

# Re Vargas

IN THE MATTER OF:

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

**and**

**Carlos Manuel Vargas**

2019 IIROC 06

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

Heard: February 13, 2019 in Toronto, Ontario  
Decision: March 19, 2019

**Hearing Panel:**

Edward T. McDermott, Chair, Randee Pavalow and Edward Jackson

**Appearance:**

Andrew Werbowski, IIROC Senior Enforcement Counsel

Sally Kwon, IIROC Enforcement Counsel

Carlos Manuel Vargas, appearing for himself

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## REASONS FOR DECISION

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### INTRODUCTION

¶ 1 This Hearing Panel was constituted pursuant to the provisions of the Consolidated Enforcement, Examination and Approval Rules (the “Rules”) of the Investment Industry Regulatory Organization of Canada (“IIROC”) including in particular, sections 8203, 8205, 8215 and 8428 thereof.

¶ 2 The Notice of Motion which initiated this hearing is dated February 6, 2019 and states that a hearing will be held on February 13, 2019 at the IIROC premises located at 121 King Street West, Suite 2000, Toronto, Ontario for the purpose of determining whether a Settlement Agreement entered into between IIROC and the Respondent, Carlos Manuel Vargas (“Vargas” or the “Respondent”), pursuant to a written agreement dated February 4, 2019 (a copy of which is attached as a schedule to these Reasons for Decision) will be accepted or rejected by the Hearing Panel in accordance with the provisions of the Rules.

¶ 3 There was no issue between the parties as to whether the application and the Notice of Motion for the Settlement Hearing had been properly commenced, served and filed in accordance with the terms of the Rules. This matter had initially been scheduled for a contested hearing to commence on February 5, 2019. Just prior to the commencement of such hearing, the Hearing Panel was advised that a Settlement Agreement had been arrived at between IIROC and the Respondent the day before and accordingly the hearing on the merits would not proceed and instead this application for acceptance of such Settlement Agreement would be

initiated with a return date of February 13, 2019.

¶ 4 This Hearing Panel was accordingly established and convened at 10:00 a.m. on February 13, 2019 at the place set forth in the Notice of Motion. The Hearing Panel (with the consent of the parties) issued an order abridging the time limits prescribed by the Rules for service of the Notice of Motion and other materials in support of the instant application.

¶ 5 As the Chair of the Hearing Panel had previously presided over this matter at the Pre-Hearing Conference, both parties confirmed that they had consented to him serving as the Chair of the Hearing Panel assigned to this particular application. The Chair further confirmed with Mr. Vargas that it was his desire and decision to be self-represented in this matter and that he had been advised on each of the previous attendances in this matter that he had the right to counsel and that if he wished, steps would be taken to direct him to the appropriate referral services so that he could select a counsel of his choice with experience in matters of this nature.

¶ 6 The Hearing Panel then proceeded to review the terms of the Settlement Agreement and received the submissions and representations of counsel for IIROC and from the Respondent himself, both of whom requested this Hearing Panel to accept the Settlement Agreement including the sanctions provided for therein.

#### **THE SETTLEMENT AGREEMENT**

¶ 7 The Hearing Panel reviewed the form of the Settlement Agreement and was satisfied that it contained the requirements of a Settlement Agreement as set forth in Rule 8215(2).

¶ 8 The Hearing Panel accordingly received and gave careful consideration to the Settlement Agreement and the submissions of the parties in support of such agreement. During the course of these presentations a number of questions were raised with Senior Enforcement Counsel for IIROC by members of this Hearing Panel as a result of which, with the consent of the parties, some additional facts were placed before the Hearing Panel for its consideration. The Hearing Panel then recessed the hearing in order that it could deliberate on the information and submissions that had been presented to it with respect to its decision as to whether it should accept or reject the Settlement Agreement. Following such recess, the Hearing Panel reconvened the hearing and advised the parties that it was prepared to accept the Settlement Agreement on the terms proposed and proceeded to execute and record its acceptance of such agreement with the reasons for this decision to be subsequently delivered to the parties in writing.

¶ 9 The following accordingly constitutes the reasons for such decision of this Hearing Panel which led it to conclude that the Settlement Agreement provided an appropriate response in the circumstances to the contravention of the Dealer Member Rules to which the Respondent has admitted guilt.

#### **THE ROLE OF THE HEARING PANEL**

¶ 10 In presenting his submissions, Senior Enforcement Counsel referred the Hearing Panel to a number of previously decided cases, many of which deal with the responsibility of a Hearing Panel in applications of this nature as well as the limitations on the scope of its review of a Settlement Agreement, which had been voluntarily entered into between the parties.

¶ 11 In the oft quoted decision of *Re Milewski*, [1999] I.B.A.C.D. No. 17, the Hearing Panel in that case described the standard of review as follows:

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.

¶ 12 This Hearing Panel agrees with that excerpt from the Milewski decision and also endorses the description of the standard of review as set forth in the decision of *Re Faber*, 2014 IIROC 14 (Can LII):

### **The Role of the Hearing Panel**

9. Under the provisions of IIROC's Rule 20.36, it is open to this Hearing Panel to either accept or reject the Settlement Agreement tendered upon us by the parties. It is not a question of whether the agreed-upon penalties are ones which this Panel would have imposed had the matter come before us for determination at a hearing. It is also not open to us to amend, re-write or alter the terms of the agreement reached between the parties.

10. It is however our fundamental responsibility to be satisfied that the penalties set forth in the agreement are within a reasonable range of appropriateness in the circumstances set forth in the agreed-upon statement of facts.

11. The following excerpts from previously decided cases as recorded in the decision of *Re Ast* (2012 IIROC 38) set forth the parameters of the Hearing Panel's decision making processes when reviewing a Settlement Agreement presented to us by the parties to the dispute:

#### **Standard for Reviewing a Settlement Agreement**

13. The standard for reviewing a Settlement Agreement was well-stated in a recent Pacific District hearing, *Re Johnson* (2012 IIROC 19), where the panel stated:

'The test applicable to a decision whether to accept or reject a settlement is well-known. Simply put, a panel should accept such an agreement unless it considers the penalty provided for clearly to fall outside a reasonable range of appropriateness.'

14. There are many similar statements. See, for example, *Re Jiwa and Hoffar* (2012 IIROC 9), which adopted an earlier IDA decision, stating: 'It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness.' Another recent example is *Re Trapeze Capital* (2012 IIROC 25), where the panel states:

'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.’

15. And, finally, see statement in *Re Rotstein and Zachheim* (2012 IIROC 27):

‘Based upon this material it is our responsibility to review the agreement in order to satisfy ourselves that it falls within a reasonable range of appropriateness to the offence and circumstances recorded in the agreement and that there is nothing in the agreement which would be contrary to the public interest or bring the administration of the Rules of IIROC into public disrepute. If we are satisfied that the Settlement Agreement does not offend these principles then it should be accepted.’

## **THE CONTRAVENTION**

¶ 13 The terms of the Settlement Agreement together with the additional facts placed before the Hearing Panel in response to its inquiries of Senior Enforcement Counsel (upon the consent of the Respondent) reveal that the Respondent between August 2012 and December 2013 while a Registered Representative with Global Maxfin Inc. and Chippingham Financial Group (where he held the dual roles of “Head of Syndication” and “Head Trader”) committed the following contravention of Dealer Member Rule 29.1:

### **Contravention**

Between August 2012 and December 2013 (the “Relevant Period”) the Respondent engaged in improper trading activity when he obtained allocations of new issues (which on the facts placed before this Hearing Panel, were acquired at the drawdown price) to trade for his Dealer Members’ own pro-trading inventory accounts or his own personal trading accounts in circumstances where he knew or ought to have known he had no or limited retail demand for the new issues, contrary to Dealer Member Rule 29.1.

¶ 14 Rule 29.1 provides as follows:

### **Business Conduct**

Dealer Members and each partner, Director, Officer, Supervisor, Registered Representative, Investment Representative and employee of a Dealer Member (i) shall observe high standards of ethics and conduct in the transaction of their business, (ii) shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest, and (iii) shall be of such character and business repute and have such experience and training as is consistent with the standards described in clauses (i) and (ii) or as may be prescribed by the Board.

For the purposes of disciplinary proceedings pursuant to the Rules, each Dealer Member shall be responsible for all acts and omissions of each partner, Director, Officer, Supervisor, Registered Representative, Investment Representative and employee of a Dealer Member; and each of the foregoing individuals shall comply with all Rules required to be complied with by the Dealer Member.

## **AGREED SANCTIONS AND COSTS**

¶ 15 In accordance with the terms of the Settlement Agreement, the parties have agreed on the following sanctions:

- a) Payment of a fine in the sum of \$620,000, inclusive of disgorgement;
- b) A one year suspension effective from when the Respondent ceased to be an Approved

Person;

- c) Six months of close supervision effective upon the date the Respondent becomes re-registered with an IIROC Dealer Member; and
- d) Costs in the sum of \$50,000.

## **AGREED FACTS**

¶ 16 Based upon the facts set forth in the Settlement Agreement, the parties are agreed that when an issuer wishes to raise capital in the public markets it generally engages the services of one or more firms to act as underwriters of the financing which are commonly referred to as the “Syndicate” or “Syndicate member(s)”. Syndicate members then enter into a contractual underwriting agreement with the issuer to purchase the new issue of securities at an agreed price less the commission for sale to clients (“the drawdown price”). The Syndicate members then offer the securities to their institutional clients at the price agreed with the issuer. The commission represents their profit on the transaction.

¶ 17 The Syndicate members may also notify their retail brokers that the stock is available for sale to “retail investors”. The retail brokers will then access the stock at the drawdown price and re-sell it at the underwritten price. Once again, their profit is obtained from the difference between the two prices.

¶ 18 The Hearing Panel was advised that, on occasion, the Syndicate may seek to engage the services of other smaller firms commonly known as the “Selling Group” or “Selling Group member(s)” in order to make a number of the securities available to retail investors who may not have an account with the Syndicate members. The process by which this invitation to participate would be made does not involve a formal written contract between the Syndicate member and the Selling Group member but rather generally results from the issuance of an email to potential members of the Selling Group that the new issue is available. If a member of the Selling Group has demand from its retail clients and wishes to take up such shares, they would communicate it to the Syndicate member by way of an “expression of interest”. The Selling Group may then be allocated a certain number of the new issue shares secured by the Syndicate member at the drawdown price to be re-sold at the underwritten price to their retail clients.

¶ 19 Of critical importance to this particular case is the fact that it is agreed that the Syndicate members expect such shares are provided to the Selling Group members at the drawdown price on the basis that they will only be sold to actual retail clients and will not be traded in the Dealer Member’s pro-trading inventory account or for the trader’s own personal account. The Respondent knew or ought to have known that Syndicate members expect such allocated shares to be sold to retail clients for the purpose of (amongst other reasons), improving the liquidity of the new issue. The parties have agreed that if this were not the case, the new issue shares would not have been allocated by the Syndicate member to the Selling Group member at the drawdown price.

¶ 20 The Respondent has agreed that he knew or ought to have known that the share allocation and distribution were contingent upon him selling only to retail clients and the shares were not to be brought into the firm’s pro-trading account or his own personal account for trading.

¶ 21 Notwithstanding that he was aware of this well understood restriction, the agreed facts indicate that between August 2012 and December 2013 the Respondent requested numerous new issue allocations for his firms from various Dealer Members who were part of underwriting Syndicates with virtually no intention of selling them to retail investors. In fact, in almost all cases he would place the allocated new issue shares in his firm’s pro-trading inventory account or his own personal trading account. By so doing he was able to earn significant commissions by reason of obtaining shares at the discounted drawdown price and then trading

them to non-retail clients.

¶ 22 It was further agreed that many of the new issues in which the Respondent participated contained a specific written disclosure from the Syndicate members that the new issue securities were “not pro-eligible” or “available for retail”. Notwithstanding these proscriptions (of which the Respondent was aware), the Respondent would allocate the new issue shares into his firm’s pro-trading inventory account or his own personal trading account and trade them in his capacity as Head Trader to non-retail investors.

¶ 23 The Respondent agreed that he had no realistic retail demand for the securities when he delivered an expression of interest to the Syndicate members. Enforcement Staff found that on numerous occasions there was no evidence that the Respondent even advised his retail distribution network that these new issues were available.

¶ 24 The Settlement Agreement also revealed that the Respondent would sell such shares short on the secondary market to obtain sale proceeds to finance the purchase of the new issue and lock in the profits. Short sales of the corresponding securities would be unnecessary if the Respondent intended to distribute the shares to retail clients as the retail clients would ultimately be responsible for payment of these securities. In addition, for at least a period of time, the Respondent was engaged in the practice of “early ticketing” of allocated shares in order to avoid the margin required for participation in the new issue distributions. By adopting these practices, the Respondent was able to manipulate the capital requirements in order to enable him to participate in deals that far exceeded his capital trading limits.

¶ 25 The Respondent has agreed that this manner of trading a new issue allocation constituted a contravention of Dealer Member Rule 29.1 as set forth above. This Hearing Panel also agrees that the practices described above and as outlined in the Settlement Agreement do constitute a contravention of Rule 29.1.

#### **APPROPRIATENESS OF THE PENALTY**

¶ 26 The Settlement Agreement presented to this Hearing Panel provided for an agreed upon sanction of \$620,000 (inclusive of disgorgement). The agreed upon sanctions also included a reference to a one year suspension effective from the date when the Respondent ceased to be an Approved Person (which, on the consent of the parties, we were advised, was sometime in 2015). The Settlement Agreement further provided that if the Respondent becomes re-registered with an IIROC Dealer Member, he would be subject to six months of close supervision effective upon the date he becomes re-registered. He was further required to pay the significant sum of \$50,000 as costs incurred by IIROC in the course of the extensive investigation and processing of this matter.

¶ 27 While it was recognized that the Hearing Panel could not supplement, alter or amend the terms of the agreement reached between the parties, this Hearing Panel had some difficulty in determining the appropriateness of the agreed upon global amount of the fine (without any demarcation as to what portions of it were to be attributable to disgorgement or the fine) particularly when the agreed upon facts did not indicate on how many occasions the Respondent had engaged in the agreed upon contravention of the Rule.

¶ 28 Perhaps in anticipation of this concern, Senior Enforcement Counsel (with the consent of the Respondent) advised the Hearing Panel that Staff had reviewed 243 new issue financings that the Respondent had participated in during the period between August 2012 and December 2013. We were further advised that of that number, the parties were agreed that 75% (or approximately 180) of the trades constituted a contravention of the Rule, with the balance of the transactions remaining in dispute. The Hearing Panel was further informed that after taking into account the cost of proceeding to prove in evidence the transactions which were in dispute and the means of the Respondent, it was agreed between the parties to arrive at the

global penalty referred to in the Settlement Agreement. It was further agreed that the amount of the penalty includes full disgorgement of all the profits made by the Respondent with respect to the undisputed improper trades and an additional unspecified amount to further sanction the Respondent for this contravention of Rule 29.1.

¶ 29 After considering the submissions of the parties, this Hearing Panel agrees that the amount of the financial penalty (even if expressed in global terms) is substantial and is certainly large enough to deter the Respondent and others from engaging in similar misconduct. It also reinforces the principle that Approved Persons who commit contraventions of this nature should not be permitted to benefit financially from their wrongdoing (Re Noronha, 2017 IIROC 16; Re Dennis, 2011 IIROC 39). We are also of the view that the amount of the penalty is not disproportionate to the nature of the offence particularly after taking into account the frequency with which the Respondent engaged in this known contravention of Rule 29.1.

¶ 30 It is accordingly our view that the considerations reflected in the following passage from the decision in Re Durno, 2018 IIROC 32 when considering the appropriateness of a fine expressed in global terms (including disgorgement) have been satisfied in this particular case:

8. The parties agreed to the following sanctions and costs:

- a) Fine of \$150,000 inclusive of disgorgement:
- b) Close supervision until December 2018; and
- c) Costs of \$5,000...

13. In considering the agreed sanctions, we are satisfied that they fall within a reasonable range. We are also satisfied that the agreed sanctions are fair and reasonable in that they appear to be proportional to the seriousness of the breaches by the Respondent and would be so recognized by the members of the public and the securities industry. Finally, we are satisfied that the agreed sanctions will serve as a deterrent to the Respondent and to the securities industry as a whole.

¶ 31 The Hearing Panel was also satisfied that the imposition of a one year suspension effective from when the Respondent ceased to be an Approved Person (sometime in 2015) was appropriate as a message to members of the industry as to the seriousness with which contraventions of this nature are viewed and the consequences which are likely to be incurred should others engage in similar misconduct. The rationale for the retroactive timing of such a suspension is not unusual in matters of this nature as reflected in the case of Re Smith, 2014 IIROC 16 at para:

#### **Timing of the Suspension Period**

21. The Settlement Agreement provides for a two year suspension commencing April 12, 2012, the date on which Canaccord Genuity Corp. terminated the Respondent's employment as a result of the misconduct at issue in this case. As the Respondent's two year absence from the industry came as a result of his conduct in this case, IIROC did not seek to extend the Respondent's time out of the industry beyond that two year period. IIROC's written submissions state that the Respondent's record and any publications regarding this case will show a two year suspension. IIROC counsel also referred the Panel to a number of cases in which a suspension had been determined to commence at the time of the Respondent's departure from the industry, rather than at the time of the panel decision. See Re Bell [2005] I.D.A.C.D. No. 15, Re Nott [2011] LNIIROC 26, Re Morrison [2004] I.D.A.C.D. No. 63, Re Conville [2013] IIROC 5, Re Little [2007] I.D.A.C.D. No. 24 and Re Parkinson [2012] LNIIROC 18.

## **CONCLUSION**

¶ 32 In the result, after taking into account the nature of this offence and the agreed upon facts and circumstances presented to us, we find that the sanctions recommended by Senior Enforcement Counsel and agreed to by the Respondent fall within a reasonable range of appropriateness in the circumstances of this particular case and the Settlement Agreement is accordingly accepted by this Hearing Panel.

Dated at Toronto, Ontario this 19<sup>th</sup> day of March, 2019.

Edward T. McDermott “Ranee Pavalow”

Ranee Pavalow

Edward Jackson

## **SCHEDULE**

### **SETTLEMENT AGREEMENT**

#### **PART I – INTRODUCTION**

1. The Investment Industry Regulatory Organization of Canada (“IIROC”) will issue a Notice of Motion 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 Carlos Manuel Vargas (“Respondent”).

#### **PART II – JOINT SETTLEMENT RECOMMENDATION**

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

#### **PART III – AGREED FACTS**

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

#### **Overview**

4. The Respondent was an Approved Person who, between August 2012 and December 2013 (the “Relevant Period”), held dual roles as both “Head of Syndication” and “Head Trader” at his firms.
5. In his role as Head of Syndication, the Respondent requested new issue allocations for his firm from various Dealer Members who were part of underwriting syndicates for the new issue distributions.
6. The Respondent received the new issue allocations at the draw down price, which is the retail price of the new issue less the commission earned by the broker for distributing the new issue allocation to its retail customers.
7. The Respondent distributed new issue allocations to actual retail clients on limited occasions. The vast majority of new issue shares were allocated to his firms’ pro-trading inventory accounts and traded by the Respondent in his capacity as Head Trader.
8. The Respondent acknowledged that when he conveyed his expressions of interest to members of the syndicate, he did so with the knowledge that he would take some or all of the allocated securities into his firm’s pro-trading inventory account.

9. If the Respondent had identified himself to the syndicate members as a proprietary trader, or had he told the syndicate members that he intended to trade the new issue shares in his firms' pro-trading inventory accounts or his own personal trading accounts, he would not have received the shares at the draw down price.
10. While it is commonly understood that new issue allocations are not intended for trading in firm's pro-trading inventory accounts, many of the new issues in which the Respondent participated contained a specific disclosure from the syndicate members that the securities were "not pro-eligible" or alternatively were "available for retail". Notwithstanding this disclosure, the Respondent allocated new issue shares into his firm's pro-trading inventory account or his own personal trading account on each of these occasions.
11. The Respondent then sold short corresponding securities on the secondary markets to obtain sale proceeds to finance the purchase of the new issues. In addition, the Respondent for a period of time, engaged in a practice of early ticketing of allocated shares, which he used in an attempt to eliminate the margin required for the participation in the new issue distributions. This practice allowed the Respondent to participate in deals that far exceeded his capital limits.
12. The Respondent's manner of trading in new issue allocations in the manner described above is contrary to Dealer Member Rule 29.1.

### **The Respondent**

13. The Respondent has been employed with various firms and registered with IIROC since June 1996. Specifically, during the Relevant Period, he was employed at Global Maxfin Capital Inc. ("GMCI") from June 2010 to October 2012 and then with Chippingham Financial Group ("Chippingham") from October 2012 to June 2014. He is currently not employed in the securities industry or registered with an IIROC firm.
14. The Respondent acted as both "Head of Syndication" and "Head of Trading" at both GMCI and Chippingham.

### **New Issue Financing**

15. When an issuer seeks to raise capital in the public markets, it will generally engage the services of one or more firms to act as underwriters of the financing. These firms are commonly referred to collectively as the "Syndicate" or, individually, as a "Syndicate Member".
16. Syndicate Members will enter into a contractual underwriting agreement with the issuer, pursuant to which the Syndicate Members purchase the new issue securities from the issuer at an agreed price, less a commission. The Syndicate members then offer these securities to their institutional clients at the price agreed with the company, with the commission representing their profit on the transaction.
17. Syndicate Members also notify their retail brokers that a certain amount of stock is being made available for sale to retail investors. The retail brokers access stock at the "drawdown price" and resell it to their clients at the underwritten price.
18. On occasion, the Syndicate may engage the services of other smaller firms (commonly known as the "Selling Group" or "Selling Group members"). The purpose of the Selling Group is to make a small portion of the securities available to retail investors who may not have an account with one of the Syndicate Members.
19. There is no contractual relationship between the Syndicate Members and the Selling Group members. The Syndicate simply sends an e-mail to potential members of a Selling Group advising that a particular new

issue has become available.

20. If a member of the Selling Group has demand from its retail clients, that demand is communicated to the Syndicate Members by way of an expression of interest. The Selling Group member may then be allocated a certain number of the new issue securities by the Syndicate. Securities are sold to the Selling Group member at the drawdown price and resold to retail clients at the underwritten price. The difference between the drawdown price and the underwritten price is a selling concession received by the Selling Group member for distributing those shares to its retail clients.
21. Syndicate Members expect that these shares are to be distributed by the Selling Group members to actual retail clients and not traded in firm's pro-trading inventory account or a trader's own personal account.

#### **Staff's Review**

22. During the Relevant Period, the Respondent's firms were members of the Selling Group for a number of new issues.
23. Staff reviewed numerous deals during the Relevant Period. The Respondent's practice was to communicate expressions of interest to the Syndicate Members for which he had no realistic retail demand. Moreover, on numerous occasions, Staff found no evidence that the Respondent advised his retail distribution network of the availability of the new issue.
24. After receiving new issue allocations from the syndicate, the Respondent sold short the corresponding securities in the marketplace to generate cash proceeds and to lock in profits. These proceeds were used to fund the purchase of the new issues.
25. The short sales of the corresponding securities are unnecessary if the Respondent intended to distribute the allocations to retail clients as the retail client would ultimately be responsible for payment of the allocated securities.
26. Furthermore, the Respondent would net the new issue allocations against the corresponding short positions, which eliminated or substantially reduced the inventory short margin requirement that would otherwise be calculated.
27. In this fashion, the Respondent provided little or no inventory margin relating to new issue securities and he was able to participate in larger allocations than his trading capital limits would have allowed.

#### **Conclusion**

28. New issues are intended for broad retail distribution and Selling Group Members should not take them into their pro-trading inventory accounts or personal trading accounts. The Respondent knew, or ought to have known, that his practice of doing so was improper and he thereby contravened Dealer Member Rule 29.1.
29. The monetary sanctions agreed to below require the respondent to disgorge all financial benefits from the improper trading activity as well as a monetary fine.

#### **PART IV – CONTRAVENTIONS**

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

Between August 2012 and December 2013 (the "Relevant Period") the Respondent engaged in improper trading activity when he obtained allocations of new issues to trade for his Dealer Members' own pro-trading inventory accounts or his own personal trading accounts in

circumstances where he knew or ought to have known he had no or limited retail demand for the new issues, contrary to Dealer Member Rule 29.1.

#### **PART V – TERMS OF SETTLEMENT**

31. The Respondent agrees to the following sanctions and costs:
- a) Payment of a fine in the sum of \$620,000, inclusive of disgorgement;
  - b) A one year suspension effective from when the Respondent ceased to be an Approved Person;
  - c) Six months of close supervision effective upon the date the Respondent becomes re-registered with an IIROC Dealer Member; and
  - d) Costs in the sum of \$50,000.
32. If this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees to pay the amounts referred to above within 30 days of such acceptance unless otherwise agreed between Staff and the Respondent.

#### **PART VI – STAFF COMMITMENT**

33. If the Hearing Panel accepts this Settlement Agreement, Staff will not initiate any further action against the Respondent in relation to the facts set out in Part III and the contraventions in Part IV of this Settlement Agreement, subject to the provisions of the paragraph below.
34. If the Hearing Panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Rule 8200 against the Respondent. These proceedings may be based on, but are not limited to, the facts set out Part III of this Settlement Agreement.

#### **PART VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT**

35. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
36. 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.
37. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing, unless the parties agree that additional facts should be submitted at the settlement hearing. If the Respondent does not appear at the settlement hearing, Staff may disclose additional relevant facts, if requested by the Hearing Panel.
38. If the Hearing Panel accepts the Settlement Agreement, the Respondent agrees to waive all rights under the IIROC Rules and any applicable legislation to any further hearing, appeal and review.
39. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement or Staff may proceed to a disciplinary hearing based on the same or related allegations.
40. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
41. 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.

42. If this Settlement Agreement is accepted, the Respondent agrees that neither he nor anyone on his behalf, will make a public statement inconsistent with this Settlement Agreement.
43. The Settlement Agreement is effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

**PART VIII – EXECUTION OF SETTLEMENT AGREEMENT**

44. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.
45. A fax or electronic copy of any signature will be treated as an original signature.

**DATED** this “4<sup>th</sup>” day of “February”, 2019.

“Witness”

Witness

“Carlos Manuel Vargas”

Respondent

“Witness”

Witness

“Andrew P. Werbowski”

Andrew P. Werbowski

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

The Settlement Agreement is hereby accepted this “13<sup>th</sup>” day of “February”, 2019 by the following Hearing Panel:

Per: “Edward McDermott”

Panel Chair

Per: “Ranee Pavalow”

Panel Member

Per: “Edward Jackson”

Panel Member

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