

Re Toll Cross Securities

IN THE MATTER OF:

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

and

Toll Cross Securities Inc.

2014 IIROC 19

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

Heard: April 15, 2014 in Toronto, Ontario
Decision: April 29, 2014

Hearing Panel:

Patrick T. Galligan, Q.C., Chair, Richard Austin and Charles F. Macfarlane

Appearances:

Andrew P. Werbowski, Enforcement Counsel

Jay Naster, Counsel for the Respondent

REASONS FOR DECISION

¶ 1 The Staff of Investment Industry Regulatory Organization of Canada (“IIROC”) and the Respondent entered into a Settlement Agreement, which they had negotiated pursuant to By-law 20.35. They submitted the Settlement Agreement to this Hearing Panel, pursuant to By-law 20.36 and Rule 15 of the Rules of Practice and Procedure, for approval or rejection. After considering the material filed and the submissions made by counsel for both IIROC and the Respondent, we issued an order accepting the Settlement Agreement. These are our reasons for making that order.

THE CONTRAVENTIONS

¶ 2 The Respondent has admitted to the following contraventions of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:

- a) From March 2010 to March 2013 (the “Relevant Period”) the Respondent violated Dealer Member Rule 3400 in that:
 - i. it permitted a research analyst to trade during the “Research Quiet Period” and against the analyst’s current recommendation without prior written approval, some of which transactions occurred at another Dealer Member;
 - ii. it issued research reports which contained inaccurate disclosure of information relating to potential conflicts of interest; and
 - iii. the disclosure of its system for rating investment opportunities and the percentage of its recommendations which fell into each category was significantly outdated.

TERMS OF SETTLEMENT

¶ 3 Staff and the Respondent agree to the following terms of settlement:

- a) The Respondent shall pay a fine to IIROC in the sum of \$15,000, and
- b) The Respondent agrees to pay costs to IIROC in the sum of \$5,000.

THE CIRCUMSTANCES

¶ 4 The circumstances of the case are set out, in detail, in Section III of the Settlement Agreement. Section III is attached as Schedule “A” to these reasons for the order. The following is a very brief summary of them.

¶ 5 In October 2011, Staff of IIROC’s Business Conduct Compliance Department (“BCCD Staff”) conducted a compliance review of the Respondent. During the course of that review Staff identified three basic issues which amounted to breaches of Dealer Member Rule 3400. The first issue was that the Respondent permitted a research analyst to trade during the research quiet period and to trade against her current recommendation. She did so without prior written approval.

¶ 6 The second issue was that the Respondent issued research reports which did not accurately disclose information which could bear on conflicts of interest. It was also learned that inaccurate disclosures had been identified in earlier reports.

¶ 7 The third issue was that the Respondent’s system for rating investment opportunities and for disclosing the percentages of its recommendation which fell into each category was seriously outdated.

¶ 8 There is no suggestion that these contraventions were the result of an intention to mislead or to obtain an unjustified benefit. They appear to be the result of carelessness and the failure to adequately supervise staff and to accurately record information.

SERIOUSNESS OF THE CONTRAVENTIONS

¶ 9 The responsibility of Dealer Members to comply with their obligation to supervise their activities and those of their employees is a very important one. Supervision is necessary to ensure ethical conduct, fair trading and the integrity of the investment industry. The contraventions in this case must, therefore, be treated as serious ones.

CIRCUMSTANCES OF AGGRAVATION

¶ 10 In the determination of an appropriate penalty, it is appropriate to consider circumstances of aggravation. The circumstances of aggravation which we take into account in this case are:

Inaccurate disclosures in research reports had been identified on the 2011 BCE Report and also identified as a deficiency in IIROC’s preceding business conduct review of the Respondent. The results of the preceding business conduct review was contained in a Sales Compliance Report (as those reports were then known) delivered to the Respondent on September 27, 2007 (‘the 2007 SCR’).

CIRCUMSTANCES OF MITIGATION

¶ 11 In the determination of an appropriate penalty, it is always necessary to consider circumstances of mitigation. The circumstances of mitigation which we take into account in this case are:

- (1) The Respondent has no disciplinary history.
- (2) The Respondent cooperated fully with IIROC Enforcement Staff during its investigation. This demonstrates that the Respondent has acknowledged its contraventions, accepted its responsibilities and has shown remorse.
- (3) The most recent field review by BCC Staff (conducted in the spring of 2013) noted that the Respondent’s practices and procedures with respect to research reports and disclosure requirements had improved and were no longer identified as a deficiency.
- (4) No specific client harm occurred as a result of the conduct which is the subject of the Settlement Agreement.

DUTY OF A HEARING PANEL UPON A SETTLEMENT HEARING

¶ 12 It is clear from jurisprudence emanating from the courts and from hearing panels of IIROC, Investment Dealers Association and the Mutual Fund Dealers Association, that our task is not to decide whether, in this case, we would have arrived at the same decision as that reached by the parties. Rather, our duty is to determine whether the penalty is a reasonable one and that it meets the objectives of the disciplinary process which are to maintain the integrity of the investment industry. We cite from the recent decision of the hearing panel in *Re CIBC World Markets Inc.*, [2011] IIROC No. 38:

13 Finally, hearing panels will not lightly interfere with a negotiated settlement. As was said in *Re Milewski*, [1999] IDACD No. 17,

... 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.

14 Or, as put by Winkler J. (albeit in another context) in *Gilbert v. CIBC*, [2004] O.J. 4260:

There is a presumption of fairness when a proposed class settlement negotiated at arms length ... is presented to the court for approval. A court will only reject a proposed settlement when it finds that the settlement does not fall within a range of reasonableness.

The test to be applied is whether the settlement is fair and reasonable ... This allows for a range of possible results and there is no perfect settlement. Settlement is a product of compromise, which by definition, necessitates give and take.

15 In our view, the settlement, negotiated as it was by the parties assisted by capable counsel, does not clearly fall “outside a range of appropriateness” and it should therefore be, and was, accepted by the panel.

¶ 13 We share the opinion expressed by the hearing panel in *Re Vorstadt*, [2012] IIROC that the settlement process is an important one which should be “encouraged and supported”.

GUIDELINES AND OTHER DECISIONS

¶ 14 This case is unique in that it is the first one in which contraventions of Member Rule 3400 have come before a hearing panel. There are no jurisprudential precedents nor is there a specific sanction guideline which applies to contraventions of Member Rule 3400. We have, nevertheless, kept in mind that when considering a penalty a hearing panel should take into account that the disciplinary process is not intended to be punitive, but rather it is intended to protect the investing public, to protect the integrity of the capital markets, to deter a particular respondent and others from committing similar contraventions and to encourage the proper performance by Members and Approved Persons of their obligations. Specifically in this case we think that it should be made clear that the provisions of Member Rule 3400 are to be taken very seriously.

IMPACT OF THE PENALTY

¶ 15 Monetary penalties are necessary to act as specific and general deterrence. The Respondent is not a large organization. The penalty composed of a fine of \$15,000 and costs of \$5,000 is a significant penalty to it. The penalty should be sufficient to act as a specific deterrent to this Respondent and should be sufficient to alert all Members that failure of supervision, failure to adequately record information and failure to comply with the provisions of Member Rule 3400 will attract significant consequences.

DECISION

¶ 16 After the hearing we considered the specific circumstances of this case and the ability of the Respondent to pay the fine and the costs. Counsel for both IIROC and the Respondent submitted that the fine and costs, in aggregate, were significant given the size of the Respondent. The circumstance of aggravation which we have cited above caused us to have concern about whether the penalty was sufficient in terms of meeting the goal of deterrence. However after reflection we decided that we were not prepared to say that it was unreasonably low. Accordingly we accepted it.

DATED this 29th day of April 2014.

Patrick T. Galligan, Chair

Richard Austin, Industry Representative

Charles F. Macfarlane, Industry Representative

SCHEDULE "A"

STATEMENT OF FACTS

(i) Acknowledgment

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

(ii) Factual Background

a. Dealer Member Rule 3400 – The Regulatory Requirements

9. Dealer Member Rule 3400 (“Research Restrictions and Disclosure Requirements”) establishes requirements that analysts must follow when publishing research reports or making recommendations and sets out the minimum procedural requirements that Dealer Members must have in place to minimize potential conflicts of interest.
10. In particular, Dealer Member Rule 3400 requires each Dealer Member to prominently disclose in any research report any information regarding its, or its analyst’s, business with or relationship with any issuer which is the subject of the report which might reasonably be expected to indicate a potential conflict of interest on the part of the Dealer Member or the analysts in making a recommendation with regard to the issuer.
11. Specifically, no individual directly involved in the preparation of a research report can effect a trade in a security of an issuer regarding which the analyst has an outstanding recommendation for a period of 30 calendar days before and 5 calendar days after the issuance of a research report, (the “Research Quiet Period”) unless that individual receives the previous written approval of a designated partner, officer or director of the Dealer Member.
12. Further, no approval may be given to allow an analyst or any individual involved in the preparation of the report to make a trade that is contrary to the analyst’s current recommendation, unless special circumstances exist.

b. The Respondent

13. TCSI is a Type 2 introducing broker. At all material times, TCSI was a Dealer Member of IIROC with its sole office located in Toronto, Ontario.
14. TCSI offers order execution services for institutional and high net-worth clients and corporate finance deals for small-cap to mid-size companies in the resource sector. Approximately 96% of TCSI’s business is with institutional accounts; only 4% is with private clients. The vast majority of the private clients are accredited and sophisticated investors.
15. TCSI also employs research analysts who prepare research reports regarding certain companies which TCSI covers in the resource sector. TCSI makes research available only to existing clients. During the Relevant Period, clients were able to log onto TCSI’s website and retrieve research reports. Currently, all research is distributed through an e-mail distribution system, which logs the recipients of the research. Not all research is sent to all clients.

c. Business Conduct Compliance Reviews

16. In October 2011, Staff of IIROC's Business Conduct Compliance department ("BCC Staff") completed a business conduct compliance review of TCSI. BCC Staff routinely conduct reviews of Dealer Member firms to ensure compliance with regulatory requirements.
17. Upon completion of the review, BCC Staff conduct an exit interview with representatives from the Dealer Member and then issue a written report which identifies any regulatory deficiencies and outlines necessary steps for the Dealer Member to take in order to ensure regulatory compliance in the future.
18. BCC Staff issued its final report for the 2011 review to TCSI on February 7, 2012 (the "2011 BCE Report"). BCC Staff identified as a Significant Item the issues referred to in paragraph 5 of this Settlement Agreement.
19. The 2011 BCE Report enumerated specific concerns with TCSI's supervisory controls over its research activities including those described in paragraph 5 above.

d. Trading During Research Quiet Period

20. Analyst A is a research analyst employed by TCSI and was employed by TCSI during the relevant time period. Analyst A covered highly speculative oil exploration companies that were listed in Canada but operated outside of Canada. None of these companies had positive operating cash flows and all stock movements were related to news of exploration or success or no news at all.
21. Between April 21, 2010 and June 25, 2010, Analyst A prepared and TCSI issued five research reports on Stratic Energy Corporation ("SE") which consistently rated SE a "Strong Buy". The "Strong Buy" recommendation reports were issued on the following dates:
 - a. April 21, 2010
 - b. May 3, 2010;
 - c. May 6, 2010;
 - d. May 10, 2010; and
 - e. June 25, 2010.
22. On August 9, 2010, Analyst A prepared and TCSI issued a research report changing the recommendation regarding SE to a "Hold/Sell". The change in recommendation was based on a press release issued August 3, 2010 announcing an agreement for sale of SE to EnQuest PLC in a share exchange transaction and another press release issued August 9, 2010 regarding a well being drilled on properties owned by SE.
23. At this time, Analyst A maintained an account with TCSI and also had three accounts at another Dealer Member (the "Other Dealer Member"). In addition to these personal accounts, Analyst A had trading authorization over two accounts belonging to a relative which were also maintained at the Other Dealer Member. The existence of these accounts was disclosed by Analyst A to TCSI in Analyst A's 2011 and 2012 Annual Compliance Questionnaire.
24. Between August 5 and August 12, 2010 (during the Research Quiet Period), Analyst A sold 769,000 shares in a TCSI account and the Other Dealer Member accounts in five separate transactions. On August 6, 2010, Analyst A sold 2,000 shares in the relative's account. These transactions are set out in Appendix "A". The proceeds of the sale of Analyst A's relative's position are \$270, however, TCSI acknowledges that it did not recognize the necessity of obtaining statements and supervising the relative's account.
25. TCSI did not provide prior written approval of these transactions which took place during a Research Quiet Period.
26. According to TCSI its UDP instructed all brokers to advise their clients to sell their holdings of SE as he was concerned about the fact that SE would no longer trade on a Canadian exchange. It was on this basis that Analyst A sold the shares.

e. Trading Against Recommendation

27. Analyst A also prepared and TCSI issued research reports regarding the following companies in the energy and resource sector:
- a. Serica Energy PLC (“SQZ”);
 - b. Bengal Energy Ltd. (“BNG”); and
 - c. Azabache Energy Inc. (“AZA”).

Trading in SQZ

28. Analyst A prepared and TCSI issued research reports which rated SQZ a “Strong Buy” on the following dates:
- May 10, 2010
 - June 28, 2010
 - September 2, 2010
29. While the “Strong Buy” recommendation was outstanding, Analyst A sold SQZ securities on twelve occasions between September 23, 2010 and May 1, 2012 as set out in Appendix “B”. Analyst A requested and received prior written approval from TCSI for only the last three transactions dated April 26, April 27 and May 1, 2012.

Trading in BNG

30. Analyst A prepared and TCSI issued research reports which rated BNG a “Speculative Buy” on the following dates:
- August 11, 2010
 - November 10, 2010
31. While the “Speculative Buy” recommendation was outstanding, Analyst A sold BNG securities on eight occasions between October 8 and December 27, 2012 as set out in Appendix “B”. None of the transactions received prior written approval from TCSI.

Trading in AZA

32. Analyst A prepared and TCSI issued research reports which rated AZA a “Speculative Buy” on the following dates:
- February 9, 2011
 - March 22, 2011
33. While the “Speculative Buy” recommendation was outstanding, Analyst A sold AZA securities on two occasions between October 27, 2011 and February 29, 2012 as set out in Appendix “B”. Analyst A requested and received approval from TCSI for only the last transaction dated February 29, 2012.
34. According to TCSI, Analyst A orally advised them that funds were required to pay for certain medical expenses and on this basis, securities were sold. TCSI acknowledges that this rationale was not properly documented and that the only written evidence of approval provided to Staff for any of the transactions made against recommendation relates to the payment of certain tax liabilities.

f. Supervision of Employee Accounts held at other Dealer Members

35. As noted above in paragraph 23, the existence of Analyst A’s accounts held at the Other Dealer Member and the account over which Analyst A had trading authorization, was disclosed to TCSI on at least two occasions in Analyst A’s Annual Compliance Questionnaires. Despite this disclosure, TCSI did not adequately supervise the transactional activity in these accounts. The sale of securities during the Research Quiet Period and against Analyst A’s recommendations (as set out in Appendices “A” and “B”)

occurred without the knowledge or prior written approval of a designated partner, director or officer of TCSI (with the exception of the four transactions noted in Appendix “B”).

36. TCSI’s review and supervision of employee accounts held at the Other Dealer Member was inadequate to detect the majority of transactions noted in Appendices “A” and “B”. The only transactions which were approved were brought to the attention of TCSI by Analyst A in advance of the transactions being made.
37. Furthermore, TCSI did not obtain copies of the relative’s monthly account statements over which Analyst A had trading authorization.

g. Inaccurate Disclosure in Research Reports

38. Research reports issued by TCSI contain a “Company Specific Disclosure Key” enumerating specific items that are then to be incorporated by reference into any given research report as may be required in the circumstances. The “Company Specific Disclosure Key” as set out in the research reports is reproduced in Appendix “C”.
39. IIROC Investigative Staff reviewed twenty-eight research reports for seven different issuers distributed by TCSI between March 17, 2010 and May 15, 2012 to ensure that proper disclosure regarding any potential conflicts had been made.
40. Six of these reports (21.4%) either did not contain the proper disclosures or contained incorrect disclosures.
41. Specifically:

- On August 11, 2010, TCSI issued a research report regarding BNG which indicated that only items 2 and 8 from the “Company Specific Disclosure Key” applied in the specific circumstances. In fact, all disclosures (items #1 - #9) should have been referenced.
- On November 3, 2010, TCSI issued a research report regarding BNG which indicated that only items 2 and 8 from the “Company Specific Disclosure Key” applied in the specific circumstances. In fact, all disclosures (items #1 - #9) should have been referenced. In addition, the November 3, 2010 report indicated that Analyst A, the analyst who prepared the report did not own shares of BNG when, in fact, she did. Furthermore, the November 3, 2010 report did not disclose that TCSI had been involved in a secondary financing for BNG in the prior 12 months.
- On February 9, 2011 TCSI issued a research report regarding AZA which indicated that only items 2 and 8 from the “Company Specific Disclosure Key” applied in the specific circumstances. In fact, all disclosures (items #1 - #9) should have been referenced.
- On March 22, 2011 TCSI issued a research report regarding AZA which indicated that only items 2 and 8 from the “Company Specific Disclosure Key” applied in the specific circumstances. In fact, all disclosures (items #1 - #9) should have been referenced.
- On March 13, 2012, TCSI issued a research report regarding Roxgold Corp. (“ROG”) which failed to identify that Analyst B, the research analyst who prepared the report, owned shares of ROG at the time.
- On April 2, 2012, TCSI issued a research report regarding ROG which failed to identify that Analyst B, the research analyst who prepared the report, owned shares of ROG at the time.

h. System for Rating Investment Opportunities

42. A Dealer Member’s system for rating investment opportunities and the manner in which each recommendation fits within the system must be disclosed on its website or otherwise. Similarly, the percentage of its recommendations that fall into each category of their recommended terminology must be disclosed on a quarterly basis.

43. TCSI's disclosure in this regard was significantly outdated. As late as March 2013, TCSI's website disclosed the required information "as of September 30, 2005".
44. Despite this deficiency being noted in the 2012 BCE Report, the outdated information remained on TCSI's website until approximately March 2013.

i. Aggravating Factors

45. Inaccurate disclosures in research reports had been identified on the 2011 BCE Report and also on the preceding business conduct review. The preceding business conduct review was contained in a Sales Compliance Report (as those reports were then known) delivered to TCSI on September 27, 2007 ("the 2007 SCR").

j. Mitigating Factors

46. The most recent field review by BCC Staff (conducted in the spring of 2013) noted that TCSI's practices and procedures with respect to research reports and disclosure requirements has improved and were no longer identified as a deficiency.
47. No specific client harm occurred as a result of the conduct which is the subject of this Settlement Agreement.

APPENDIX "A"

Analyst A Trading in SE during Research Quiet Period

Tdate	SDate	Security	Sell Volume	Total Amount	ACB	Acct	Firm
5-Aug-10	10-Aug-10	SE	120,000	\$ 17,950.00	\$ 0.15	Non-registered	TCSI
6-Aug-10	11-Aug-10	SE	49,000	\$ 7,280.63	\$ 0.15	TFSA	Other
6-Aug-10	11-Aug-10	SE	2,000	\$ 270.00	\$ 0.15	Relative	Other
9-Aug-10	12-Aug-10	SE	200,000	\$ 29,741.62	\$ 0.15	RRSP	Other
10-Aug-10	13-Aug-10	SE	200,000	\$ 29,741.62	\$ 0.15	RRSP	Other
12-Aug-10	17-Aug-10	SE	200,000	\$ 28,749.42	\$ 0.14	RRSP	Other

APPENDIX "B"

Summary of Analyst A's trading against research recommendation

Tdate	SDate	Security	Sell Volume	Total Amount	ACB	Acct	Firm	Approved?
23-Sep-10	28-Sep-10	SQZ	25,000	\$ 19,571.82	\$ 0.78	RRSP	Other	N
11-Oct-10	14-Oct-10	SQZ	25,000	\$ 21,903.25	\$ 0.88	RRSP	Other	N
9-Nov-10	12-Nov-10	SQZ	10,000	\$ 6,443.04	\$ 0.64	RRSP	Other	N
10-Nov-10	15-Nov-10	SQZ	25,000	\$ 17,093.76	\$ 0.68	RRSP	Other	N
23-Nov-10	26-Nov-10	SQZ	10,000	\$ 6,933.70	\$ 0.69	Margin	Other	N
30-Nov-10	3-Dec-10	SQZ	20,000	\$ 15,458.23	\$ 0.77	RRSP	Other	N
4-Jan-11	7-Jan-11	SQZ	10,000	\$ 6,450.00	\$ 0.65	Non-registered	TCSI	N
19-Sep-11	22-Sep-11	SQZ	2,000	\$ 540.00	\$ 0.30	Relative	Other	N
21-Oct-11	26-Oct-11	SQZ	1,300	\$ 304.20	\$ 0.26	Relative	Other	N
26-Apr-12	1-May-12	SQZ	44,000	\$ 21,399.18	\$ 0.49	RRSP	Other	Y
27-Apr-12	2-May-12	SQZ	42,000	\$ 21,266.49	\$ 0.51	RRSP	Other	Y
1-May-12	4-May-12	SQZ	14,000	\$ 7,088.83	\$ 0.51	RRSP	Other	Y

Tdate	SDate	Security	Sell Volume	Total Amount	ACB	Acct	Firm	Approved?
8-Oct-10	14-Oct-10	BNG	10,000	\$ 10,799.48	\$ 1.08	RRSP	Other	N
14-Oct-10	19-Oct-10	BNG	10,000	\$ 10,898.60	\$ 1.09	RRSP	Other	N
15-Oct-10	20-Oct-10	BNG	20,000	\$ 24,582.19	\$ 1.23	RRSP	Other	N
18-Oct-10	21-Oct-10	BNG	3,000	\$ 3,810.00	\$ 1.27	RRSP	Other	N
13-Dec-10	16-Dec-10	BNG	50,000	\$ 57,450.00	\$ 1.15	Non-registered	TCSI	N
15-Dec-10	20-Dec-10	BNG	10,000	\$ 11,295.09	\$ 1.13	RRSP	Other	N
16-Dec-10	21-Dec-10	BNG	15,000	\$ 16,647.70	\$ 1.11	RRSP	Other	N
27-Dec-10	30-Dec-10	BNG	50,000	\$ 59,950.00	\$ 1.20	Non-registered	TCSI	N

Tdate	SDate	Security	Sell Volume	Total Amount	ACB	Acct	Firm	Approved?
27-Oct-11	1-Nov-11	AZA	50,000	\$ 25,772.82	\$ 0.52	Margin	Other	N
29-Feb-12	5-Mar-12	AZA	100,000	\$ 96,508.28	\$ 0.97	RRSP	Other	Y

APPENDIX “C”

TCSI Company Specific Disclosure Key

TCSI uses the following Company Specific Disclosure Key. Please refer to the Company Specific Disclosures section above for specific disclosures applicable to the issuer(s) discussed in this report.

1. On the last day of the month preceding the date of this report TCSI and its affiliates held an aggregate of less than 1% of the outstanding shares (of any class of equity securities) of *[issuer]*.
2. The research analyst(s) and/or associates (or their household members) who prepared this research report do not directly or beneficially own common stock of *[issuer]*.
3. TCSI has not managed or co-managed an initial public offering of equity or equity-related securities for *[issuer]* in the past 12 months, the closing date of which was at least 40 calendar days prior the issuance of this report.
4. TCSI has not managed or co-managed a secondary offering of equity or equity-related securities for *[issuer]* in the past 12 months, the closing date of which was at least 10 calendar days prior to the issuance of this report.
5. TCSI has not provided services to *[issuer]* for remuneration other than normal course investment advisory or trade execution services during the preceding 12 months.
6. TCSI has not received compensation for investment banking services from *[issuer]* during the preceding 12 months.
7. No employee of TCSI [name of employee] is an [officer, director or employee] of *[issuer]* (or serves in an advisory capacity to the issuer).
8. The research analyst(s) and/or associates who prepared this research report have not viewed the material operations of *[issuer]*.
9. TCSI has not been paid or reimbursed by the issuer for the analyst(s) travel expenses to view the material operations of *[issuer]*.

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff (“Staff”) and the Respondent, Toll Cross Securities Inc. (“TCSI”) consent and

agree to the settlement of this matter by way of this agreement (the “Settlement Agreement”).

2. The Enforcement Department of IROC has conducted an investigation (“the Investigation”) into the conduct of TCSI.
3. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IROC Transitional Rule No.1, Schedule C.1, Part C (the “Hearing Panel”).

II. JOINT SETTLEMENT RECOMMENDATION

4. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
5. The Respondent admits to the following contraventions of IROC Dealer Member Rules, Guidelines, Regulations or Policies:
 - a. From March 2010 to March 2013 (the “Relevant Period”) the Respondent violated Dealer Member Rule 3400 in that:
 - i. it permitted a research analyst to trade during the “Research Quiet Period” and against the analyst’s current recommendation without prior written approval, some of which transactions occurred at another Dealer Member;
 - ii. it issued research reports which contained inaccurate disclosure of information relating to potential conflicts of interest; and
 - iii. the disclosure of its system for rating investment opportunities and the percentage of its recommendations which fell into each category was significantly outdated.

6. Staff and the Respondent agree to the following terms of settlement:

- a. The Respondent shall pay a fine to IROC in the sum of \$15,000.

7. The Respondent agrees to pay costs to IROC in the sum of \$5,000.

III. STATEMENT OF FACTS

(iii) Acknowledgment

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

(iv) Factual Background

a. Dealer Member Rule 3400 – The Regulatory Requirements

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10. In particular, Dealer Member Rule 3400 requires each Dealer Member to prominently disclose in any research report any information regarding its, or its analyst’s, business with or relationship with any issuer which is the subject of the report which might reasonably be expected to indicate a potential conflict of interest on the part of the Dealer Member or the analysts in making a recommendation with regard to the issuer.
11. Specifically, no individual directly involved in the preparation of a research report can effect a trade in a security of an issuer regarding which the analyst has an outstanding recommendation for a period of 30 calendar days before and 5 calendar days after the issuance of a research report, (the “Research Quiet Period”) unless that individual receives the previous written approval of a designated partner, officer or director of the Dealer Member.
12. Further, no approval may be given to allow an analyst or any individual involved in the preparation of the

report to make a trade that is contrary to the analyst's current recommendation, unless special circumstances exist.

b. The Respondent

13. TCSI is a Type 2 introducing broker. At all material times, TCSI was a Dealer Member of IIROC with its sole office located in Toronto, Ontario.
14. TCSI offers order execution services for institutional and high net-worth clients and corporate finance deals for small-cap to mid-size companies in the resource sector. Approximately 96% of TCSI's business is with institutional accounts; only 4% is with private clients. The vast majority of the private clients are accredited and sophisticated investors.
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19. The 2011 BCE Report enumerated specific concerns with TCSI's supervisory controls over its research activities including those described in paragraph 5 above.

d. Trading During Research Quiet Period

20. Analyst A is a research analyst employed by TCSI and was employed by TCSI during the relevant time period. Analyst A covered highly speculative oil exploration companies that were listed in Canada but operated outside of Canada. None of these companies had positive operating cash flows and all stock movements were related to news of exploration or success or no news at all.
21. Between April 21, 2010 and June 25, 2010, Analyst A prepared and TCSI issued five research reports on Stratic Energy Corporation ("SE") which consistently rated SE a "Strong Buy". The "Strong Buy" recommendation reports were issued on the following dates:
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 - e. June 25, 2010.
22. On August 9, 2010, Analyst A prepared and TCSI issued a research report changing the recommendation regarding SE to a "Hold/Sell". The change in recommendation was based on a press release issued August 3, 2010 announcing an agreement for sale of SE to EnQuest PLC in a share exchange transaction and another press release issued August 9, 2010 regarding a well being drilled on properties owned by SE.

23. At this time, Analyst A maintained an account with TCSI and also had three accounts at another Dealer Member (the “Other Dealer Member”). In addition to these personal accounts, Analyst A had trading authorization over two accounts belonging to a relative which were also maintained at the Other Dealer Member. The existence of these accounts was disclosed by Analyst A to TCSI in Analyst A’s 2011 and 2012 Annual Compliance Questionnaire.
24. Between August 5 and August 12, 2010 (during the Research Quiet Period), Analyst A sold 769,000 shares in a TCSI account and the Other Dealer Member accounts in five separate transactions. On August 6, 2010, Analyst A sold 2,000 shares in the relative’s account. These transactions are set out in Appendix “A”. The proceeds of the sale of Analyst A’s relative’s position are \$270, however, TCSI acknowledges that it did not recognize the necessity of obtaining statements and supervising the relative’s account.
25. TCSI did not provide prior written approval of these transactions which took place during a Research Quiet Period.
26. According to TCSI its UDP instructed all brokers to advise their clients to sell their holdings of SE as he was concerned about the fact that SE would no longer trade on a Canadian exchange. It was on this basis that Analyst A sold the shares.

e. Trading Against Recommendation

27. Analyst A also prepared and TCSI issued research reports regarding the following companies in the energy and resource sector:
 - a. Serica Energy PLC (“SQZ”);
 - b. Bengal Energy Ltd. (“BNG”); and
 - c. Azabache Energy Inc. (“AZA”).

Trading in SQZ

28. Analyst A prepared and TCSI issued research reports which rated SQZ a “Strong Buy” on the following dates:
 - May 10, 2010
 - June 28, 2010
 - September 2, 2010
29. While the “Strong Buy” recommendation was outstanding, Analyst A sold SQZ securities on twelve occasions between September 23, 2010 and May 1, 2012 as set out in Appendix “B”. Analyst A requested and received prior written approval from TCSI for only the last three transactions dated April 26, April 27 and May 1, 2012.

Trading in BNG

30. Analyst A prepared and TCSI issued research reports which rated BNG a “Speculative Buy” on the following dates:
 - August 11, 2010
 - November 10, 2010
31. While the “Speculative Buy” recommendation was outstanding, Analyst A sold BNG securities on eight occasions between October 8 and December 27, 2012 as set out in Appendix “B”. None of the transactions received prior written approval from TCSI.

Trading in AZA

32. Analyst A prepared and TCSI issued research reports which rated AZA a “Speculative Buy” on the following dates:

- February 9, 2011
 - March 22, 2011
33. While the “Speculative Buy” recommendation was outstanding, Analyst A sold AZA securities on two occasions between October 27, 2011 and February 29, 2012 as set out in Appendix “B”. Analyst A requested and received approval from TCSI for only the last transaction dated February 29, 2012.
 34. According to TCSI, Analyst A orally advised them that funds were required to pay for certain medical expenses and on this basis, securities were sold. TCSI acknowledges that this rationale was not properly documented and that the only written evidence of approval provided to Staff for any of the transactions made against recommendation relates to the payment of certain tax liabilities.

f. Supervision of Employee Accounts held at other Dealer Members

35. As noted above in paragraph 23, the existence of Analyst A’s accounts held at the Other Dealer Member and the account over which Analyst A had trading authorization, was disclosed to TCSI on at least two occasions in Analyst A’s Annual Compliance Questionnaires. Despite this disclosure, TCSI did not adequately supervise the transactional activity in these accounts. The sale of securities during the Research Quiet Period and against Analyst A’s recommendations (as set out in Appendices “A” and “B”) occurred without the knowledge or prior written approval of a designated partner, director or officer of TCSI (with the exception of the four transactions noted in Appendix “B”).
36. TCSI’s review and supervision of employee accounts held at the Other Dealer Member was inadequate to detect the majority of transactions noted in Appendices “A” and “B”. The only transactions which were approved were brought to the attention of TCSI by Analyst A in advance of the transactions being made.
37. Furthermore, TCSI did not obtain copies of the relative’s monthly account statements over which Analyst A had trading authorization.

g. Inaccurate Disclosure in Research Reports

38. Research reports issued by TCSI contain a “Company Specific Disclosure Key” enumerating specific items that are then to be incorporated by reference into any given research report as may be required in the circumstances. The “Company Specific Disclosure Key” as set out in the research reports is reproduced in Appendix “C”.
39. IIROC Investigative Staff reviewed twenty-eight research reports for seven different issuers distributed by TCSI between March 17, 2010 and May 15, 2012 to ensure that proper disclosure regarding any potential conflicts had been made.
40. Six of these reports (21.4%) either did not contain the proper disclosures or contained incorrect disclosures.
41. Specifically:
 - On August 11, 2010, TCSI issued a research report regarding BNG which indicated that only items 2 and 8 from the “Company Specific Disclosure Key” applied in the specific circumstances. In fact, all disclosures (items #1 - #9) should have been referenced.
 - On November 3, 2010, TCSI issued a research report regarding BNG which indicated that only items 2 and 8 from the “Company Specific Disclosure Key” applied in the specific circumstances. In fact, all disclosures (items #1 - #9) should have been referenced. In addition, the November 3, 2010 report indicated that Analyst A, the analyst who prepared the report did not own shares of BNG when, in fact, she did. Furthermore, the November 3, 2010 report did not disclose that TCSI had been involved in a secondary financing for BNG in the prior 12 months.
 - On February 9, 2011 TCSI issued a research report regarding AZA which indicated that only

items 2 and 8 from the “Company Specific Disclosure Key” applied in the specific circumstances. In fact, all disclosures (items #1 - #9) should have been referenced.

- On March 22, 2011 TCSI issued a research report regarding AZA which indicated that only items 2 and 8 from the “Company Specific Disclosure Key” applied in the specific circumstances. In fact, all disclosures (items #1 - #9) should have been referenced.
- On March 13, 2012, TCSI issued a research report regarding Roxgold Corp. (“ROG”) which failed to identify that Analyst B, the research analyst who prepared the report, owned shares of ROG at the time.
- On April 2, 2012, TCSI issued a research report regarding ROG which failed to identify that Analyst B, the research analyst who prepared the report, owned shares of ROG at the time.

h. System for Rating Investment Opportunities

42. A Dealer Member’s system for rating investment opportunities and the manner in which each recommendation fits within the system must be disclosed on its website or otherwise. Similarly, the percentage of its recommendations that fall into each category of their recommended terminology must be disclosed on a quarterly basis.
43. TCSI’s disclosure in this regard was significantly outdated. As late as March 2013, TCSI’s website disclosed the required information “as of September 30, 2005”.
44. Despite this deficiency being noted in the 2012 BCE Report, the outdated information remained on TCSI’s website until approximately March 2013.

i. Aggravating Factors

45. Inaccurate disclosures in research reports had been identified on the 2011 BCE Report and also on the preceding business conduct review. The preceding business conduct review was contained in a Sales Compliance Report (as those reports were then known) delivered to TCSI on September 27, 2007 (“the 2007 SCR”).

j. Mitigating Factors

46. The most recent field review by BCC Staff (conducted in the spring of 2013) noted that TCSI’s practices and procedures with respect to research reports and disclosure requirements has improved and were no longer identified as a deficiency.
47. No specific client harm occurred as a result of the conduct which is the subject of this Settlement Agreement.

IV. TERMS OF SETTLEMENT

48. This settlement is agreed upon in accordance with IROC Dealer Member Rules 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.
The Settlement Agreement is subject to acceptance by the Hearing Panel.
49. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
50. 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.
51. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her/its right under IROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
52. 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.

53. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
54. 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.
55. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
56. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

AGREED TO by the Respondent at the City of "Toronto" in the Province of "Ontario", this "25th" day of "March", 2014.

"Jay Naster"

Witness

"Marc Bouchard" Chairman

Respondent

AGREED TO by Staff at the City of "Toronto" in the Province of "Ontario", this "24th" day of "March", 2014.

"Charles Corlett"

Witness

"Andrew P. Werbowski"

Senior Enforcement Counsel on
behalf of Staff of the Investment
Industry Regulatory Organization of
Canada

ACCEPTED at the City of Toronto in the Province of Ontario, this 15th day of April, 2014, by the following Hearing Panel:

Per: "The Honourable Patrick T. Galligan, Q.C., Chair"

Per: "Richard Austin"

Per: "Charles Macfarlane"

APPENDIX "A"

Analyst A Trading in SE during Research Quiet Period

Tdate	SDate	Security	Sell Volume	Total Amount	ACB	Acct	Firm
5-Aug-10	10-Aug-10	SE	120,000	\$ 17,950.00	\$ 0.15	Non-registered	TCSI
6-Aug-10	11-Aug-10	SE	49,000	\$ 7,280.63	\$ 0.15	TFSA	Other
6-Aug-10	11-Aug-10	SE	2,000	\$ 270.00	\$ 0.15	Relative	Other
9-Aug-10	12-Aug-10	SE	200,000	\$ 29,741.62	\$ 0.15	RRSP	Other
10-Aug-10	13-Aug-10	SE	200,000	\$ 29,741.62	\$ 0.15	RRSP	Other
12-Aug-10	17-Aug-10	SE	200,000	\$ 28,749.42	\$ 0.14	RRSP	Other

APPENDIX "B"

Summary of Analyst A's trading against research recommendation

Tdate	SDate	Security	Sell Volume	Total Amount	ACB	Acct	Firm	Approved?
23-Sep-10	28-Sep-10	SQZ	25,000	\$ 19,571.82	\$ 0.78	RRSP	Other	N
11-Oct-10	14-Oct-10	SQZ	25,000	\$ 21,903.25	\$ 0.88	RRSP	Other	N
9-Nov-10	12-Nov-10	SQZ	10,000	\$ 6,443.04	\$ 0.64	RRSP	Other	N
10-Nov-10	15-Nov-10	SQZ	25,000	\$ 17,093.76	\$ 0.68	RRSP	Other	N
23-Nov-10	26-Nov-10	SQZ	10,000	\$ 6,933.70	\$ 0.69	Margin	Other	N
30-Nov-10	3-Dec-10	SQZ	20,000	\$ 15,458.23	\$ 0.77	RRSP	Other	N
4-Jan-11	7-Jan-11	SQZ	10,000	\$ 6,450.00	\$ 0.65	Non-registered	TCSI	N
19-Sep-11	22-Sep-11	SQZ	2,000	\$ 540.00	\$ 0.30	Relative	Other	N
21-Oct-11	26-Oct-11	SQZ	1,300	\$ 304.20	\$ 0.26	Relative	Other	N
26-Apr-12	1-May-12	SQZ	44,000	\$ 21,399.18	\$ 0.49	RRSP	Other	Y
27-Apr-12	2-May-12	SQZ	42,000	\$ 21,266.49	\$ 0.51	RRSP	Other	Y
1-May-12	4-May-12	SQZ	14,000	\$ 7,088.83	\$ 0.51	RRSP	Other	Y

Tdate	SDate	Security	Sell Volume	Total Amount	ACB	Acct	Firm	Approved?
8-Oct-10	14-Oct-10	BNG	10,000	\$ 10,799.48	\$ 1.08	RRSP	Other	N
14-Oct-10	19-Oct-10	BNG	10,000	\$ 10,898.60	\$ 1.09	RRSP	Other	N
15-Oct-10	20-Oct-10	BNG	20,000	\$ 24,582.19	\$ 1.23	RRSP	Other	N
18-Oct-10	21-Oct-10	BNG	3,000	\$ 3,810.00	\$ 1.27	RRSP	Other	N
13-Dec-10	16-Dec-10	BNG	50,000	\$ 57,450.00	\$ 1.15	Non-registered	TCSI	N
15-Dec-10	20-Dec-10	BNG	10,000	\$ 11,295.09	\$ 1.13	RRSP	Other	N
16-Dec-10	21-Dec-10	BNG	15,000	\$ 16,647.70	\$ 1.11	RRSP	Other	N
27-Dec-10	30-Dec-10	BNG	50,000	\$ 59,950.00	\$ 1.20	Non-registered	TCSI	N

Tdate	SDate	Security	Sell Volume	Total Amount	ACB	Acct	Firm	Approved?
27-Oct-11	1-Nov-11	AZA	50,000	\$ 25,772.82	\$ 0.52	Margin	Other	N
29-Feb-12	5-Mar-12	AZA	100,000	\$ 96,508.28	\$ 0.97	RRSP	Other	Y

APPENDIX "C"

TCSI Company Specific Disclosure Key

TCSI uses the following Company Specific Disclosure Key. Please refer to the Company Specific Disclosures section above for specific disclosures applicable to the issuer(s) discussed in this report.

1. On the last day of the month preceding the date of this report TCSI and its affiliates held an aggregate of less than 1% of the outstanding shares (of any class of equity securities) of *[issuer]*.
2. The research analyst(s) and/or associates (or their household members) who prepared this research report do not directly or beneficially own common stock of *[issuer]*.
3. TCSI has not managed or co-managed an initial public offering of equity or equity-related securities for *[issuer]* in the past 12 months, the closing date of which was at least 40 calendar days prior the issuance of this report.
4. TCSI has not managed or co-managed a secondary offering of equity or equity-related securities for *[issuer]* in the past 12 months, the closing date of which was at least 10 calendar days prior to the issuance of this report.
5. TCSI has not provided services to *[issuer]* for remuneration other than normal course investment advisory

or trade execution services during the preceding 12 months.

6. TCSI has not received compensation for investment banking services from *[issuer]* during the preceding 12 months.
7. No employee of TCSI *[name of employee]* is an *[officer, director or employee]* of *[issuer]* (or serves in an advisory capacity to the issuer).
8. The research analyst(s) and/or associates who prepared this research report have not viewed the material operations of *[issuer]*.
9. TCSI has not been paid or reimbursed by the issuer for the analyst(s) travel expenses to view the material operations of *[issuer]*.

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