Re M Partners and Isenberg

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

M Partners Inc. and Steven Isenberg

2018 IIROC 25

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

Heard: June 28, 2017 in Toronto, Ontario
Oral Decision: June 28, 2017
Written Decision: July 16, 2018

Hearing Panel:
The Honourable Peter B. Hambly, Chair, Richard E. Austin and Leo Ciccone
Appearance:
Elissa Sinha, Enforcement Counsel
Alistair Crawley for M. Partners and Steven Isenberg
Steven Isenberg, present

DECISION ON SETTLEMENT AGREEMENT

Introduction

¶ 1 On June 13, 2018, the Investment Industry Regulatory Organization of Canada ("IIROC") issued a Notice of Application for a Settlement Hearing before a Hearing Panel of IIROC to consider whether to accept a Settlement Agreement ("the Agreement") entered into between M Partners Inc. ("M Partners") and Steven Isenberg and Staff of IIROC pursuant to Section 8428 of the Consolidated Enforcement Examination and Approval Rules of IIROC. The Agreement is attached hereto as Exhibit 1.

¶ 2 After hearing oral submissions on June 28, 2017, the Hearing Panel retired to consider the matter. After returning to the hearing room, the Chair announced that the Hearing Panel had decided to accept the Agreement. Written reasons would follow. These are our reasons.

Background

¶ 3 M Partners is a registered IIROC Dealer Member and a member and subscriber to IIROC-regulated marketplaces. As such, M Partners is a Participant under the Universal Market Integrity Rules ("UMIR"). M Partners is a full service brokerage, primarily engaged in corporate finance activities. M Partners currently employs 13 IIROC registrants. Steven Isenberg ("Isenberg") is the UDP ("Ultimate Designated Person") for M Partners and has been registered in that capacity since 2005. Isenberg is also M Partners' CEO. Isenberg enters trades for his accounts as well as the accounts of his clients.

¶ 4 Prior to 2017, M Partners relied on manual trade tickets ("Tickets") for all orders. In 2017, M Partners

implemented electronic ticketing to address Audit Trail Deficiencies (as defined herein) that are at the centre of the allegations against the Respondents.

¶ 5 In February 2015, an IIROC Hearing Panel accepted a settlement agreement between M Partners and Staff (the "First Settlement Agreement"). In the First Settlement Agreement, M Partners admitted that it had contravened the following requirements of UMIR during November 2012:

i. failed to comply with its trade supervisions obligations contrary to UMIR 7.1 and Policy 7.1; and

ii. failed on receipt or origination of certain orders to record specific information relating to the orders as required by Part 11 of the Trading Rules (National Instrument 23-101) contrary to UMIR 10.11(1).

¶ 6 In the Agreement, the Respondent, M Partners, admits that between February 2015 and August 2016 it contravened UMIR 10.11 by failing to comply with Part 11.1. of the Trading Rules found in National Instrument 23-101, specifically by failing to record the following on all Tickets:

a) the order identifier

b) the type, issuer, class, series and symbol of the security;

c) the face amount or unit price;

d) the number of securities;

e) date and time the order is first originated or received;

f) the client account number or client identifier; and

g) any client instructions or consents, respecting the handling or trading of the order.

¶ 7 M Partners also admits in the Agreement that it contravened UMIR 7.1 by failing to comply with its trading supervision obligations as set out in its own internal policies and procedures. These policies and procedures state:

a) a Ticket was required for every trade recording, among other things, quantity, price, security/symbol, and account number/name;

b) all Tickets were required to be time-stamped with the date and time the order was received;

c) changes to the form of an order (“CFO”), such as to price or quantity, were required to be properly recorded on the Ticket and time-stamped to reflect when the changed instructions were received;

d) filled Tickets were retained for seven years and unfilled Tickets were retained for five years.

¶ 8 Isenberg admits in the Agreement as UDP of M Partners that between February 2015 and August 2016 he contravened the following IIROC Dealer Member Rule:

> 38.5(c) The Ultimate Designated Person must
>
> (i) supervise the activities of the Dealer Member that are directed towards ensuring compliance with the Corporation’s Dealer Member rules and applicable securities law requirements by the firm and each individual acting on the Dealer Member’s behalf, and
>
> (ii) promote compliance by the Dealer Member, and individuals acting on its behalf, with the Corporation’s Dealer Member rules and applicable securities laws.

¶ 9 The parties have entered into the Agreement based on admitted facts. The Agreement sets out penalties as follows:

1. M Partners will pay a fine of $120,000;
2. Isenberg will pay a fine of $70,000; and
3. M Partners will pay costs of $10,000.
4. Payment will be made within 30 days of acceptance unless otherwise agreed between Staff and the Respondents.

¶ 10 The requirements of UMIR 10.11 and Part 11.1 of the Trading Rules found in National Instrument 23-101 are of great importance as they are crucial for the proper accounting of trades in securities. When M Partners acquires or sells securities its obligation to properly settle such trades, including meeting applicable requirements related to priority of orders and the distinguishing between "client" and "non-client" trades, is dependent on the proper identification and allocation of trades to client accounts and to its own accounts in the case of principal trades. Lapses in meeting these requirements are known in the industry as Audit Trail Deficiencies.

¶ 11 The responsibilities of the UDP under Rule 38.5 are of equal importance and the UDP is often said to have the obligation to promote a culture of compliance at his or her firm, and in such regard is expected to set the tone from the top.

¶ 12 As noted above in the First Settlement Agreement, M Partners admitted that during November 2012 it had Audit Trail Deficiencies and improper order handling practices. Isenberg executed the First Settlement Agreement on behalf of M Partners. Pursuant to the First Settlement Agreement, M Partners paid a fine of $40,000 and costs of $5,000.

¶ 13 IIROC Staff identified further Audit Trail Deficiencies by M Partners in February and March 2015. These included the following:

a) missing Tickets where M Partners failed to produce a Ticket to correspond to an order placed by its Trade Desk;
b) Tickets without a time-stamp to indicate the date and time the order was received;
c) Tickets with a time-stamp that did not correspond to the actual trading;
d) Tickets that did not identify client name and/or account;
e) Tickets where the number of units and price did not correspond to the order(s) entered;
f) Tickets where the fill information intended to record the number of shares purchased or sold and price did not correspond to the actual transaction(s);
g) Tickets for trades subject to CFO, where the new instructions were not time-stamped or properly recorded; and
h) Tickets where required information was illegible and/or missing.

¶ 14 During a 2016 compliance examination of M Partners, IIROC compliance staff identified further Audit Trail Deficiencies and improper use of accumulation accounts in August and September 2016.

¶ 15 Isenberg was aware that M Partners had a history of Audit Trail Deficiencies, having signed the First Settlement Agreement and being the UDP when it was accepted. He also received quarterly reports which detailed the results of the CCO's testing for audit trail requirements and noted instances of Audit Trail Deficiencies, including missing information as regarding the price and quantity of securities purchased, as well as missing and late time stamps.

¶ 16 Isenberg's own Tickets were deficient as were those prepared by the M Partners Trade Desk. Isenberg did not follow the requirements for trading and maintaining an audit trail set out in UMIR and the Trading Rules or in M Partners' own policies and procedures, nor did he take adequate steps to ensure that M Partners' employees did so. Thus, Isenberg failed to fulfill his obligations as UDP.

¶ 17 In 2017, M Partners retained a consultant to address the issues described in the Agreement and to conduct a comprehensive review of its compliance program. As noted above, M Partners has implemented electronic ticketing to address the Audit Trail Deficiencies and is implementing other improvements to its compliance program.

¶ 18 Counsel informed us in submissions that the Agreement followed a full day mediation before an experienced mediator.

¶ 19 In March 2018, Isenberg completed the CCO examination.

Discussion

Role of a Hearing Panel in Considering Whether to Accept a Settlement Agreement

¶ 20 In *Re Milewski*, [1999] I.D.A.C.D. No. 17, a District Council considered whether to accept a settlement agreement between a registered representative and the Investment Dealers Association, the forerunner of IIROC. The allegations were that a registered representative had sold investments to clients that were inappropriate given the clients' stated investment objectives. The penalty proposed was a substantial fine plus disgorgement of commissions. The District Council approved the settlement. It stated that the test to be applied to determine whether it should accept a settlement agreement was the following:

> Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.
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> This understanding is reflected in paragraph 20.26 of the By-laws, which authorizes the District Council to "accept", rather than approve, a settlement agreement. In each case, a District Council must determine appropriateness, but the standards applicable to its doing so on a settlement hearing differ from those in a contested hearing. Thus, the penalties imposed under settlement agreements, while relevant to a District Council exercising its discretion to penalize, provide only limited assistance in a hearing like this one. (p. 9-10)

¶ 21 In *Re Donnelly* 2016 IIROC 29, a hearing panel considered whether it should accept a settlement agreement on penalty resulting from allegations of a branch manager of a securities firm to supervise adequately a registered representative of the firm. It stated that the proposed penalties must be within an acceptable range taking into account similar case, be fair, reasonable and proportionate to the seriousness of the contraventions and be a deterrent to the respondent and the industry.

¶ 22 In *R. v. Anthony-Cook*, [2016] 2 SCR 204, the Supreme Court of Canada in the judgment of Justice Moldaver considered the test to be applied by a court in deciding whether to accept a joint submission of the Crown and defence on the appropriate sentence for an accused charged with serious crimes. The court decided the test was the public interest test which Justice Moldaver described as follows:

> [34] In my view, these powerful statements capture the essence of the public interest test developed by the Martin Committee. They emphasize that a joint submission should not be rejected lightly, a conclusion with which I agree. Rejection denotes a submission 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 had broken down. This is an undeniably high threshold — and for good reason...

¶ 23 In its decision in *Re Jacob* 2017 IIROC 17, the Hearing Panel considered the decision in *Re Cavalaris* 2017 IIROC 04 in its deliberations. The Hearing Panel in *Re Cavalaris* had to decide whether to accept a settlement agreement between IIROC and a chief compliance officer of an investment dealer based on allegations of failure properly to supervise the investment dealer. The Hearing Panel drew an analogy between the test in *Milewski* and the test in *Anthony Cook*. It stated the following:

> ¶ 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 he 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.

¶ 24 In *Re Jacob 2017 IIROC 17,* IIROC made allegations against the controlling mind of a small investment firm. A hearing panel considered a settlement agreement. It succinctly stated the facts as follows:

> ¶9 In the Settlement Agreement, the Respondent admits (paragraph 122) to the following contravention of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:
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> From November 2013 to December 2015 the Respondent as Ultimate Designated Person failed to supervise the activities of Jacob Securities and individuals acting on its behalf in order to ensure compliance with IIROC Rules, and failed to promote compliance with IIROC Rules by Jacobs Securities and those acting on its behalf, contrary to IIROC Rules 38 and 2500.

Staff and the Respondent agreed to a Settlement in which the Respondent would pay a global fine of $100,000, be suspended from acting as an Ultimate Designated Person for three years from the acceptance of the Agreement, and pay costs to IIROC in the sum of $10,000.

¶ 25 The Hearing Panel considered the reasoning in *Re Cavalaris* and the test for accepting a joint submission in a criminal case stated by the Supreme Court of Canada in *Anthony Cook*. It stated the following:

> ¶27 ...A recent IIROC decision, *Re Cavalaris* 2017 IIROC 04, which relied heavily on the Anthony-Cook case, was also included in the material. We have not included it in our reasons because we believe it is unnecessary in Settlement Agreement hearings and might create problems if relied on as the test. It is unnecessary because for almost 20 years IIROC and MFDA Panels have relied on the Milewski jurisprudence, without serious difficulties. If the Milewski test is unsatisfactory, it can easily be clarified or changed by the regulatory body. To introduce the Anthony-Cook test might create needless problems. Supreme Court decisions in criminal matters are often difficult to interpret and frequently require further elaboration by the courts. Therefore, the test would require Panels not normally very knowledgeable about criminal law issues to understand and keep up with the evolving criminal law jurisprudence. And, it would necessitate determining whether the new test was the same or stricter than the Milewski test.
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> ¶28 Moreover, the contexts with respect to the regulatory process and the criminal process are different. The Supreme Court of Canada was trying to solve a serious and difficult problem of congested courts and unreasonable delay in the criminal justice system, which can and does. The issue has proven to be hard to solve legislatively or administratively, in part because of the many participants in various levels of government that have an interest in the process. The Supreme Court's recent case of R v. Jordan 2016 SCC 27, dealing with time limits for trials, can be seen as a companion attempt to deal effectively with the issue of congestion and delay in the criminal justice system in Canada.
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> ¶29 Those same issues are not being faced to the same extent by the regulatory process in the field

of securities regulation. Moreover, there are significant differences between the regulatory process and the criminal process, such as the potential penalties, the quantum and burden of proof, the right to be protected from self-incrimination, the right to counsel, the use of closed hearings, the use of sanction guidelines, and the use of industry representatives on the Panels, to mention some other differences.

¶30 It seems wise to stick with the Milewski test, which has stood to test of time.

¶ 26 In *Dunsmuir v. New Brunswick* 2008 S.C.R. 190, the Supreme Court of Canada held that only two tests should be applied by courts in deciding whether to uphold administrative decisions, namely, correctness and reasonableness. In the course of its reasons it stated the following:

> [54] Guidance with regard to the questions that will be reviewed on a reasonableness standard can be found in the existing case law. Deference will usually result where a tribunal isinterpreting its own statute or statutes closely connected to its function, with which it will have particular familiarity.

¶ 27 We agree with this reasoning in *Jacob*. The use of the *Anthony Cook* test is not appropriate in the regulatory context for a hearing panel to use in considering whether to accept a settlement agreement between IIROC and a subject of IIROC enforcement. IIROC panels have expertise in interpreting UMIR. They have no expertise in criminal law. Although application of the two tests will likely produce the same result, it is better to use only the test in *Milewski*.

Should the Hearing Panel Accept the Proposed Settlement

¶ 28 We apply the framework suggested in *Donnelly* to determine whether the settlement agreement meets the test in *Milewski* for acceptance by the Hearing Panel by considering whether the proposed penalties are within an acceptable range taking into account similar case; are fair, reasonable and proportionate to the seriousness of the contraventions and will be a deterrent to the respondents and the industry. For ease of reference the proposed penalties are as follows:

1. M Partners will pay a fine of $120,000;
2. Isenberg will pay a fine of $70,000;
3. M Partners will pay costs of $10,000.
4. Payment will be made within 30 days.

Similar Cases

¶ 29 In *Re Scotia Capital* 2017 IIR0C 48, IIROC took disciplinary proceedings against a large investment firm for its failure to supervise two registered representatives who had recommended investments to clients that were not suitable to them. The clients suffered losses for which Scotia Capital reimbursed them in the amount of $2,501,729. Scotia Capital had taken remedial steps to ensure that what had happened would not be repeated. The penalty proposed in a settlement agreement was a fine of $200,000, costs of $20,000 and disgorgement by the supervisor of the registered representatives of $100,000 to be donated to a charity. The hearing panel approved the settlement. In it reasons it stated the following in Paragraph 21:

> For a large financial institution, the magnitude of the fine is less important than the damage to its reputation caused by the notoriety of proceedings such as the present. That said, the fines should be consistent with those levied against similar sized institutions in similar circumstances. The fines must satisfy the principle established in the IIROC Sanction Guidelines that:
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> > "The purpose of sanctions in a regulatory proceeding is to protect the public interest by restraining future conduct that may harm the capital markets. In order to achieve this, sanctions should be significant enough to prevent and discourage future misconduct by the respondent (specific deterrence), and to deter others from engaging in similar misconduct (general deterrence)."

¶ 22 The cases cited by IIROC Staff all suggest that the sanctions proposed by the parties are within

the zone of appropriateness and would not bring the administration of justice into disrepute. Our conclusion in that regard was the reason we accepted the settlement. A review of the facts of these cases to identify similarities and differences between each of them and the present case would not be useful. All these cases ultimately turn on their own facts and, particularly when considering a joint settlement agreement, the zone of what is acceptable is quite wide.

¶ 30 In *Re Donnelly,* the respondent was a branch manager of an investment firm. He had failed to supervise properly a registered representative. It was a second contravention for the same offense. The penalty approved by the hearing panel was a fine of $30,000, costs of $1,500 and suspension from acting a supervisory capacity for 1 year. The respondent was 70 years of age and in poor health. The contravention at issue was much less serious than the first contravention. The respondent had not worked as branch manager for 4 years and was unlikely to do so again.

¶ 31 In *Re National Bank Financial, Clark and O'Reilly* 2011 IIROC 1, two investment advisers employed by National Bank Financial committed audit trail contraventions of IIROC Rules. National Bank Financial failed to supervise them properly. No clients suffered losses. Remedial steps were taken to ensure that this did not happen again. Settlement agreements accepted by the hearing committee consisted of a fine of $250,000 and costs of $30,000 against National Bank Financial, a fine of $110,000 and costs of $5,000 against one adviser and a fine of $15,000 and costs of $2,500 against the other adviser who was an assistant.

¶ 32 In *Re Jitney Trade* 2017 IIROC 25, the respondent was an investment dealer. It had failed to comply with its trade supervision obligations. This permitted one of its clients to engage in the practices of spoofing and layering. These practices artificially effect the prices of securities on the market. It was putting in place procedures to upgrade systems that it already had to prevent these practices from reoccurring. The hearing panel approved a settlement agreement, which required Jitney Trade to pay a fine of $200,000 and costs of $25,000.

¶ 33 In *Re D & D Securities & Lilly* 2016 IIROC35, D & D was engaged in investment banking. Patrick Lilly was the president of D & D. The respondents failed to ensure compliance with regulatory requirements to avoid misuse of confidential information, identify and manage conflicts of interest and outside business activities and supervise retail accounts. Lilly had failed to fulfill representations made to IIROC that it would improve its sales compliance program. D & D had taken significant steps to ensure future compliance that impressed the hearing panel. It did not have a disciplinary history. There were no complaints by clients and no evidence of client harm. D & D's revenue was modest. The hearing panel approved a settlement agreement that required that the respondents take specified remedial steps, D & D pay a fine of $15,000, Lilly pay a fine of $7,500 and D & D pay costs of $5,000.

¶ 34 In *Re Jacob* 2017 IIROC 17, Sasha Jacob who was the respondent had founded Jacob Securities. In an expedited hearing on December 17, 2015, a hearing panel found that it had failed to meet basic requirements to supervise its employees. It required the firm to cease dealing with the public. In this hearing Sasha Jacob was the respondent. The hearing panel approved a settlement agreement that required that he pay a fine of $100,000, costs of $10,000 and that he not act as an ultimate designated person for 3 years.

¶ 35 We are satisfied that the proposed penalties are consistent with penalties accepted by hearing panels in recent cases as set out above.

Fair, Reasonable and Proportionate

¶ 36 M Partners is of modest size with 13 IIROC registrants. It is in the public interest that it continues to be active. The penalties must be sufficient to act as a deterrent but not cripple the firm.

Deterrent to the Respondents and the Industry

¶ 37 This is the element of the test that gave the Hearing Panel the most concern given the penalty levied against M Partners of $40,000 and costs of $5,000 in the First Settlement Agreement for similar, if not identical, Audit Trail Deficiencies. Certain facts were persuasive in our concluding that the Agreement should be accepted in the face of repeated failure of M Partners to comply with the same provisions of UMIR. These

include;

a) the adoption of electronic ticketing by M Partners which should ensure that there would not be a reoccurrence of the conduct at issue;

b) the lengthy mediation between the parties in arriving to the Agreement;

c) the penalties in the Agreement are substantially greater than in the First Settlement Agreement, and their relative impact given the relatively small size of M Partners;

d) the significant penalty imposed against Isenberg personally; and

e) that these reasons will be published on the IIROC website. This will undoubtedly be an embarrassment to M Partners and to Isenberg and may lead to other negative consequences.

Result

¶ 38 We conclude that the Agreement is in the public interest and we accept it.

Dated at Toronto, Ontario this 16th day of July, 2018.

Peter. B. Hambly

Richard E. Austin

Leo Ciccone

Exhibit 1

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 M Partners Inc. and Steven Isenberg (together, the "Respondents").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff and the Respondents 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 Respondents agree with the facts as set out in Part III of this Settlement Agreement.

Overview

4. M Partners failed to comply with its trading supervision obligations and satisfy its audit trail requirements. During the relevant period, there were numerous instances where M Partners failed to properly complete trade tickets in accordance with regulatory requirements and its internal policies and procedures (the "Audit Trail Deficiencies"). This was contrary to M Partners' regulatory obligations and created uncertainty as to client instructions and the ownership of securities.

5. Isenberg, as UDP of M Partners, failed to supervise M Partners' compliance with its trading supervision and audit trail obligations, despite a prior disciplinary proceeding on these issues and reports from M Partners' former CCO.

6. There were multiple Audit Trail Deficiencies for trades entered by Isenberg himself which is inconsistent with the promotion of compliance by the UDP.

The Respondents

7. M Partners is a registered IIROC Dealer Member and a member and subscriber to IIROC-regulated marketplaces. As such, M Partners is a Participant under the Universal Market Integrity Rules ("UMIR").

8. M Partners is a full service brokerage, primarily engaged in corporate finance activities. M Partners currently employs 13 IIROC registrants.

9. Isenberg is the UDP for M Partners and has been registered in that capacity since 2005. Isenberg is also M Partners' CEO. Isenberg enters trades for his accounts as well as the accounts of his clients.

10. In February 2015, an IIROC Hearing Panel accepted a Settlement Agreement between M Partners and Staff (the "First Settlement Agreement"). In the First Settlement Agreement M Partners admitted that during November 2012 it had Audit Trail Deficiencies and improper order handling practices. Isenberg executed the First Settlement Agreement on behalf of M Partners.

11. Pursuant to the First Settlement Agreement, M Partners paid a fine of $40,000 and represented that it had taken remedial steps to rectify the deficiencies. The following facts demonstrate that the remediation was inadequate.

Audit Trail Requirements

12. At the relevant time, M Partners did not use electronic trade ticketing. Rather, M Partners' trade desk personnel (the "Trade Desk") were required to complete and time-stamp manual trade tickets ("Tickets") for all orders. Isenberg or one of two other employees who placed trades at M Partners would then enter trades using the information provided in the Ticket.

13. For every trade, M Partners was required to record the specific information set out in UMIR 10.11 and Part 11 of the Trading Rules (National Instrument 23-101). The requisite information included, among other things:

    a) the order identifier

    b) the type, issuer, class, series and symbol of the security;

    c) the face amount or unit price;

    d) the number of securities;

    e) the date and time the order is first originated or received;

    f) the client account number or client identifier; and

    g) any client instructions or consents, respecting the handling or trading of the order.

14. M Partners' internal policies and procedures adopted these requirements and amplified them. The policies stated that:

    a) a Ticket was required for every trade recording, among other things, quantity, price, security/symbol, and account number/name;

    b) all Tickets were required to be time-stamped with the date and time the order was received;

    c) changes to the form of an order ("CFO"), such as to price or quantity, were required to be properly recorded on the Ticket and time-stamped to reflect when the changed instructions were received;

    d) filled Tickets were retained for seven years and unfilled Tickets were retained for five years.

Audit Trail Deficiencies

(i) 2015 Audit Trail Deficiencies

15. Subsequent to entering into the First Settlement Agreement, IIROC Staff identified Audit Trail Deficiencies in February and March 2015. Over a sample period of six trading days, there were a significant number trading events with one or more Audit Trail Deficiencies, including:

    a) missing Tickets where M Partners failed to produce a Ticket to correspond to an order placed by its Trade Desk;

    b) Tickets without a time-stamp to indicate the date and time the order was received;

    c) Tickets with a time-stamp that did not correspond to the actual trading;

    d) Tickets that did not identify client name and/or account;

    e) Tickets where the number of units and price did not correspond to the order(s) entered;

    f) Tickets where the fill information intended to record the number of shares purchased or sold and price did not correspond to the actual transaction(s);

    g) Tickets for trades subject to CFO, where the new instructions were not time-stamped or properly recorded; and

    h) Tickets where required information was illegible and/or missing.

16. Tickets were also incomplete. For example, on February 2, 2015, M Partners entered an order to sell 155,000 shares of Highbury Projects ("HPI") at $0.34. However, the Ticket refers to 155,500 shares. The order expired at the end of the day unfilled. The following day an order was entered at 9:03 to sell 155,000 shares at $0.34. At 10:19, the order was changed to $0.335 and at 12:56, it was changed again to $0.325 and 120,000 shares were sold at that price. The final change in price is not indicated on the Ticket or time-stamped.

17. By way of further example, a Ticket stamped February 27, 2015 reflects an order to buy two blocks of 50,000 shares in Theratechnologies ("TH") at $0.72 and $0.74, respectively. The orders were filled on February 27 at an average price of $0.73. However the Ticket refers to a fill of 100,000 shares at $0.6375 on February 26, 2015, the day before the Ticket was time-stamped and the orders were entered and filled.

18. The deficient ticketing and failure to maintain a proper audit trail created uncertainty regarding ownership and the potential for improper allocation and breaches of client priority.

19. Isenberg entered trades in several of the trading events referred to above with Audit Trail Deficiencies.

20. In the year leading up to the February/March 2015 period referred to above, the CCO reported to Isenberg and the M Partners Board of Directors that improvements were needed in regards to accurate and complete ticketing. Quarterly reports detailed the results of the CCO's testing for audit trail requirements and noted instances of missing information such as price and quantity of securities purchased, as well as missing and late time stamps.

(ii) Audit Trail Deficiencies in Trading of Advisor under Close Supervision

21. An advisor became registered with M Partners in December 22, 2014. He was subject to close supervision due to prior discipline by IIROC. M Partners completed and filed a Close Supervision Report every month for the employee, however Audit Trail Deficiencies in his trading were not identified in a timely manner.

(iii) 2016 Audit Trail Deficiencies

22. During a 2016 compliance examination of M Partners, IIROC compliance staff identified further Audit Trail Deficiencies and improper use of accumulation accounts in August and September 2016.

23. For example, between August 15 and 31, 2016, M Partners purchased approximately 413,000 shares of Performance Sports Group Ltd. ("PSG") and sold approximately 400,000 shares. This was accomplished through hundreds of orders entered almost exclusively under Isenberg's trading identifier.

24. All of the PSG units were deposited to a firm inventory account and held there until August 30 and 31, 2016 when they were allocated to accounts belonging to Isenberg's clients and M Partners.

25. The Tickets for some of the PSG orders missing. The Tickets that are available are time-stamped on the allocation dates, rather than the trade dates which were up to two weeks earlier. Most of the PSG Tickets were marked non-client and the trades were entered into the market accordingly. When the PSG shares were issued to client accounts, M Partners made entries into IIROC's Regulatory Market Correction System ("RMCS") to change the markers from "non-client" to "client".

26. In 2016, M Partners submitted a high number of RMCS entries to correct trade markers. The significant number of improperly marked orders reflects inadequate controls around ticketing and order entry.

M Partners Failed to Adequately Supervise Trading and Audit Trail Requirements

27. As a Participant under UMIR, M Partners was obliged to supervise its employees to ensure that trading in securities on a marketplace is carried out in compliance with the applicable regulatory requirements, including those set out in UMIR and the Trading Rules. In particular, M Partners is required to comply strictly with audit trail requirements.

28. M Partners failed to comply with audit trail requirements. The Audit Trail Deficiencies make it impossible to audit trading instructions and confirm whether M Partners has properly allocated securities purchased and maintained client priority.

Isenberg Failed to Take Adequate Steps to Ensure and Promote Compliance

29. Isenberg was aware that M Partners had a history of Audit Trail Deficiencies, having signed the First Settlement Agreement and been the UDP when it was accepted. He also received the CCO's quarterly reports identifying ongoing Audit Trail Deficiencies.

30. Isenberg's own Tickets were deficient as were those prepared by the M Partners Trade Desk. Isenberg did not follow the requirements for trading and maintaining an audit trail set out in UMIR and the Trading Rules or in M Partners' own policies and procedures, nor did he take adequate steps to ensure that M Partners' employees did so. Thus, Isenberg failed to fulfill his obligations as UDP.

Mitigating Factors

31. In 2017, M Partners retained a consultant to address the issues described in this Settlement Agreement and do a comprehensive review of its compliance program. M Partners has implemented electronic ticketing to address the Audit Trail Deficiencies and is implementing other improvements to its compliance program.

32. In March 2018, Isenberg completed the CCO examination.

PART IV – CONTRAVENTIONS

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

Count 1

Between February 2015 and August 2016, the Respondent M Partners Inc.:

a) failed to comply with its trading supervision obligations, contrary to UMIR 7.1; and

b) failed to maintain a proper audit trail by not recording specific information relating to orders as required by Part 11 of the Trading Rules (National Instrument 23-101), contrary to UMIR 10.11(1).

Count 2

Between February 2015 and August 2016, the Respondent Steven Isenberg, as Ultimate Designated Person ("UDP"), did not take adequate steps to supervise M Partners' compliance with its regulatory obligations

regarding trading supervision and the maintenance of a proper audit trail and failed to promote compliance at M Partners, contrary to IIROC Dealer Member Rule 38.5(c)**.**

PART V – TERMS OF SETTLEMENT

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

    a) M Partners will pay a fine of $120,000;

    b) Isenberg will pay a fine of $70,000; and

    c) M Partners will pay costs of $10,000.

35. If this Settlement Agreement is accepted by the Hearing Panel, the Respondents agree to pay the amounts referred to above within 30 days of such acceptance unless otherwise agreed between Staff and the Respondents.

PART VI – STAFF COMMITMENT

36. If the Hearing Panel accepts this Settlement Agreement, Staff will not initiate any further action against the Respondents in relation to the facts set out in Part III and the contraventions in Part IV of this Settlement Agreement, subject to the provisions of the paragraph below.

37. If the Hearing Panel accepts this Settlement Agreement and the Respondents fail to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Rule 8200 against the Respondents. These proceedings may be based on, but are not limited to, the facts set out Part III of this Settlement Agreement.

PART VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT

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

39. 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.

40. Staff and the Respondents 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 Respondents, or either of them, do not appear at the settlement hearing, Staff may disclose additional relevant facts, if requested by the Hearing Panel.

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

42. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondents may enter into another settlement agreement or Staff may proceed to a disciplinary hearing based on the same or related allegations.

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

44. 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, contraventions, and the sanctions agreed upon in this Settlement Agreement.

45. If this Settlement Agreement is accepted, the Respondents agrees that neither of them, nor anyone on their behalf, will make a public statement inconsistent with this Settlement Agreement.

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

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

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

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

DATED this 27th day of April, 2018.

"Witness"	"M Partners Inc."
Witness	M PARTNERS INC. Per: "Steve Isenberg"
"Witness"	"Steven Isenberg"
Witness	STEVEN ISENBERG
"Witness"	"Elissa Sinha"
Witness	Elissa Sinha Enforcement Counsel on behalf of Enforcement Staff of the Investment Industry Regulatory Organization of Canada

The Settlement Agreement is hereby accepted this "28th" day of "June", 20"18" by the following Hearing Panel:

Per: "Peter Hambly"
Panel Chair

Per: "Richard Austin"
Panel Member

Per: "Leo Ciccone"
Panel Member