

# Re Industrial Alliance Securities

IN THE MATTER OF:

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

**and**

**Industrial Alliance Securities Inc.**

2014 IIROC 57

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

Heard: November 4, 2014 in Toronto, Ontario

Decision: November 4, 2014

Decision Released: November 18, 2014

## **Hearing Panel:**

Paul M. Moore, Q.C., Chair, Selwyn Kossuth and David Lang

## **Appearances:**

Senior Enforcement Counsel, Charles Corlett

Respondent's Counsel, David DiPaolo

Also in attendance as an officer of the Respondent, Mr. Legault

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## **REASONS FOR APPROVAL OF SETTLEMENT AGREEMENT**

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### Background

¶ 1 The Settlement Agreement in this matter was accepted by the hearing panel and approved as being in the public interest at the hearing on November 4, 2014.

¶ 2 The chair of the panel delivered oral reasons for the decision at the end of the hearing and agreed to provide an edited copy of the transcript of the reasons to serve as a public record of the decision.

### Decision of the panel

#### THE CHAIR:

¶ 3 We find that the Settlement Agreement is acceptable and we approve it as being in the public interest.

¶ 4 The reasons we find it acceptable are the following.

¶ 5 As counsel indicated, this was a one-off violation of the policy and rules of IIROC with respect to maintaining and operating a supervision system. It does not indicate that there's a systemic problem with the supervision system of the Respondent. It deals with one representative in one location and a specific commission-sharing arrangement.

¶ 6 As pointed out by counsel for the Respondent, there is no policy of IIROC that prohibits commission sharing, especially in situations such as buying out a book of business.

¶ 7 There is no evidence of client harm.

¶ 8 The risk to the public from the situation terminated when the commission-sharing arrangements were

terminated in February 2012. Accordingly, there is no possibility of ongoing risk and harm to the investing public from this situation.

¶ 9 The rule that we follow in approving settlement agreements is to be satisfied that if there is a violation, as we determined there was in this case, the penalties agreed to are appropriate; and by appropriate is meant that they fall within the parameters of acceptability.

¶ 10 Staff counsel pointed out that there are a variety of cases where the penalties may be closer to the minimum suggested in the penalty guidelines of IIROC and ranging on up.

¶ 11 He referred us to *Re Byron Capital Markets, [2014] IIROC No.22* (a settlement agreement case) where the agreed penalty was at the very low end of acceptability and some other cases where one-off situations were at issue.

¶ 12 We are satisfied as a panel that the \$50,000 fine that has been agreed in the Settlement Agreement before us, plus costs of \$7,500, are within the acceptable range, and, for that reason, we do not have a problem in accepting this Settlement Agreement.

¶ 13 This Settlement Agreement is important. Commission-splitting arrangements are inherently fraught with potential risks.

¶ 14 In this particular case, there were red flags that went up all over the place. Those red flags are indicated in the various paragraphs of the Settlement Agreement where the agreed facts are laid out.

¶ 15 There was no adequate due diligence by the Respondent.

¶ 16 Adequate due diligence is measured by what is reasonable in the circumstances of a particular fact situation. In this case, independent inquiry by the Respondent was necessary. It was not sufficient for Industrial Alliance to just call the registered representative or Mr. Vitug and ask, "Is everything in order?" There was need for independent inquiry and none took place.

¶ 17 As a consequence of inadequate due diligence by the Respondent, the following situation continued.

¶ 18 Mr. Vitug and the Respondent's registered representative, who was a long-time former associate and employee of Mr. Vitug, shared the same reception area and had offices in the same complex; the registered representative dealt with Mr. Vitug's former clients; and Mr. Vitug continued to deal with those clients on insurance and other matters not under the purview of IIROC; however, Mr. Vitug also was dealing in securities matters with those former clients, as he should not have done because Mr. Vitug had been banned from the securities industry for previous violations that were serious in nature.

¶ 19 For all these reasons, this was a serious case.

¶ 20 However, Industrial Alliance did take action when it discovered that Mr. Vitug was dealing in securities with the registered representative's clients. It terminated the arrangements with Mr. Vitug. It did not let its negligence go on. That is to its credit.

¶ 21 Had there been evidence of client harm; had Industrial Alliance not terminated the relationship; had Industrial Alliance not taken this matter seriously; and had this not been an isolated incident, we may well have had more difficulty in accepting this Settlement Agreement.

¶ 22 This case is an important precedent as a warning to the industry to exercise due diligence by making independent inquiries whenever there is an arrangement such as that which existed in this case.

MR. KOSSUTH:

¶ 23 I concur with the reasons of the chair.

¶ 24 The amount of the fine was the deciding factor. Having listened to both counsel, I can accept the \$50,000 amount as a very reasonable settlement.

MR. LANG:

¶ 25 I endorse the remarks of my fellow panelists.

Dated at Toronto, this 18<sup>th</sup> day of November, 2014.

Paul M. Moore, Q.C.

Selwyn Kossuth

David Lang

## **SETTLEMENT AGREEMENT**

### **I. INTRODUCTION**

1. IIROC Enforcement Staff (“Staff”) and the Respondent, Industrial Alliance Securities Inc. (“Industrial Alliance”), consent and agree to the settlement of this matter by way of this agreement (the “Settlement Agreement”).
2. The Enforcement Department of IIROC has conducted an investigation (“the Investigation”) into the conduct of the Respondent.
3. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC 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 IIROC Dealer Member Rules, Guidelines, Regulations or Policies:

Between October 2010 and February 2012, Industrial Alliance failed to adequately supervise the activities of one of its Registered Representatives, contrary to Dealer Member Rules 38.1 and 2500.

6. Staff and the Respondent agree to the following terms of settlement:
  - a) a fine of \$50,000.
7. The Respondent agrees to pay costs to IIROC in the sum of \$7,500.

### **III. 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**

#### **Overview**

9. Effective on or about August 12, 2010, Julius Caesar Philip Vitug (“Vitug”) was fined \$350,000, ordered to pay costs of \$80,000, and permanently barred from approval with IIROC. These sanctions were the result of an IIROC hearing panel decision dated March 31, 2009, in which he was found to have engaged in conduct unbecoming or detrimental to the public interest while employed at Macquarie Private Wealth Inc. (“Macquarie”), as a result of undisclosed financial interests and undisclosed financial dealings in the accounts of two of his clients held at another member firm.
10. Industrial Alliance had been actively recruiting Vitug since June 2009. During the recruitment process, Industrial Alliance became aware that Vitug was the subject of IIROC disciplinary proceedings.

Subsequently, Industrial Alliance became aware that Vitug had been sanctioned in those proceedings.

11. In August 2010, Vitug advised Industrial Alliance that his appeal of IIROC's disciplinary sanction had failed. He informed them that Diane Jean Kunicyn ("Kunicyn"), his long-time assistant, would be taking over responsibility for his book of business at Macquarie.
12. Shortly thereafter, Kunicyn, Vitug and Industrial Alliance agreed that Kunicyn would move to Industrial Alliance. Kunicyn began working at Industrial Alliance on October 19, 2010 in a principal/agent relationship. The bulk of her clients were Vitug's former clients transferred from Macquarie to Industrial Alliance.
13. Kunicyn rented an office in the same business centre as Vitug which had a common reception area.
14. Industrial Alliance, Kunicyn and Vitug entered into an arrangement whereby Kunicyn would pay Vitug for Vitug's book of business by directing that half of all commission revenues she earned from Industrial Alliance be shared with a numbered company controlled by Vitug on the basis that he was licensed to sell insurance (the "Commission Sharing Agreement").
15. In the circumstances, Industrial Alliance failed to meet its supervision obligations. In particular, Industrial Alliance:
  - (i) relied on Vitug's and Kunicyn's verbal assurances that Vitug would not continue to advise his former clients; and
  - (ii) failed to adequately address the risks associated with Kunicyn's longstanding and continuing relationship with Vitug and the entering into of the Commission Sharing Agreement.

#### **The Commission Sharing Agreement with Vitug**

16. In November 2010, Kunicyn requested that Industrial Alliance finalize the Commission Sharing Agreement with Vitug's numbered company so that she could begin repaying Vitug for his book of business. The Commission Sharing Agreement was effective from Kunicyn's start date at Industrial Alliance.
17. In or around December 2010, the Commission Sharing Agreement was executed between Industrial Alliance and Vitug's numbered company.
18. Under the terms of the Commission Sharing Agreement, Vitug's numbered company was entitled to a 50% share of Kunicyn's net commissions for all securities-related activity carried out by Vitug's former clients.
19. Standard client disclosure forms disclosing the Commission Sharing Agreement were executed by Kunicyn's clients between December 2010 and January 2011.
20. The disclosure form identified that Industrial Alliance had entered into a referral arrangement with a numbered company and that the numbered company was engaged in the business of "insurance."
21. According to Kunicyn, the purpose of the Commission Sharing Agreement was to pay Vitug for his book of business. This is consistent with the understanding of Industrial Alliance at the time. Industrial Alliance was not made aware of the total amount of consideration to be paid by Kunicyn to acquire the book of business from Vitug.
22. Vitug received his first commission payment under the Commission Sharing Agreement in late December 2010. Between December 2010 and February 2012, Vitug received approximately \$193,000 in payments pursuant to the Commission Sharing Agreement.

#### **Compliance Issues**

23. In December 2010, the then President and Vice-President of Industrial Alliance arranged a telephone conference call with Kunicyn and a senior representative of Industrial Alliance. Vitug was asked to join the call as the compliance department had questioned whether he had any ongoing role in dealing with

clients. During the call, the President asked Vitug for his assurance that only Kunicyn would speak to clients about their accounts. Vitug confirmed verbally that he was not advising clients of Industrial Alliance with respect to their accounts and would not act as the agent of the clients in dealing with Kunicyn.

24. In early February 2011, Industrial Alliance became concerned about the number of unsolicited client trades in speculative stocks executed by Kunicyn for her clients.
25. In order to address this issue Industrial Alliance required all clients engaging in the unsolicited trading to execute an acknowledgment confirming the trades were unsolicited and that they were speculative and high risk.
26. In March 2011, Staff made inquiries about Kunicyn's role at Industrial Alliance, after having learned of the existence of the Commission Sharing Agreement, that the majority of Vitug's former clients were now Kunicyn's responsibility and that she was working in a sub-branch as the only registrant.
27. In October 2011, Kunicyn confirmed to Staff that she had been sharing office premises with Vitug since she began working at Industrial Alliance.
28. Kunicyn's agency agreement was terminated by Industrial Alliance in February 2012.

#### **Respondent's Position**

29. Industrial Alliance has no knowledge of Vitug engaging in the business of, or holding himself out as engaging in the business of, advising his former clients in securities related activities during the relevant period.

#### **IV. TERMS OF SETTLEMENT**

30. 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.
31. The Settlement Agreement is subject to acceptance by the Hearing Panel.
32. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
33. 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.
34. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives its right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
35. 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.
36. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
37. 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.
38. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
39. 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 “Montreal” in the Province of “Quebec”, this “7<sup>th</sup>” day of October, 2014.

**“Witness”**

**“Richard Legault”**

**PRESIDENT**

**AGREED TO** by Staff at the City of Toronto in the Province of Ontario, this 30th day of September, 2014.

**“Witness”**

**“Charles Corlett”**

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 4th day of November, 2014, by the following  
Hearing Panel:

Per: “Paul Moore”

Panel Chair

Per: “Selwyn Kossuth”

Panel Member

Per: “David Lang”

Panel Member

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