVM, the Respondent, from November 30, 2007 on, executed private placements for 19 clients in the debenture of Millenia Hope Bio-Pharma.

62. What's more, many of these clients were referred to the Respondent by Provost and met the Respondent in the company of Provost on one or more occasions.

63. Now, the Respondent, given the information at his disposal, should have refused to deal with Provost, who was directly named in the order of prohibition from acting as a securities advisor issued by the BDRVM, as well as cited in the BDRVM decision of November 30, 2007, which upheld the prohibition against him, stating that the latter had no authority to act for and on behalf of MHBP.

64. Consequently, the Respondent engaged in conduct unbecoming or detrimental to the public interest and failed to exercise **his** gatekeeper role.

CONCLUSION

65. What emerges from these facts is that, with respect to the private placement in the convertible debenture of Millenia Hope Bio-Pharma, the Respondent failed in his duty to know his clients, and to ensure the

suitability of his clients' orders, and engaged in business conduct or practice unbecoming or detrimental to the public interest, in addition to failing to fulfill his role as a gatekeeper, by leading numerous individuals to invest substantial sums in a high-risk investment in a company that ultimately went bankrupt.

IV. TERMS OF SETTLEMENT

66. In accordance with Dealer Member Rule 20.35 to 20.40 inclusively, and Rule 15 of the Dealer Member Rules of Practice and Procedure;

67. The Settlement Agreement is subject to acceptance by the Hearing Panel;

68. The Settlement Agreement shall become effective and binding upon the Respondent and Staff from the date of its acceptance by the Hearing Panel;

69. The Settlement Agreement will be presented to the Hearing Panel at a hearing ("the Settlement Hearing") for approval. Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.

70. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his right, under IIROC rules and any applicable legislation, to a disciplinary hearing, review or appeal.

71. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement; or staff may proceed to a disciplinary hearing in relation to the matters disclosed in the investigation.

72. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel;

73. Staff and the Respondent agree that, if the Hearing Panel accepts the Settlement Agreement, they, or anyone on their behalf, will not make any public statements inconsistent with the Settlement Agreement.

74. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent shall be payable immediately on the effective date of the Settlement Agreement;

75. Unless otherwise stated, suspensions, prohibitions, expulsions, restrictions and other conditions or terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

AGREED TO by the Respondent at Montréal, Québec, this_____ day of _____ 2013.

« WITNESS »

WITNESS:

« REGINALD GROOME »

REGINALD GROOME

RESPONDENT

AGREED TO by Staff of IIROC at Montréal, Québec, this_____day of_____ 2013.

« LINDA VACHET »

WITNESS:

« MARTIN HOVINGTON »

MARTIN HOVINGTON

ENFORCEMENT COUNSEL, FOR STAFF OF IIROC