Unofficial English Translation

Re Dubois

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

The By-Laws of the Investment Dealers Association of Canada

and

Daniel Dubois

2014 IIROC 18

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

Hearing and decision rendered: February 18, 2014
Reasons issued: April 15, 2014

Hearing Panel
Me Jean Martel Ad. E., Chair; Gilles Archambault and Jean Élie
Appearances
Me Martin Hovington, Enforcement Counsel for IIROC
Me Jacques Trudeau, Counsel for the Respondent

DECISION ON SETTLEMENT AGREEMENT

¶ 1 Following an investigation into the conduct of Daniel Dubois (**Respondent**), Staff of the Investment Industry Regulatory Organization of Canada (**IIROC**) negotiated and concluded a settlement agreement (the **Settlement Agreement**) with the Respondent on January 29, 2014 and requested that the hearing coordinator convene a settlement hearing, in accordance with Rule 20.36 of the Dealer Member Rules of IIROC (**Rule 20**), *Corporation Hearing Processes*, and Rule 15, *Settlement Hearings*, of the Rules of Practice and Procedure of IIROC.

¶ 2 The Respondent consented and agreed to be subject to the jurisdiction of this Hearing Panel for the purposes of these proceedings,[1] and at a hearing held on February 18, 2014, the Settlement Agreement appended hereto (and modified at the hearing) was recommended for our acceptance.

¶ 3 Pursuant to the Settlement Agreement, the Respondent admitted that he contravened the Rules, Guidelines, Regulations or Policies of IIROC's Dealer Members (the **Rules**). He admits to the commission of

[1] Settlement Agreement, Part I, par. 4.

the following violations: [2]

1. *Between July 2004 and October 2011, the Respondent failed to observe high standards of ethics and conduct and engaged in business practice unbecoming in the transaction of his activities, in that he:*

    a) *did not adequately and completely disclose all of his outside business activities to his employer;*

    b) *held authorizations to trade and exercised a form of authority over the accounts of certain of his clients, off book and without the knowledge of his employer;*

    *contrary to Dealer Member Rule 29.1 (**IDA** By-law 29.1 prior to June 1, 2008);*[3]

2. *Between July 2004 and October 2011, Respondent accepted remuneration and/or a consideration from a person other than his employer in regard to securities-related activities that he performed for this person, contrary to IIROC Rule 18.15 (IDA By-Law 18.15 prior to June 1, 2008).*[4]

3. *On October 31 and November 1, 2011, the Respondent failed to observe high standards of ethics and conduct and engaged in conduct unbecoming and potentially detrimental to the public interest in that he misled and/or lied to his employer when questioned about the activities described above under counts 1 and 2, contrary to IIROC Dealer Member Rule 29.1.*

¶ 4 The parties agreed that the violations committed by the Respondent should be sanctioned as follows: [5]

(i) An aggregate fine of $20,000: $10,000 for count 1 and $10,000 for count 2;

(ii) Disgorgement of $10,724.00, representing the fees collected between 2004 and 2010 due to the commission of the offence; and

(iii) A one-month suspension of approval in any capacity.

¶ 5 The Hearing Panel recorded two amendments to the Agreement made at the hearing with the consent of the parties.

¶ 6 The first amendment states that, in case of acceptance of the Agreement, the agreed suspension of approval shall only commence as of June 14, 2014, so that Respondent's clients may continue to have access to the services of a French-speaking securities representative from Mackie while the Respondent serves his suspension.

¶ 7 The second amendment concerns par. 48 of the Agreement, which was amended forthwith by the parties to correct a clerical error and ensure that it henceforth reads as follows: [TRANSLATION] *"The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel;"*

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

¶ 9 After consideration of the terms and conditions of this Agreement and taking into account the pleadings

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[2] Settlement Agreement, Part II, par. 7.

[3] Effective June 1, 2008, the self-regulatory activities previously carried out by the IDA were taken over by IIROC. *Transition Rule No. 1* allows IIROC *inter alia* to initiate settlement proceedings on behalf of the IDA in connection with events that occurred prior to this date, when the Respondent in these proceedings was governed by IDA rules. In this case, according to *Schedule C.1 to Transition Rule No. 1, Hearing Committees and Hearing Panels Rule* (subsection 1.9(2)), IDA rules in force at the relevant time shall apply, to the extent they are consistent with IIROC practices and procedures at the time the enforcement proceedings are commenced. That is the case here for the violations committed by the Respondent prior to June 1, 2008.

[4] Ibid.

[5] Settlement Agreement, Part II, par. 8.

of the legal counsel for both parties, the Hearing Panel decided to accept the Settlement Agreement as amended, with immediate effect as of the hearing date and with reasons to follow.

¶ 10 These reasons are outlined below.

The agreed essential facts

¶ 11 At the material time, and more specifically between July 2004 and November 2011 (**the material period**), the Respondent was acting as an investment advisor with Desjardins Securities Inc. (**DS**), an IIROC-regulated firm, and prior to June 1, 2008, an IDA Member Firm.

¶ 12 Prior to his employment with DS, Respondent performed the functions of investment advisor with National Bank Financial (from 1987 to 2004) and Walden (in 1987).

¶ 13 Since November 2011, Respondent has been employed with Mackie Research Capital Corporation (**Mackie**), where he has been subject to close supervision since his hiring.

Description of Respondent's outside business activities

¶ 14 While in the employ of National Bank Financial – that is, between 1987 and 2004 – Respondent engaged in offshore securities trading for certain clients that requested it.

¶ 15 Respondent engaged in these activities with the knowledge of his employer at the time, via accounts (**offshore accounts**) held in the Bahamas with National Bank International (NBI), a subsidiary of National Bank of Canada, which was sold to Crédit Agricole Suisse Bahamas (CASB) in 2007 (**NBI/CASB**).

¶ 16 When he was hired by DS, Respondent continued to manage offshore trading accounts for five of his clients, forwarding their instructions to NBI/CASB pursuant to authorizations to trade granted him by these clients. He did not inform his new employer that he held these authorizations to trade, nor that he was using them to engage in outside trading activities on behalf of these clients.

Incomplete and inadequate disclosure to employer

¶ 17 The offshore trades executed by the Respondent during the material period were not reported in the books and records of DS. They consequently escaped the scrutiny of the dealer's compliance department.

¶ 18 By virtue of the applicable rules and under the terms of the policies and supervision procedures of DS Compliance, the Respondent was obligated to disclose completely the nature and extent of his offshore activities, obtain the written approval of DS to that effect, and inform DS that he held authorizations to trade, in order to carry on these activities in the latter's name.

¶ 19 As of 2005, as it did with many of its compliance policies and procedures, DS revised its policy on its advisors' outside business activities, and informed the interested parties – the Respondent among them – of the content of the revised policy by email. In the ensuing years, the firm's advisors also received reminders of this policy.

¶ 20 Between 2005 and 2011, as part of annual compliance confirmations, Respondent confirmed that he had read the DS code of ethics and the compliance manual, which clearly state the obligations incumbent on the investment advisors to disclose their outside business activities.

Remuneration prohibited

¶ 21 Whenever he executed trades for his five clients with NBI/CASB, Respondent was paid commissions which he had NBI/CASB deposit in a personal account held in his name with that institution. In June 2009, Respondent closed this account and asked NBI/CASB henceforth to pay him these commissions by cheque.

¶ 22 From 2004 to 2011, Respondent collected from NBI/CASB a total remuneration in the order of $10,724 in commissions for his services as an investment advisor, which he rendered to the offshore account holders.

¶ 23 These activities of the Respondent therefore led him to accept remuneration and/or a consideration from

a person other than DS, [6] the IDA Member firm (and subsequently, the IIROC-regulated firm) with whom he was employed at the time, in regard to securities-related activities that he performed for DS.

False statements to his employer DS

¶ 24 When DS discovered that the Respondent had been operating as an offshore investment advisor without its knowledge, the staff of its compliance department called him in twice to discuss the situation, on October 31 and November 1, 2011.

¶ 25 During these interviews, DS' representatives asked the Respondent specifically if he had engaged in any business activities for clients with offshore accounts and, if so, if he had collected commissions or any other form of remuneration or consideration in respect of these activities.

¶ 26 Repeatedly, the Respondent denied having engaged in such activities, or having received any such remuneration.

¶ 27 What's more, he denied having held a personal account with NBI/CASB, whereas he had in fact maintained one for the deposit of his commissions up until June 2009.

Analysis

¶ 28 Rule 20.36(1) states that upon conclusion of a settlement hearing, a hearing panel such as ours may only accept or reject the settlement agreement submitted for its consideration.

¶ 29 This is why, in its evaluation of the decision to be rendered in such case, the hearing panel must avoid interfering with the settlement negotiated between the parties, unless there are serious reasons for doing so.

¶ 30 *Re Milewski* [1999] I.D.A.C. No. 17, established that we should accept the settlement agreement if, after consideration of the agreed-upon facts, the disciplinary measures that it proposes appear to fall within *"a reasonable range of appropriateness*" given the misconduct in question.[7]

¶ 31 In order to make this determination, it seemed appropriate to consider the aggravating factors, as well as the mitigating factors arising from the agreed-upon facts, using the Guidelines to guide us.

¶ 32 For the purposes of our decision, other than the facts mentioned in the Settlement Agreement and the Rules cited above, we therefore considered the *IIROC Dealer Members Disciplinary Sanction Guidelines* (March 2009 edition) (the **Guidelines**), the case law cited by the parties relative to violations similar to those admitted to by the Respondent,[8] as well as *Re BMO Nesbitt Burns* [2012] IIROC No. 21, and *Re Dariotis and Fiumidinisi* [2011] IIROC No. 75.

The adequacy of the recommended disciplinary measures

¶ 33 In the Settlement Agreement before us, Respondent admits that during the material period, he failed to adequately and fully disclose all of his outside business activities to DS, his employer at the time.

¶ 34 Moreover, he admits that he accepted remuneration or a consideration from a person other than the Dealer Member of IIROC (and before that, the IDA) with whom he was employed, in regard to securities-related activities which he performed for DS.[9]

¶ 35 In fact, he admitted having contravened IIROC Dealer Member Rule 29.1 (IDA By-law 29.1 prior to June 1, 2008) and IIROC Rule 18.15 (IDA By-Law 18.15 prior to June 1, 2008), which expressly state:

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[6] Rule 18.15, cited below, would have permitted the remuneration or consideration to be paid by DS, an affiliate or a related company, but it is accepted as fact that this was not the case here.

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

[8] *Re Mansour* [2007] I.D.A.C.D. No. 56; *Re Paziuk* [2009] IIROC 47; *Re White* [2010] IIROC 25; *Re Arapis* [2011] IIROC 37; *Re Dalpé et Milette* [2013] OCRCVM 18; *Re Lamontagne* [2009] IIROC 6; *Re Pan* [2012] IIROC 22; *Re Steinhoff* [2012] IIROC 39; *Re Warkentin* [2012] IIROC 40; *Re Gunderson* [2012] IIROC 66; *Re Raby* [2013] OCRCVM 30.

[9] This other person was not a firm in the same group as the Dealer Member, nor was it affiliated with it.

*"***Rule 29 — *Business Conduct***

1. Dealer Members and each […] 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 […]"

*"***Rule 18 — *Registered Representatives and Investment Representatives***

[…]

15. No Registered Representative or Investment Representative may accept or permit any associate to accept, directly or indirectly, any remuneration, gratuity, benefit or any other consideration from any person other than the Dealer Member or its affiliates or related companies, for the securities related activities he or she conducts on behalf of the Dealer Member or its affiliates or its related companies."

¶ 36 Respondent also admitted in the Settlement Agreement that he had misled and/or lied to his former employer DS when the firm's compliance staff questioned him about his outside trading activities and the remuneration derived therefrom.[10] Here again, his conduct was contrary to the provisions of IIROC Dealer Member Rule 29.1, *supra*.

Aggravating factors

¶ 37 The fact that the Respondent did not inform DS about his securities-related activities outside the firm, nor of his resulting gains, prevented DS from supervising these activities and from supervising the Respondent's conduct as he engaged in said activities.

¶ 38 Similarly, Respondent exercised a form of authority over the offshore accounts of his five clients, without DS being informed that he held authorizations to trade in these accounts. In so doing, Respondent again prevented effective supervision by DS of the handling of these client accounts, which is against the Rules.

¶ 39 In respect of the standards of ethics and business conduct recognized within the industry, these activities exposed the five clients concerned and the dealer who employed him to real risks, since not disclosing them made it impossible for the dealer to ensure appropriate oversight and supervision.

¶ 40 By failing to disclose these activities, the Respondent was hindering the dealer who employed him in its duty to protect the public[11]. What's more, he exposed the latter to potential liability in regard to the clients concerned, by depriving it of the ability to mitigate the risk through the normal application of its policies and supervision procedures. Indeed, the clients could have demanded that the dealer indemnify them for any alleged losses that its representative's undisclosed business activities might have caused them.

¶ 41 Moreover, the Respondent caused loss to his ex-employer by depriving it, during the material period, of the revenues from commissions that it should have earned by reason of these offshore trades.

¶ 42 This misconduct by the Respondent was fundamentally reprehensible; all the more so, because it is not the result of simple negligence on his part, but indeed of deliberate actions.

¶ 43 The admissions he makes in the Settlement Agreement offer conclusive proof that the Respondent knew or ought to have known, on the one hand, that under the Rules and the policies and procedures of DS, he had a regulatory duty in regard to the trades he was making in the offshore accounts and, on the other hand, that he was contravening this obligation by acting as he did with his clients and with NBI/CASB. In spite of this, he decided to disregard it, and he did so knowingly.

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[10] See *supra*, pars. 24 to 27.

[11] *Re Dennis* [2011] IIROC No.39, par. 10.

¶ 44 The Respondent was an experienced investment representative, with already 17 years of service in the industry when the material period began. He had to be familiar with with the IDA and IIROC rules that governed the outside business activities of a representative, and with the regulatory limits on his right to receive, for a securities transaction executed on behalf of the dealer that employs him, a remuneration or a consideration from a person other than this dealer (or an affiliate or related company).

¶ 45 DS' written policies and supervision procedures effectively stated these rules, and their revision was moreover the object of repeated reminders to the firm's representatives between 2005 and 2010, and to the Respondent among them.

¶ 46 The Respondent latter even signed and submitted to his employer, year after year during the material period, annual confirmations, in which he attested that he was in compliance with these rules. He did so falsely.

¶ 47 To this Hearing Panel, it was therefore clear that, with his employer DS, the Respondent had chosen lies and deceit over transparency, thus aggravating the seriousness of his misconduct.

Mitigating factors

¶ 48 Since he started in the securities industry in 1987, Respondent has had no disciplinary record other than the current matter, be it with the IDA or IIROC.

¶ 49 The Respondent has not been the object of any customer complaint relative to the doings that are the subject of the Settlement Agreement. In fact, these are victimless actions that did not cause any substantial financial losses.

¶ 50 After his initial misconduct with the compliance officers at his previous firm, the Respondent amended his behaviour and cooperated fully with Staff of IIROC when he was asked for his assistance or for information as part of the investigation initiated in his regard. He was notably diligent in providing the documentation requested of him relative to the offshore institutions, over which IIROC, as a private Canadian organization, had no direct jurisdiction. He must be given credit for this attitude, which has aided in reaching the Settlement Agreement before us.

¶ 51 In negotiating this agreement, the Respondent acknowledged his misconduct, which was a positive sign worthy of consideration in our mind. As the Guidelines state, with good reason, the earlier the wrongdoing is admitted and remorse is expressed, the more it must be seen as a convincing sign that the remorse is real.

¶ 52 In addition, we estimated that the acknowledgment of responsibility by the Respondent had facilitated the disciplinary process and reduced the costs ultimately borne in this regard by the IIROC members.

¶ 53 The Hearing Panel also took note that the remuneration derived by the Respondent from committing the violations, an amount of $10,724, was insignificant in proportion to the total assets under his management at the time, which were worth approximately $45 million, according to the representations made at the hearing.

¶ 54 On the subject of voluntary rehabilitation, the Respondent has taken the Conduct and Practices Handbook Course. He has also been under close supervision by his new employer Mackie since November 2011. Counsel for IIROC has confirmed that, throughout this period, his conduct has been irreproachable.

¶ 55 Moreover, the Hearing Panel has taken into account the fact that following his dismissal by DS, the Respondent was unemployed for nearly a month, in addition to losing a substantial portion of his clientele and his managed assets.

¶ 56 At the hearing, finally, it was confirmed to us that his dismissal was reported in several newspapers. While not a deciding factor, we thought it was worth some consideration.

¶ 57 This kind of publicity is already, in itself, a penalty from the standpoint of a financial services provider's reputation with his clients.

¶ 58 It also serves the general aims of IIROC's disciplinary process with regard to the protection of the investing public. By making an example of an investment advisor who is dismissed for professional misconduct, this publicity tends to strengthen the deterrent effect of the disciplinary penalties for all regulated

participants, and to maintain the public trust in the quality of the prevailing standards of ethics and conduct in the investment industry.

Sanctions

¶ 59 On the subject of sanctions, we noted, as regards the fines agreed between the parties, that sections 3.6 (*Discretionary Trading)* and 3.10 (*Outside Business Activities*) of the Guidelines recommend a minimum fine of $5,000, and $10,000 respectively, for infractions similar to those covered by the Settlement Agreement.

¶ 60 From this, the Hearing Panel concluded that, with respect to the facts in admission, the fines provided in the Settlement Agreement – $10,000 for count 1 (failure to disclose outside business activities and exercising a form of authority over accounts, off book and without the knowledge of DS) were compatible with the guidelines. Moreover, the imposition of a $10,000 fine for count 2 (remuneration by a person other than one's employer in regard to securities-related activities) was in this same vein and seemed reasonable to us as well.

¶ 61 The $20,000 in aggregate fines do not represent a departure from the precedents invoked before us (*Masour, Paziuk, Arapis, Dalpé et Milette,* and *Raby*) and in our opinion fully address the situation described to us.

¶ 62 With regard to count 3 (false statements to the employer) the parties agreed on a one-month suspension of the Respondent from approval in any capacity within the investment industry.

¶ 63 Our Hearing Panel noted that par. 4.2 of the Guidelines' *General Principles* list five factors that might justify such a suspension of approval.

¶ 64 Of these five factors, three might be deemed applicable in the Respondent's case: (i) there have been numerous serious transgressions; (ii) there has been a pattern of misconduct; and (iii) the misconduct in question has caused some measure of harm to the integrity of the securities industry as a whole.

¶ 65 Basing itself on these criteria, the Hearing Panel concluded that in the circumstances of the Respondent's case and with regard to some of the precedents that were cited to us (*White*, *Lamontagne, Warkentein*, *Gunderson*), the one-month suspension from approval in any capacity was a reasonably adequate disciplinary measure.

¶ 66 The Hearing Panel saw no objection to the agreed suspension being served between June 14 and July 13, 2014, this delay arising from a concern to protect the best interests of the clients without in so doing affecting the credibility of IIROC's disciplinary process.

¶ 67 Furthermore, disgorgement of the $10,724 in commissions is an additional penalty which seems entirely justified to us.

¶ 68 First of all, it is recommended in each of paragraphs 3.6 (*Discretionary Trading)*, *3*.10 (*Outside Business Activities*) and 5.5 (*Misrepresentations)* of the Guidelines, and is supported by the case law invoked (*Mansour*, *Arapis*, *Dalpé et Millette*, and *Raby*).

¶ 69 The Hearing Panel also estimated that regardless of the scope of the commission amounts in question, the fact remained that by contravening rules aimed at ensuring that his conduct was suitable and unlikely to cause harm to the public, the Respondent had enriched himself with commissions that he kept secret for many years.

¶ 70 It is therefore in the name of elementary justice and fairness to the other advisors or representatives who do follow the rules, that the Settlement Agreement could not allow the Respondent to keep this amount and demanded restitution.

¶ 71 Ordering costs in the amount of $5,000 also seemed reasonable to us in light of the precedents that were cited (*Mansour*, *Paziuk*, *Arapis*, and *Raby*).

¶ 72 Finally, our Hearing Panel estimated that it was justifiable that the Settlement Agreement not suggest subjecting Respondent's reapproval to an additional period of strict supervision, nor to the obligation to retake the Conduct and Practices Handbook Course and Exam. In our eyes, this would have been superfluous.

Conclusions

¶ 73 For all these reasons, we are the opinion that the penalties agreed upon in the Settlement Agreement in every respect satisfy the criteria of fairness and reasonable appropriateness that would permit us to accept the settlement.

¶ 74 Consequently, we allow the joint recommendation of the parties and accept the Settlement Agreement before us.

NOW THEREFORE, THE HEARING PANEL:

¶ 75 **REITERATES ITS DECISION TO ACCEPT,** effective February 18, 2014, the Settlement Agreement appended to this decision, as amended at the hearing, and notably assesses the following penalties against the Respondent:

1) a fine of $20,000, representing $10,000 for the first count and $10,000 for the second count;
2) disgorgement of the sum of $10,724, representing the fees collected between 2004 and 2010 in the perpetration of the violations;
3) imposition of a one-month suspension from approval in any capacity with IIROC, effective from June 14, 2014 to July 13, 2014; and
4) costs in the amount of $5,000, applicable to the costs incurred by IIROC in the course of this matter.

Montréal, this 15th day of April, 2014.

Gilles Archambault, Panel Member

Jean Élie, Panel Member

Jean Martel, Chair

SCHEDULE

SETTLEMENT AGREEMENT

INVESTMENT INDUSTRY

REGULATORY ORGANIZATION OF CANADA

IN THE MATTER OF:

THE RULES OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)

AND

THE BY-LAWS OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA (IDA)

AND

DANIEL DUBOIS

SETTLEMENT AGREEMENT

I. BACKGROUND

1. The Enforcement Staff of IIROC and the Respondent, Daniel Dubois, consent and agree to the settlement of these matters by way of this settlement agreement ("the Settlement Agreement");
2. The Enforcement Department of IIROC has conducted an investigation ("the Investigation") into the

conduct of Daniel Dubois;

3. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada and Market Regulation Services Inc. Pursuant to the Administrative and Regulatory Services Agreement between IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions.
4. The Respondent consents and agrees to be subject to IIROC's jurisdiction;
5. The Investigation disclosed matters for which the Respondent may be disciplined by a Hearing Panel appointed pursuant to Part C of Schedule C.1 to Transition Rule No. 1 of IIROC (the Hearing Panel).

II. JOINT SETTLEMENT RECOMMENDATION

6. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement;
7. The Respondent, after receiving various explanations from IIROC Staff members, admits to the following contraventions of the Rules, Guidance, Regulations or Policies of IIROC's Dealer Members:
   1) Between July 2004 and October 2011, the Respondent failed to observe high standards of ethics and conduct and engaged in business practice unbecoming in the transaction of his activities, in that he:
      a. did not adequately and completely disclose all of his outside business activities to his employer;
      b. held authorizations to trade and exercised a form of authority over the accounts of certain of his clients, off book and without the knowledge of his employer;

      contrary to Dealer Member Rule 29.1 (IDA By-law 29.1 prior to June 1, 2008).
   2) Between July 2004 and October 2011, Respondent accepted remuneration and/or a consideration from a person other than his employer in regard to securities-related activities that he performed for this person, contrary to IIROC Rule 18.15 (IDA By-Law 18.15 prior to June 1, 2008).
   3) On October 31 and November 1, 2011, the Respondent failed to observe high standards of ethics and conduct and engaged in conduct unbecoming and potentially detrimental to the public interest in that he misled and/or lied to his employer when questioned about the activities described above under counts 1 and 2, contrary to IIROC Dealer Member Rule 29.1.
8. Staff and the Respondent have accepted the following terms of settlement:
   a. an aggregate fine in the amount of $20,000: $10,000 on count 1 and $10,000 on count 2;
   b. Disgorgement of $10,724 representing the fees collected between 2004 and 2010;
   c. A one-month suspension of approval in any capacity;
   d. A 12-month period of close supervision once the suspension is lifted.
9. The Respondent agrees to pay IIROC costs in the amount of $5,000.

III. STATEMENT OF FACTS

(i) Acknowledgment

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

(ii) Factual Background

11. The Respondent, between 2004 and 2011, while he was in the employ of Desjardins Securities Inc. (DS), acted as investment advisor for five (5) of his clients in respect of accounts held by the latter with Crédit Agricole Suisse Bahamas (CASB) (formerly "National Bank International" or NBI), off book and without the knowledge of DS;
12. Respondent would give NBI/CASB instructions to execute trades in the offshore accounts of these five

(5) clients pursuant to authorizations to trade granted him by his clients;

13. Since 2004, Respondent received $10,724 directly as remuneration and/or consideration for trades effected in these offshore accounts on behalf of his clients, which amounts were paid to him via a personal deposit account that he held with NBI/CASB until June 2009 and, subsequently by cheque made payable to his order and sent care of his name, all without informing his employer DS;

14. According to the Respondent, when he was hired in June 2004, he allegedly informed the DS representative in charge of hiring that he held a certain number of offshore accounts, without the DS representative ever specifically asking him to close them or to reveal their nature to DS. On the basis of this summary disclosure and the absence of specific instructions from the DS representative on that occasion, the Respondent wrongly believed that he did not, in future, have to report to DS about his outside business activities in connection with these offshore accounts;

15. When the DS Compliance Department met with him on October 31 and November 1, 2011, the Respondent falsely indicated several times that he had never received commissions or any other form of remuneration for the trading effected in his clients' offshore accounts, in addition to falsely denying that he had held a personal offshore account with NBI/CASB;

The representative Daniel Dubois (the Respondent)

16. Respondent was employed with DS from 2004 to 2011;

17. Since November 2011, Respondent has been employed with Mackie Research Capital Corporation (Mackie) and is subject to close supervision;

18. At all material times, Respondent was in the employ of DS;

19. On June 1, 2008, Respondent became a registrant of IIROC;

20. On November 3, 2011, DS dismissed the Respondent for undisclosed outside business activities involving offshore accounts held by some of his clients with NBI/CASB;

Mr. Dubois' outside business activities

21. It appears that in the job he held prior to being hired by DS, Respondent managed offshore trading accounts for those of his clients who requested it, in an open process with his employer at the time, but these transactions were off book after he was hired by DS in July 2004;

22. This management service was performed in the same way as for the accounts held here in Québec, with the difference that the consideration and/or commissions were deposited to a personal account opened in the Respondent's name at NBI/CASB;

23. The Investigation revealed that, between 2004 and 2011, Respondent had managed five (5) client accounts at NBI/CASB;

24. In the context of managing these offshore accounts, Respondent held an authorization to trade with NBI/CASB for each of these accounts, without DS being informed of these authorizations to trade.

Contravention 1: Incomplete and inadequate disclosure of outside business activities and trading authorizations

25. By virtue of the applicable legislation, as well as the internal policies and procedures of DS, Respondent was required to make full disclosure to DS of the extent of him his outside business activities, and obtain written approval from DS in order to continue these activities;

26. By not adequately disclosing the relevant information concerning the clients with offshore accounts, Respondent was preventing DS from performing the monitoring of client accounts required by the applicable legislation;

27. During the years he was employed with DS, Respondent had many opportunities to disclose his outside

business activities to his employer, which he neglected or omitted to do until his dismissal in November 2011;

28. In this regard, as of 2005, DS updated and implemented numerous compliance policies and procedures, specifying the disclosure obligations incumbent on investment advisors in respect of this type of activity;

29. Notably, DS introduced a code of ethics and a compliance manual in 2005, and completed a revision of its policy on outside business activities in 2010;

30. These measures were communicated to all DS advisors; in fact, the compliance manual was the subject of a special presentation, which Respondent confirmed having attended;

31. Certain of these measures were also the subject of reminders from the Compliance Department, notably the revised policy on outside business activities, in the form of information bulletins emailed to the DS advisors, including the Respondent;

32. In spite of all these measures and the applicable legislation, Respondent never altered his way of doing things or raised any questions about offshore client accounts;

33. Every year from 2005 to 2011, as part of annual compliance confirmations, Respondent confirmed that he had read the DS code of ethics, and the compliance manual which mention the obligations incumbent on the advisor to disclose this type of outside business activity as well as any brokerage accounts over which the advisor exercises a form of authority;

34. While acting as he did, Respondent came to understand that he had failed to observe high standards of ethics and professional conduct and was engaging in business conduct and practice unbecoming in the transaction of his activities;

35. His failure to adequately disclose to DS his activities with NBI/CASB notwithstanding, Respondent could not accept remuneration or any form of consideration for these activities;

36. Indeed, the applicable legislation prohibits a registered representative from receiving, directly or indirectly, any form of remuneration for securities-related activities, unless that remuneration comes from the dealer member with which he is employed;

37. Between 2004 and 2009, the Respondent accepted $10,274 in commissions paid to his personal NBI/CASB account in return for professional investment services rendered to his clients who held offshore accounts with NBI/CASB, off book and without the knowledge of DS;

38. Though the type of remuneration may have varied during this period, Respondent consistently received a consideration for the trades he executed on behalf of his clients in their offshore accounts, without informing DS;

39. The Respondent, in agreeing to have a consideration paid to his personal NBI/CASB account, had to know that he was accepting remuneration that was not provided by DS;

40. As of June 2009, Respondent closed his personal account with NBI/CASB and asked the latter to send him his remuneration in the form of cheques.

Contravention 3: False statements to his employer

41. When DS discovered the Respondent's involvement in undisclosed outside business activities, the latter was called to two (2) interviews with the DS Compliance Department;

42. In the course of these interviews, the representatives of the DS Compliance Department asked the Respondent several times whether he had received remuneration or some other form of consideration relative to his management or activities in connection with his clients' offshore accounts with NBI/CASB;

43. Over the course of the two interviews conducted by the DS Compliance Department, Respondent

denied at least six (6) times having received remuneration for activities relating to his clients' offshore accounts;

44. What's more, Respondent denied having held a personal investment account with NBI/CASB, whereas he held a personal deposit account from 2004 until June 2009, to which $10,724 in remuneration was deposited pursuant to his activities in his clients' accounts;

45. Respondent's clients have not filed any complaints respecting his actions.

IV. TERMS OF SETTLEMENT

46. This settlement is agreed upon in accordance with IIROC Dealer Member Rules 20.35 to 20.40 inclusive, and Rule 15 of the Dealer Member Rules of Practice and Procedure.

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

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

49. 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.

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

51. 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.

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

53. 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.

54. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.

55. 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 Laval, in the Province Québec, this 22nd of January, 2014.

« Witness »

Witness

« Daniel Dubois »

Daniel Dubois - Respondent

Agreed to by Staff, at the City of Montréal, in the Province of Québec, this 29th day of January, 2014.

Linda Vachet

« Linda Vachet »

Witness

« Martin Hovington »

Me Martin Hovington

Enforcement Counsel, on behalf of Staff of IIROC