

Re Malley

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

Brian Andrew Malley

and

Christine Marie Malley

2014 IIROC 29

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

Heard March 3, 2014 in Edmonton, Alberta
Reasons for Decision: June 25, 2014

Hearing Panel:

Alan V.M. Beattie, Q.C., Chair, Neil Murphy and William Welton

Appearances:

David McLellan - Senior Enforcement Counsel for IIROC

The Respondents, Brian Andrew Malley and Christine Marie Malley did not attend, nor did Counsel on their behalf

REASONS FOR DECISION ON THE MERITS DECISION AND REASONS FOR DECISION ON PENALTIES

1. INTRODUCTION

¶ 1 Brian Andrew Malley and Christine Marie Malley (“the Respondents”), by Notice of Motion, supported by an Affidavit, both dated January 15, 2014, sought a stay of the IIROC disciplinary proceedings pending the final determination of criminal proceedings against Brian Malley. The criminal proceedings are scheduled to take place from January 26 to March 6, 2015.

¶ 2 A hearing was conducted in Edmonton on January 30, 2014, regarding the application for a stay of the disciplinary proceedings, with written submissions and oral arguments made by both Counsel to the Panel. At the conclusion of the arguments, after a caucus, the Panel advised that, by unanimous decision, the application for a stay of proceedings was dismissed, with written reasons to follow. The written Reasons for Decision were issued on February 24, 2014.

¶ 3 Brian Malley was charged, on May 26, 2012 with first degree murder and two related charges, in

relation to the death of VS who had been a client of Brian Malley at the Red Deer, Alberta branch office of Assante Capital Management Inc. (“Assante”).

¶ 4 On May 30, 2012, staff of IIROC (“Staff”) commenced an investigation into the conduct of Brian Malley as a Registered Representative and of Christine Malley, his supervisor and Branch Manager. Christine Malley is the wife of Brian Malley. Staff issued a Notice of Hearing dated November 6, 2013, alleging misconduct against the Respondents. The Notice of Hearing alleged that the Respondents had failed to cooperate with IIROC in its investigation. The allegations of misconduct against Brian Malley (summarized) were failure to know your client (12 clients), unsuitable trading recommendations (10 clients) and improper discretionary trading (7 clients). The allegation of misconduct against Christine Malley was that she failed to exercise her supervisory responsibilities with respect to the accounts of 12 clients. The Notice of Hearing does not contain allegations of misconduct concerning the handling by Brian Malley of the accounts of VS.

¶ 5 The Respondents refused to attend interviews arranged by IIROC and advised, through Counsel, that they intended to seek a stay of the IIROC proceedings against them pending the conclusion of the criminal proceedings against Brian Malley. Counsel for the Respondents advised, at the Hearing on the stay, that the Respondents are prepared to cooperate with IIROC once the criminal proceedings are finalized. IIROC Counsel advised, at that Hearing, that Staff had offered to not ask the Respondents, in the interviews, any questions regarding VS but the Respondents rejected the offer and refused to attend interviews. The Respondents have not filed a Response to the Notice of Hearing.

¶ 6 Some or all of the investors who are the persons to which the allegations of misconduct against the Respondents relate, and others, have commenced civil claims against the Respondents and Assante (Court of Queen’s Bench of Alberta file number 1210 001029); there is an application to have those proceedings certified as a class action. An application was made in that action by the Malleys to have those actions stayed pending disposition of the criminal proceedings. The application was dismissed, apparently without written reasons, in an Order of Associate Chief Justice Rooke dated June 4, 2013, which also dealt with confidentiality issues.

¶ 7 The present Hearing on the merits and penalties, was scheduled for March 3, 4 and 5, 2014, in Edmonton. Prior to the Hearing, Counsel for the Respondents advised that the Respondents, and Counsel, would not be attending this Hearing.

2. NOTICE OF HEARING

¶ 8 The following is the Notice of Hearing dated November 6, 2013:

THE PURPOSE OF THE HEARING is to determine whether the Respondent, Brian Andrew Malley and the Respondent, Christine Marie Malley committed the following contraventions that are alleged by the Staff of IIROC (“Staff”):

Brian Andrew Malley (“Malley”)

1. Since November, 2012, Malley has failed to cooperate with an IIROC investigation, contrary to Dealer Member Rule 19.5;
2. Between approximately 2005 and 2012, Malley failed to use due diligence to learn and remain informed of the essential facts relative to twelve (12) clients, contrary to IIROC Rule 1300.1(a) [IDA Regulation 1300.1(a) prior to June 1, 2008];
3. Between approximately 2008 and 2012, Malley made investment recommendations that were unsuitable for ten (10) clients, contrary to IIROC Rule 1300.1(q) [IDA Regulation 1300.1(q) prior to June 1, 2008)];
4. Between approximately 2009 and 2012, Malley made discretionary trades in the accounts of seven (7) clients without first having the accounts approved and accepted as discretionary accounts, contrary to IIROC Dealer Member Rule 1300.4.

Christine Marie Malley (“Christine Malley”)

5. Since November, 2012, Christine Malley has failed to cooperate with an IIROC investigation, contrary to Dealer Member Rule 19.5;
6. Between approximately 2005 and 2012, while the Branch Manager at Assante Capital Management Inc., Christine Malley failed to exercise her supervisory responsibilities with respect to the accounts of twelve (12) clients, contrary to IIROC Dealer Member Rules 38.4(a) and 2500 [IDA Regulation 1300.2 and Policy No. 2 prior to June 1, 2008].

PARTICULARS

TAKE FURTHER NOTICE that the following is a summary of the facts alleged and to be relied upon by Staff at the hearing:

Overview

1. Brian Andrew Malley (“Malley”) was a Registered Representative (“RR”) in a sub-branch office of Assante Capital Management Inc. (“Assante”) in Red Deer, Alberta.
2. In May, 2012, Malley was arrested by the RCMP and charged with first degree murder in relation to the death of his client, VS. Thereafter, 54 clients came forward and complained about Malley’s handling of their accounts. Staff focused its investigation on 12 of the complainant clients (“Clients”).
3. Malley failed to know his Clients, many of whom were retired or approaching retirement, and had very little investment knowledge.
4. Malley failed to ensure that his recommendations were suitable for ten (10) of the Clients as he recommended that Clients hold highly concentrated positions in speculative securities such as junior issuers and commodity based leveraged ETFs. In many cases, he recommended that the Clients borrow on margin or against their home equity in order to purchase securities.
5. In addition, he engaged in discretionary trading in the accounts of seven (7) of the Clients, without first having the accounts approved and accepted as discretionary accounts.
6. Many of the Clients suffered substantial losses in their accounts.
7. Christine Malley, who was Malley’s spouse, was the Branch Manager of the sub-branch and Malley’s supervisor. She approved client accounts with inappropriate investment and risk parameters, failed to take the necessary action to prevent Malley from engaging in highly aggressive trading strategies, and failed to undertake any meaningful supervision of Malley with respect to the activities in the Clients’ accounts.
8. Both Malley and Christine Malley refused to attend individually scheduled interviews with Staff, and thus failed to cooperate with a Staff investigation.

Registration History

9. Malley had been a Registered Representative with Assante since November, 2000. He did not have the authority to conduct discretionary trades.
10. Christine Malley had been a Registered Representative with Assante since November, 2000 and a Branch Manager since July, 2001.

Employment Termination

11. On or about May 25, 2012, Assante terminated the employment of Malley. On or about May 28, 2012, Assante terminated the employment of Christine Malley.
12. Neither has worked in a registered capacity for a Member firm since that time.

Complainants

13. Staff reviewed the accounts of VS, which sustained substantial investment losses, and were subject to material withdrawals. However, due to limited information and Staff's inability to interview VS, the allegations herein do not relate to the handling of the accounts of VS and are focused on a sample of complaints received from a number of other clients.
14. IIROC received complaints, directly and indirectly from approximately 54 clients of Malley concerning the management of their accounts.
15. The allegations herein relate to the handling of the accounts of the following 12 complainants (together the "Clients"):
 - a. CP
 - b. DL
 - c. CA
 - d. CH
 - e. SJ/RJ
 - f. WS/KL
 - g. RL
 - h. JK/AK
 - i. DA

A. Allegation - Failure to Cooperate

16. By letters dated May 30 and 31, 2012, Staff advised Malley by written correspondence that he was the subject of an investigation into his conduct as an RR, including but not necessarily limited to, his handling of the accounts of VS.
17. By letters dated May 30 and 31, 2012, Staff advised Christine Malley by written correspondence that she was the subject of an investigation into her supervision of Malley as Branch Manager, including but not necessarily limited to the accounts of VS.
18. On or about October 23, 2012, Staff contacted Malley's legal counsel concerning the scheduling of separate interviews of both Malley and Christine Malley in Edmonton. Both Malley and Christine Malley were represented by the same legal counsel.
19. On or about November 9, 2012, the Malley's legal counsel confirmed by email that both Malley and Christine Malley would attend for interviews on November 28 at 9:00 a.m. and 1:00 p.m. respectively at a specific location in Edmonton.
20. On November 28, 2012, at 9:00 a.m., Staff attended in Edmonton, but Malley failed to appear. Instead, the Malley's legal counsel appeared to advise that neither Malley nor Christine Malley would be appearing. She advised that they would be requesting a stay of any IIROC disciplinary proceedings against them pending the conclusion of criminal proceedings against Brian Malley.
21. On November 30, 2012, legal counsel to the Malleys wrote to Staff to "formally request that the investigation into the conduct of Brian Malley be stayed pending the conclusion of his criminal proceedings."
22. On December 11, 2012, Staff advised legal counsel that it was their view that a stay of administrative proceedings would not be available at the investigative stage, and that it was compelling both Malley and Christine Malley to attend interviews on a date to be determined. It is Staff's position that a stay is not warranted in the circumstances of this case.
23. On January 15, 2013, Staff advised the Malley's legal counsel by written correspondence that it

intended to proceed with the interviews of Malley and Christine Malley, on February 7, 2013 at 9:00 a.m. (Brian Malley) and 1:00 p.m. (Christine Malley) in Edmonton.

24. On February 7, 2013, Staff attended at the stated time and place in Edmonton but again both Malley and Christine Malley failed to appear.
25. Malley's refusal to attend an interview was an attempt to frustrate the investigation by Staff into the matters alleged. As such, his actions constitute a failure to cooperate with an investigation and is contrary to IIROC Dealer Member Rule 19.5.
26. Christine Malley's refusal to attend an interview was an attempt to frustrate the investigation by Staff into the matters alleged. As such, her actions constitute a failure to cooperate with an investigation and is contrary to IIROC Dealer Member Rule 19.5.

B. Allegations against Brian Andrew Malley

Client - CP

(i) Failure to Know Your Client

27. CP was born in 1950. She has a high school education, and has completed a secretarial arts program. She worked in administrative roles at various corrections facilities for a number of years until she retired in 2006.
28. A single parent, she was not in a position to lose money. She had little investment knowledge and relied on Malley for his investment advice and direction. Approximately 85% of her life savings were invested with Malley.
29. She first opened an account with Malley in 2001. During the course of her dealings with Malley, she held a total of four accounts – a margin account; a cash account; an RRSP account and a TFSA account.
30. A July, 2008 NCAF states that she was then 57 years old, had an income of \$15,000 per year, liquid assets of \$490,000, and fixed assets of \$200,000. Her investment knowledge is listed as “good”. Her stated investment objectives were 30% “capital gains – medium term”, and 70% “capital gains – short term”. Her stated risk tolerance parameters were 40% medium and 70% high.
31. By February, 2010, CP was 59 and had fully retired. An NCAF update states that she had an annual income of \$15,000 per year, liquid assets of \$490,000 and a net worth of \$690,000. Her stated investment objectives were 100% “capital gains - short term”, and her stated risk tolerance parameters were 100% high. Her stated investment knowledge remained as “good”.
32. In May, 2012, updates to accounts were made and three additional NCAF's were signed by CP. They state that her income was now \$21,000, her liquid assets were \$300,000 and her net worth was stated to be \$500,000. The investment objective and risk tolerance parameters in all three forms are left blank. Her stated investment knowledge remained as “good”.
33. Despite her age and her 2006 retirement, between 2001, and the final NCAF update in May, 2012, each NCAF update completed for her accounts increased the degree of risk in her accounts.
34. From the period of July, 2008 onward, the stated investment objectives and risk tolerance parameters were far too aggressive for a retired client with limited investment knowledge and income who was looking for safety and security in her investments.
35. As such, the stated investment objectives and risk tolerance parameters were inconsistent with the client's true financial situation, investment knowledge, investment objectives and risk tolerance.

(ii) Suitability

36. Malley recommended that CP purchase a large number of high risk TSX Venture listed issuers, and the holdings in her account were largely comprised of these issuers. In later years, her account also held natural gas leveraged exchange traded funds.
37. In addition, Malley also recommended that CP borrow on margin to finance trades. Between January, 2009 and December, 2011, her margin balance grew from an average of \$7,000 to \$25,000, reaching a high of \$37,000 in June, 2011.
38. Despite the use of margin, CP did not understand that she was borrowing to invest.
39. Between January, 2009 and December, 2011, the actual holdings in CP's accounts were comprised of securities having risk tolerances of approximately 13% low, 46% medium, and 41% high.
40. During this period of review of January, 2009 to December, 2011, CP's accounts achieved a combined increase in value of 17.4%. During the same period, the TSX Composite Index gained 31.2%.
41. These holdings were highly concentrated in speculative holdings and reflected an extremely high degree of risk. As such, these recommendations were not at all suitable for CP in light of her age, employment status, investment knowledge and experience. In addition, the recommended use of margin for CP was not suitable for her circumstances.

(iii) Discretionary Trading

42. During the material time, Malley executed many trades in CP's accounts without confirming the details of all trades with CP prior to their execution.
43. Malley would discuss the performance of certain securities with CP after the fact during occasional in person meetings at this office.
44. During the period of January, 2009 to April, 2012, Malley made 89 trades in CP's accounts. His Maximizer notes do not contain references and/or notations in order to document that he contacted CP to confirm trade details prior to execution of all trades.
45. At no point did Malley obtain CP's written authorization for discretionary trading. CP's accounts were not designated as discretionary by Assante.

Client – DL

(i) Failure to Know Your Client

46. DL was born in 1965 and works as a manager in the oil and gas sector. His formal education was as a forestry technician.
47. In February, 2009, he completed a NCAF which states that his income was \$100,000 per year, with net liquid assets of \$150,000 and fixed assets of \$450,000. His stated investment knowledge is "good". His stated investment objectives were 100% "capital gains – medium term" and his stated risk tolerance was 100% medium.
48. In February, 2011, an updated NCAF increased his stated investment objectives to 100% "growth – short term" and his risk tolerance was increased to 100% high. The annual income, fixed assets, and investment knowledge entries on the form were not completed.
49. DL had limited investment experience and was relying on Malley for investment advice and direction. Approximately 75% of DL's life savings were held in his accounts with Malley.
50. The stated investment objectives and risk tolerance parameters were far too aggressive and were inconsistent with DL's true financial situation, investment knowledge, investment objectives and

risk tolerance.

(ii) Suitability

51. The holdings recommended by Malley for DL's accounts were largely comprised of high risk securities, specifically junior resource issuers and natural gas leveraged exchange traded funds.
52. Between January, 2009 and January, 2012, the actual holdings in DL's accounts were comprised of securities having risk tolerances of approximately 13% low, 2% medium, and 85% high.
53. In the 40 month period ending May 31, 2012, DL experienced a combined loss of \$36,401 in his four accounts. This reflected a loss of 54% of his average invested capital. During the same period, the TSX Composite Index gained approximately 32%.
54. These holdings were highly concentrated in speculative holdings and reflected an extremely high degree of risk. As such, these recommendations were not suitable for DL, an individual in his 40's with limited investment experience who was saving for retirement.

Client - CA

(i) Failure to Know Your Client

55. CA was born in 1947 and works as a cook in an oilfield camp. She had a high school education, and considered her risk tolerance to be low. She believed that an investment in stocks would result in a guaranteed return of between 6% to 10% per year.
56. In April, 2005, at age 58, she completed a NCAF in which her stated income was \$46,000 per year, with net liquid assets of \$35,000 and no fixed assets. The NCAF indicates that she had "good" investment knowledge, with investment objectives of 100% "capital gains – short term" and risk tolerance of 100% high in her margin account. Her RRSP account states that she has investment objectives of 50% "capital gains – medium term", and 50% "capital gains – short term". Her stated risk tolerance parameters were 50% medium and 50% high.
57. There is no record of any NCAF update after the initial form in April, 2005.
58. The funds that CA provided to Malley to invest reflected her entire life savings, and CA was relying on Malley for investment advice and direction.
59. For the period of April, 2005 onward, the stated investment objectives and risk tolerance parameters were far too aggressive for a vulnerable client seeking safe and secure investments. As such, they were inconsistent with the client's true financial situation, investment knowledge, investment objectives and risk tolerance.

(ii) Suitability

60. The holdings recommended by Malley for CA's accounts were largely comprised of high risk securities, specifically junior resource issuers and natural gas leveraged exchange traded funds.
61. Between January, 2009 and January, 2012, the actual holdings in CA's accounts were comprised of securities having risk tolerances of approximately 4% low risk, 38% medium risk, and 58% high risk.
62. In the 40 month period ending May 31, 2012, CA experienced a combined loss of \$15,842 in her two accounts. This reflected a loss of 27% of her average invested capital. During the same period, the TSX Composite Index gained approximately 32%.
63. These holdings were highly concentrated in medium and high risk securities and in addition to the use of leverage, reflected a high degree of risk. As such, these recommendations were not at all suitable for CA, a vulnerable client in her late 50's and early 60's.

(iii) Discretionary Trading

64. During the material time, Malley executed many trades in CA's accounts without confirming the details of all trades with CA prior to their execution.
65. CA would only learn of trades after the fact.
66. During the period of January, 2011 to April, 2012, Malley made 20 short term trades (primarily in commodity leveraged ETF's) in her accounts. His Maximizer notes during this time period do not contain references and/or notations in order to document that he contacted CA to confirm trade details prior to execution of all trades.
67. At no point did Malley obtain CA's written authorization for discretionary trading. CA's accounts were not designated as discretionary by Assante.

Client – CH

(i) Failure to Know Your Client

68. CH was a 60 year old retired farmer when she opened a TFSA account with Malley in 2009. She had a high school education, and was working part time as a bus driver.
69. She did not require income from her investments to fund her living expenses, but she wanted the funds in her account for her daughter after CH died.
70. A July, 2009 NCAF for the TFSA account states that she had an annual income of \$25,000, fixed assets of \$350,000 and liquid assets of \$25,000. Her stated investment knowledge was "average/fair". Her stated investment objectives were "capital gains – short term 100%", and her risk tolerance parameters were 100% high.
71. A January, 2010 NCAF for a cash account included the same information as the earlier TFSA NCAF. However, the new account permitted her to borrow on margin.
72. For the period of July, 2009 onward, the stated investment objectives and risk tolerance parameters were far too aggressive for a semi-retired client in her 60's, and as such they were inconsistent with the client's true financial situation, investment knowledge, investment objectives and risk tolerance.

(ii) Suitability

73. Upon Malley's recommendation, in January, 2010, CH borrowed \$80,000 pursuant to a secured line of credit against his home, and used the loan proceeds to purchase \$75,355 worth of units in a natural gas leveraged exchange traded fund.
74. The holdings recommended by Malley were largely comprised of high risk securities, specifically junior resource issuers and natural gas leveraged exchange traded funds.
75. In the 34 months that Malley managed her accounts, CH suffered a total loss of \$37,342 in her two accounts. This reflected a loss of 49% of her average invested capital. During the same period, the TSX Composite Index gained approximately 5.3%.
76. These holdings were highly concentrated in high risk securities and, in addition to the use of leverage, reflected an extremely high degree of risk. As such, these recommendations were not at all suitable for CH, an unsophisticated 60 year old investor.

(iii) Discretionary Trading

77. During the material time, Malley executed many trades in CH's accounts without confirming the details of all trades with CH prior to their execution.
78. CH would only learn of trades after the fact.
79. During the period of August, 2009 to September, 2011, Malley made 30 short term trades (primarily in commodity leveraged ETF's). His Maximizer notes during this time period contain

just five possible references to trades. The notes do not contain references and/or notations in order to document that he contacted CH to confirm trade details prior to execution of all trades.

80. At no point did Malley obtain CH's written authorization for discretionary trading. CH's accounts were not designated as discretionary by Assante.

Clients - SJ/RJ

(i) Failure to Know Your Client

81. SJ and RJ are a married couple who were both employed as teachers until they retired in 2009 and 2004 respectively. They first opened an Assante account with Malley in 2003.
82. Their most recent NCAF is dated December 2, 2008. At that time, RJ was 60 and had fully retired and SJ was 63 and nearing retirement.
83. The NCAF states that they held liquid assets of \$750,000, fixed assets of \$400,000 and good investment knowledge. Their investment objectives were "capital gains – medium term – 80%" and "capital gains – short term 20%", and their risk parameters were 80% medium and 20% high.
84. The funds held in the accounts with Malley comprised approximately 60-70% of their savings.
85. Neither SJ nor RJ had ever taken any investment courses, and were not experienced investors. They did not require income from their investment accounts to fund living expenses, but they wanted their investments to grow over time and therefore they were willing to take on some degree of risk with certain portions of their accounts.
86. For the period of December, 2008 onward, the stated investment objectives and risk tolerance parameters were too aggressive for a retired couple with little investment experience, and as such were inconsistent with the clients' true financial situation, investment knowledge, investment objectives and risk tolerance.

(ii) Suitability

87. SJ/RJ held both a cash account and a margin account.
88. The holdings recommended by Malley for their accounts were largely comprised of some low to medium risk securities, as well as numerous higher risk junior resource issuers.
89. Between January, 2009 and January, 2011, the holdings in the accounts were comprised of securities having risk tolerances of approximately 15% low risk, 59% medium risk, and 26% high risk.
90. In the final 28 months that Malley managed the accounts, SJ/RJ experienced a combined gain of \$465,000, an increase of 75%. During the same period, the TSX Composite Index gained approximately 59%. The increase reflected the market gains and beneficial timing in transferring out of the accounts.
91. In addition, the margin balance averaged approximately \$67,000 during the relevant period.
92. These holdings were highly concentrated in medium and high risk securities and, combined with the use of leverage, reflected a high degree of risk. As such, these recommendations were not suitable for SJ/RJ, a retired couple with limited investment experience.

Clients – WS/KL

(i) Failure to Know Your Client

93. WS and KL are a married couple who were born in 1949 and 1950 respectively. WS was self-employed in the construction industry and KL worked for the government.

94. WS had a high school diploma, had not taken any investment courses and had little investment knowledge. WS was interested in high risk investments although he wanted to set any profits aside so that only his initial investment was at risk.
95. KL had a college diploma and had little investment knowledge. Despite the stated objectives, she was seeking low to medium risk investments.
96. They first opened Assante accounts with Malley in 2005.
97. A July, 2005 NCAF for WS, then aged 55, states that he had liquid assets of \$6,000, fixed assets of \$98,000 and net worth of \$104,000. His income was \$23,000 per year. His stated investment objectives were 100% “capital gains – short term”, and his stated risk tolerance was 100% high. His investment knowledge was listed as “average/fair”.
98. The July, 2005 NCAF is the only KYC form for WS.
99. A July, 2005 NCAF for KL, then aged 55, states that she had liquid assets of \$5,000, fixed assets of \$90,000 and net worth of \$95,000. Her income was \$67,000 per year. Her stated investment objectives were also 100% “capital gains – short term”, and stated risk tolerance was 100% high. Her investment knowledge was listed as “poor”.
100. NCAF updates for KL’s account occurred in 2006, reducing the investment objectives to 50% “capital gains – medium term”, 50% “capital gains – short term”. However, in August, 2007, the NCAF was changed back to 100% “capital gains – short term”, and risk tolerance of 100% high. KL’s investment knowledge was also changed to “good”. There are no further NCAF updates for KL’s account after August, 2007.
101. For the period of July, 2005 onward, the stated investment objectives and risk tolerance parameters for both WS and KL were far too aggressive for clients nearing retirement age with limited assets and investment knowledge, and as such were inconsistent with their true financial situation, investment knowledge, investment objectives and risk tolerance.

(ii) Suitability

102. The combined value of WS and KL’s accounts was \$72,151 on January 31, 2009. In October, 2010, KL closed her account and moved it to another firm. WS did not move his account as it remained with Malley.
103. Between January, 2009 and June, 2010 (when KL’s account was still with Malley), the number of high risk securities in the accounts comprised at least 66% of the total holdings. After KL closed her account, the number of high risk securities in WS’ account comprised approximately 98% of the total holdings.
104. After accounting for deposits and withdrawals, between January 30, 2009 and May 25, 2012, the value of WS’ account increased by \$4,196, a gain of 13.6%. During the same period, the S&P/TSX index increased by 34.2%.
105. After accounting for deposits and withdrawals, between January 30, 2009 and September 3, 2010, the value of KL’s account decreased by \$12,404, a loss of 30.1%. During the same period, the TSX Composite Index increased by 40.8%.
106. The holdings recommended by Malley for WS and KL’s accounts were largely comprised of high risk securities, specifically junior resource issuers traded on the TSX Venture Exchange.
107. In addition, during the period of review, the margin debt in the accounts ranged from between approximately \$1600 to \$6,000.
108. These holdings were highly concentrated in high risk securities and, in addition to the use of leverage, reflected an extremely high degree of risk. As such, these holdings were not at all suitable for WS and KL, two unsophisticated investors with limited assets and nearing

retirement.

Client – RL

(i) Failure to Know Your Client

109. RL was 67 years old and retired when he first opened an account with Malley in 2009. RL had worked as a camp manager for an oilfield services company for many years prior to retirement. He had a high school education and did not have investment experience.
110. As he was retired, RL relied on his accounts for income. The holdings with Malley reflected nearly his entire life savings.
111. The April, 2009 NCAF for the cash account stated that he had liquid assets of \$300,000, net worth of \$600,000 and an annual income of \$50,000. His stated investment objectives were 80% “capital gains – medium term”, 20% “capital gains – short term”, and his risk tolerance parameters were 80% medium and 20% high risk. His stated investment knowledge was “average/fair”.
112. In January, 2010, the cash account NCAF was updated with the risk tolerance parameters changed to 50% medium and 50% high. All other information remained the same.
113. In September, 2011, the cash account NCAF was again updated with the liquid assets increased to \$425,000 and net worth to \$725,000. The investment objective and risk tolerance portions of the NCAF were left blank.
114. For the period of April, 2009 onward, the stated investment objectives and risk tolerance parameters were too aggressive for a retired client without investment experience, and as such were inconsistent with the client’s true financial situation, investment knowledge, investment objectives and risk tolerance.

(ii) Suitability

115. Upon opening the accounts, RL initially transferred \$269,000 to Assante in May, 2009.
116. On Malley’s recommendation, RL borrowed \$125,000 pursuant to a secured line of credit against his home, with the intention of using these funds to invest in securities.
117. On June 25, 2009, RL deposited \$96,140 from the loan proceeds into his cash account and purchased an equivalent number of units in Enervest Diversified Income Trust (“Enervest”).
118. Between June 30, 2009 and December 31, 2011, the average risk level in the accounts was 3% low risk, 71% medium risk and 26% high risk.
119. During the 35 months that RL held his accounts with Malley, the value of RL’s accounts increased by \$55,121, a gain of 17.8%. During the same period of time, the TSX Composite Index increased 18.5%.
120. The holdings recommended by Malley for RL’s accounts were, apart from the Enervest position, largely comprised of high risk securities, specifically junior resource issuers and crude oil/natural gas leveraged exchange traded funds.
121. These holdings were highly concentrated in medium and high risk securities and, in addition to the use of leverage, reflected an extremely high degree of risk. As such, these recommendations were not at all suitable for RL; an unsophisticated investor in his late 60’s who was retired and dependent on his holdings for income.

(iii) Discretionary Trading

122. During the material time, Malley executed many trades in RL’s accounts without confirming the details of all trades with RL prior to their execution.

123. RL would only learn of trades after the fact.
124. During the period of June, 2009 to December, 2011, Malley made 165 short term trades (primarily in commodity leveraged ETF's). His Maximizer notes during this time period contain 30 possible references to trades. However, the notes do not contain references and/or notations in order to document that he contacted CH to confirm trade details prior to execution of all trades.
125. At no point did Malley obtain RL's written authorization for discretionary trading. RL's accounts were not designated as discretionary by Assante.

Clients - JK/AK

(i) Failure to Know Your Client

126. JK and AK are a married couple who were born in 1947 and 1948 respectively. JK was a local small business owner and had completed 2 years of university. AK worked part time as a nurse.
127. They first opened Assante accounts with Malley in 1996.
128. A December, 2007 NCAF for the couple for the joint cash account states that they had liquid assets of \$1,500,000 and fixed assets of \$3,000,000. Their stated annual income is \$75,000, and they had good investment knowledge. At that time, their investment objectives were 50% "capital gains – medium term", and 50% "capital gains – short term". Their risk tolerance parameters were 50% medium and 50% high.
129. In an April, 2009 NCAF for the joint cash account, all information remained the same as the previous NCAF with the exception of the liquid assets, which had decreased from \$1,500,000 to \$1,200,000.
130. In a May, 2011 NCAF, the couple's stated liquid assets are \$1,300,000, with fixed assets of \$3,600,000. Their stated annual income is now \$100,000. The investment objectives and risk tolerance parameter information is left blank, and their occupation is listed as "retired".
131. Despite the investment objectives and risk tolerance parameters, the amount of high risk securities during the 40 month period of review did not exceed 20% of the total value of the accounts. In addition, the account value did increase in concert with a 56% increase in the TSX Composite Index in 2009 and 2010.
132. Despite the actual holdings reflecting acceptable levels of risk for these clients, the stated investment objectives and risk tolerance parameters included investment objectives of 50% "capital gains – medium term" and a risk tolerance objective of 50% high risk. Such parameters were too aggressive for a retired couple, and as such were inconsistent with the clients' true financial situation, investment knowledge, investment objectives and risk tolerance.

(ii) Discretionary Trading

133. During the material time, Malley executed many trades in JK/AK's accounts without confirming the details of all trades with either JK or AK (as applicable) prior to their execution.
134. They would only learn of trades after the fact.
135. In the 41 month period of review ending May 31, 2012, Malley conducted 143 trades in their accounts.
136. The Maximizer notes maintained by Malley contain 19 possible references to trades. 12 of the notes simply state "client wants to hedge ETF transaction". They do not contain references and/or notations in order to document that he contacted JK or AK to confirm trade details prior to execution of all trades.
137. At no point did Malley obtain written authorization from either JK or AK for discretionary

trading. The accounts were not designated as discretionary by Assante.

Client – DA

(i) Failure to Know Your Client

138. DA was born in 1957 and was employed as a building facilities manager. DA had a high school education, and had very limited investment knowledge.
139. When she opened the accounts in 2005, she advised Malley that she was not a risk taker, and her objective was to save for her expected retirement in 10 to 15 years.
140. A January, 2005 NCAF for a margin account and a registered account states that she had income of \$60,000 per year, liquid assets of \$75,000 and fixed assets of \$230,000.
141. For the margin account, her stated investment objectives were 50% “capital gains – medium term” and 50% “capital gains – short term”. Her risk tolerance parameters were 50% medium and 50% high.
142. Although she had a margin account, she did not understand that margin involved borrowing money.
143. For the registered account, her stated investment objectives were 70% “capital gains – medium term” and 30% “capital gains – short term”. Her risk tolerance parameters were 70% medium and 30% high.
144. In a January, 2012 NCAF, the form contains a client signature and net worth information. However, all other client information has been left blank.
145. For the period from January, 2005 onward, the stated investment objectives and risk tolerance parameters were too aggressive for a client with limited assets and investment experience seeking to save for retirement and as such was inconsistent with the client’s true financial situation, investment knowledge, investment objectives and risk tolerance.

(ii) Suitability

146. Between January 1, 2009 and December 31, 2011, the actual holdings in her accounts (RRSP and margin accounts) were comprised of securities having risk tolerances of 13% low, 50% medium and 37% high risk.
147. The margin debt over period reviewed averaged \$37,481.
148. The higher risk holdings recommended by Malley for DA’s accounts were largely comprised of junior resource issuers and natural gas leveraged exchange traded funds.
149. During the period of review by Staff, the value of DA’s accounts decreased by \$33,398, a loss of 23.8%. During the same period of time, the TSX Composite Index increased 31.2%.
150. These holdings were highly concentrated in medium and high risk securities and, in addition to the use of leverage, reflected an extremely high degree of risk. As such, these recommendations were not at all suitable for DA, an unsophisticated investor who was risk averse and wanting to save for her retirement.

(iii) Discretionary Trading

151. During the material time, Malley executed many trades in DA’s accounts without confirming the details of all trades with her prior to their execution.
152. She would only learn of trades after the fact.
153. During the 41 month period of review of the three accounts by Staff, Malley made 94 trades in the accounts.

154. The Maximizer notes maintained by Malley contain just five possible references to trades. They do not contain references and/or notations in order to document that he contacted DA to confirm trade details prior to execution of all trades.
155. At no point did Malley obtain written authorization from DA for discretionary trading. The accounts were not designated as discretionary by Assante.

C. Allegations against Christine Malley (Supervision)

156. As particularized above, Malley failed to know his Clients, and he failed to ensure that his recommendations were suitable for many of the Clients. In addition, he engaged in discretionary trading in the accounts of many of the Clients without first having the accounts approved and accepted as discretionary accounts.
157. While the circumstances of each complainant vary, in general most of the Clients:
 - (a) were unsophisticated investors;
 - (b) were retired or approaching retirement;
 - (c) had investment objectives and risk tolerance parameters that were inconsistent with their true parameters;
 - (d) held substantial portions of their holdings in high risk securities of small resource issuers and commodity based leveraged exchanged traded funds;
 - (e) were subject to Malley's use of his own discretion in the management of their accounts;
 - (f) had all or substantially all of their liquid assets invested with Malley;
 - (g) often used leverage and were unaware of the risks associated with borrowing to invest;
 - (h) suffered substantial losses in their accounts.
158. Malley was the lead RR in a small sub-branch consisting of himself, Christine Malley, and an administrative assistant. He was supervised at the Tier 1 level by Christine Malley.
159. As Branch Manager, her duties would have included the review and approval of NCAF's and client account updates, the review of daily and monthly trading summary reports as well as the supervision of account activity.
160. Despite these responsibilities, and although she was the Branch Manager and Malley's direct supervisor, she functioned more as an office manager with responsibility for administrative and operations functions than as a supervisor.
161. In addition to approving NCAF's and updates with investment objectives and risk tolerance parameters when it was plain and obvious that they were inconsistent with the Clients' true circumstances, she participated in entering trades on a volume basis when it was apparent that Malley was trading securities in client accounts with discretion.
162. In reviewing daily and monthly trading summary reports, it would have been apparent that Malley was engaging in aggressive trading strategies which were not suitable.
163. In effect, Christine Malley did not conduct any meaningful supervision of Malley in relation to his handling of the Clients' accounts. In particular, her supervisory failures included the following:
 - (a) Approved NCAF's and NCAF updates for the Clients when it was apparent that the stated investment objectives and risk tolerance parameters would have been inconsistent with the Clients' true financial situation, investment knowledge, investment objectives and risk tolerances;

- (b) Allowed and didn't question trading activity in the Clients' accounts which was clearly unsuitable as it frequently included purchases of high risk securities of small resource issuers and commodity based leveraged exchanged traded funds;
- (c) Allowed and didn't question the use of leverage in the accounts of many of the Clients who were retired or approaching retirement;
- (d) Allowed and didn't question his pursuit of a highly aggressive trading strategy which ultimately resulted in substantial losses in most cases;
- (e) Allowed and didn't question his use of discretionary trading when she knew that the accounts were not approved and accepted as discretionary accounts;
- (f) Actively participated with Malley in the processing of large volumes of trades when it was apparent that he was acting on a discretionary basis;
- (g) Failed to maintain documentation to establish that she was conducting daily or monthly reviews; and
- (h) Failed to maintain documentation to establish that she had the necessary supervisory procedures in place.

164. Christine Malley's participation in the actions of Malley, and her failure to take the necessary action to prevent him from engaging in highly aggressive trading strategies, amounted to a complete failure to supervise.

GENERAL PROCEDURAL MATTERS

TAKE FURTHER NOTICE that the hearing and related proceedings shall be subject to the *Rules of Practice and Procedure*.

TAKE FURTHER NOTICE that pursuant to Rule 13.1 of *the Rules of Practice and Procedure*, the Respondent is entitled to attend and be heard, be represented by counsel or an agent, call, examine and cross-examine witnesses, and make submissions to the Hearing Panel at the hearing.

RESPONSE TO NOTICE OF HEARING

TAKE FURTHER NOTICE that each Respondent must serve upon the Staff of IIROC a Response to the Notice of Hearing in accordance with Rule 7 of the Rules of Practice and Procedure within twenty (20) days (for a Standard Track disciplinary proceeding) or within thirty (30) days (for a Complex Track disciplinary proceeding) from the effective date of service of the Notice of Hearing.

FAILURE TO RESPOND OR ATTEND HEARING

TAKE FURTHER NOTICE that if a Respondent fails to serve a Response or attend the hearing, the Hearing Panel may, pursuant to Rules 7.2 and 13.5 of the *Rules of Practice and Procedure*:

- (a) proceed with the hearing as set out in the Notice of Hearing, without further notice to the Respondent;
- (b) accept as proven the facts and contraventions alleged by Staff in the Notice of Hearing; and
- (c) order penalties and costs against a Respondent pursuant to Dealer Member Rules 20.33, 20.34 and 20.49.

PENALTIES & COSTS

TAKE FURTHER NOTICE that if the Hearing Panel concludes that a Respondent did commit any or all of the contraventions alleged by Staff in the Notice of Hearing, the Hearing Panel may, pursuant to Dealer Member Rules 20.33 and 20.34, impose any one or more of the following penalties:

Where a Respondent is/was an Approved Person:

- (a) a reprimand;
- (b) a fine not exceeding the greater of:
 - (i) \$1,000,000 per contravention; and
 - (ii) an amount equal to three times the profit made or loss avoided by such Approved Person by reason of the contravention.
- (c) suspension of approval for any period of time and upon any conditions or terms;
- (d) terms and conditions of continued approval;
- (e) prohibition of approval in any capacity for any period of time;
- (f) termination of the rights and privileges of approval;
- (g) revocation of approval;
- (h) a permanent bar from approval with the IIROC; or
- (i) any other fit remedy or penalty.

Where a Respondent is/was a Dealer Member:

- (a) a reprimand;
- (b) a fine not exceeding the greater of:
 - (i) \$5,000,000 per contravention; and
 - (ii) an amount equal to three times the profit made or loss avoided by the Dealer Member by reason of the contravention;
- (c) suspension of the rights and privileges of the Dealer Member (and such suspension may include a direction to the Dealer Member to cease dealing with the public) for any period of time and upon any conditions or terms;
- (d) terms and conditions of continued Membership;
- (e) termination of the rights and privileges of Membership;
- (f) expulsion of the Dealer Member from membership in the IIROC; or
- (g) any other fit remedy or penalty.

TAKE FURTHER NOTICE that if the Hearing Panel concludes that a Respondent did commit any or all of the contraventions alleged by the Staff in the Notice of Hearing, the Hearing Panel may pursuant to Dealer Member Rule 20.49 assess and order any investigation and prosecution costs determined to be appropriate and reasonable in the circumstances.

THE MERITS

3. SUBMISSIONS OF IIROC

¶ 9 In the absence of the Respondents at the Hearing, the Panel should proceed with the Hearing as provided in Rule 13.5 and accept as proven the facts set out in the Notice of Hearing (above) if the Panel has any reservations about accepting the evidence there are witnesses who are prepared to testify. It is to be recognized that the Respondents did not file Responses to the Notice of Hearing and have failed to cooperate with IIROC in its investigation. Other panels have proceeded in accordance with Rule 13.5.

IIROC re David Bruce Connacher 2011 IIROC 28

I.D.A. re Zygmunt Janiewicz 2006 I.D.A.C.D. No. 3

Re Malley 2014 IIROC 29

4. REASONS FOR DECISION ON THE MERITS

¶ 10 Rule 13.5 of IIROC Rules of Practice and Procedure provide:

13.5 Where Respondent Fails to Attend Disciplinary Hearing

Where a Respondent, having been served with a Notice of Hearing, fails to attend a disciplinary hearing, the Hearing Panel may proceed in the absence of the Respondent and may accept as proven the facts and violations alleged by the Organization in the Notice of Hearing.

Upon making a finding of the violations as alleged in the Notice of Hearing, the Hearing Panel may immediately hear submissions of the Organization regarding an appropriate penalty and may impose such penalty, as it deems appropriate, pursuant to Dealer Member Rule 20.33 and 20.34.

¶ 11 At the Hearing the Panel ruled, and now confirms, that we would proceed in accordance with Rule 13.5 to hear submissions regarding penalty. We are satisfied, as were the panels in the above three cited cases, that we should accept as proven the facts set out in the Notice of Hearing.

THE PENALTIES

5. SUBMISSIONS OF IIROC

¶ 12 The failure of the Malleys to cooperate is obvious, including their failure to attend this Hearing or to have Counsel attend on their behalf. IIROC acknowledges that they have failed to cooperate and failed to attend the Hearing on the advice of Counsel because of the murder charge against Brian Malley. However, it is also recognized that none of the misconduct set out in the Notice of Hearing relates to VS, a client of Brian Malley, and the person regarding whom he is charged with murder. Furthermore, this Panel dismissed an application by the Respondents for a stay of these proceedings. IIROC decisions dealing with failure to cooperate, together with serious misconduct, resulting in permanent bans, are:

IIROC re David Kenneth Smith 2009 IIROC 48

I.D.A. re Trevor Scott Morrison 2009 IIROC 4

¶ 13 Brian Malley committed many serious contraventions including failing to know his clients, investing for them in unsuitable investments, making discretionary trades without authority, recommending and putting in place margin accounts which were not appropriate for the clients and which the clients did not understand, and abusing clients' trust. Most clients suffered substantial losses. Although two of the clients had gains in their portfolios the fact remains that the investments were totally unsuitable for those clients, as well as all the other clients to whom reference has been made in the Notice of Hearing. [The complaints against Brian Malley are summarized in paras. 3-6, 156 and 157 of the Notice of Hearing (pp. above). Brian Malley's misconduct was egregious and warrants the severe disciplinary responses, including permanent prohibition, sought by IIROC. Other decisions (which follow) involving some similar circumstances imposed lengthy suspensions; this case involves misconduct more serious than the offences in those cases. Brian Malley should not be permitted to continue working in the industry.

I.D.A. re Roger Michael Biduk 2013 IIROC 19

IIROC re Randal William Harding 2011 IIROC 65

IIROC re Kenneth Gareau 2011 IIROC 72

IIROC re Melaney Phillips 2011 IIROC 34

IIROC re James Gwilym Jones 2012 IIROC 48

¶ 14 Guidance is also provided by the IIROC Disciplinary Sanction Guidelines.

¶ 15 [The complaints against Christine Malley are summarized at para. 162 of the Notice of Hearing.] She

Re Malley 2014 IIROC 29

was completely aware of the activities of Brian Malley, her husband. He was the only person she had responsibility for supervising and she failed completely in exercising **any** supervisory functions. Most of the I.D.A. and IIROC decisions involve “red flags”. The knowledge Christine Malley had of her husband’s activities was well beyond “red flags”. In addition she has failed to cooperate with IIROC (albeit on Counsel’s advice). The importance of Branch Managers’ functions cannot be over-emphasized. Her failure to supervise in any way makes the circumstances of this case more egregious than the circumstances in most supervision cases, but other cases still provide guidelines, as do the Disciplinary Sanction Guidelines.

I.D.A. re Frank Youden 2005 I.D.A.C.D. No. 52

IIROC re Richard Allan MacDonald 2012 IIROC 68

IIROC re Charles Floyd and James Gordon McDonald 2013 IIROC 27

IIROC re Dundee Securities Corporation 2013 IIROC 57

6. DECISION AND REASONS REGARDING PENALTY - BRIAN MALLEY

¶ 16 At the outset we will comment on the fairness of proceeding in the absence of the Respondents resulting from the very unusual circumstances of this case. This Panel, as stated above, dismissed the application of the Respondents for a stay of proceedings. Obviously Counsel for the Respondents was of the opinion that the Respondents’ attendance and testimony at this Hearing could be prejudicial to the position of Brian Malley in the criminal proceedings. However, as stated in our decision on the stay, “the public interest in seeing the Hearing concluded expeditiously, general deterrence, and protecting investors and the integrity of the Markets dictate that, in balancing interests, this Hearing should proceed”. In our decision regarding the Stay we stated at para. 28:

...The obvious defence which the Respondents can be expected to mount with respect to the overall failure to cooperate allegation is that they were acting on the advice of Counsel due to the criminal proceedings. The merit of that defence will have to be assessed at the IIROC hearing on the merits on March 3-5, 2014, but any evidence to that effect given by Brian Malley can certainly not prejudice his possible defence, or theory of defence, in the criminal proceedings.

¶ 17 Since the Respondents did not attend the Hearing, nor did Counsel on their behalf, to make submissions regarding penalties, we have no basis for assessing the merit of the defence.

¶ 18 We agree with IIROC that the conduct of Brian Malley was egregious. In other cases of similar conduct, including failure to cooperate (*Smith* and cases cited therein, *Floyd*) panels have imposed permanent bans and significant fines.

¶ 19 On the issue of failure to cooperate, notwithstanding that the Respondents were acting on the advice of Counsel, the following statements in *Re Morrison* (above), at paras. 50 and 51 (adopted in *Re Smith*), are pertinent:

50. We also agree with, and would reiterate the view expressed in *Re: Stewart* [2005 I.D.A.C.D. No. 23, Bulletin No. 3443, July 22, 2005], that the seriousness of the alleged impropriety that forms the basis of the investigation which may have been frustrated in whole or in part by the Respondent’s failure to cooperate with the investigative process, can be considered a serious, aggravating factor. In our view that factor is present in this case.

51. The securities industry is a business of trust and confidence. Approved Persons must above all conduct themselves with trustworthiness and integrity, and act in an honest and fair manner in all their dealings with the public, their clients, and the securities industry as a whole. Approved Persons have agreed to abide by and comply with the Association’s By-laws, and that includes the duty to cooperate in any investigation. As was said in *Re Stewart* (supra), there is a general principle that the requirement to cooperate in any investigation is fundamental to maintaining an efficient, competitive

market environment, and also to maintain the integrity of the securities system and protect the public interest.

¶ 20 A useful summary regarding penalties for failure to cooperate is provided by the panel in *Re Smith* (above):

17. In support of its position, IIROC counsel referred to a number of authorities dealing with penalty in circumstances analogous to those in this case; that is, where the consequences of the failure to cooperate amounted to serious misconduct. In the majority of those cases the penalty was a \$50,000 fine, imposition of a permanent ban, and an award for costs. The authorities included *Re: Lower* [2009] IIROC No. 39, *Re: Morrison* [2009] IIROC No. 4, and many of the authorities referred to in those decisions including *Re: Bassett*; *Re: Buskell*; *Re: Crittall*; *Re: Katz*; *Re: Loewen*; *Re: Milardovic*; *Re: Reiffenstein*; *Re: Stauffer*; and *Re: White*.

¶ 21 In other cases cited by IIROC (above) involving similar circumstances of unsuitable trades and unauthorized transactions, the following penalties were imposed:

Re Harding: fine of \$125,000, disgorgement of commissions in the amount of \$17,861, and a suspension of approval for a period of five years.

Re Phillips: suspension of five years, fine of \$290,000, disgorgement of profits of \$10,350, retake courses, strict supervision for two years if he re-registers, and costs of \$15,000.

Re Jones (Settlement Agreement): prohibited from registration with IIROC for five years, fine of \$200,000, costs of \$10,000.

¶ 22 In *Re Smith* the charges against the respondent were (1) failure to cooperate (did not attend interview, did not file a response and did not attend the hearing) and (2) making numerous unsuitable and unauthorized trades on behalf of two clients. The trades took place over a period of less than three years. Client A had a margin account and a RRIF account. The accounts had a total of approximately \$1.5 million originally (after withdrawals) and a closing value of approximately \$245,000. The respondent collected total commissions of \$450,800 on 1,995 transactions. Client B had a cash account of \$55,000, the closing value of which was \$8,826. The respondent collected total commissions of \$10,216 on 135 transactions.

¶ 23 *Re Harding* involved only one client, a 70 year old widow who was a very unsophisticated investor with a modest fixed income. The respondent established a margin account for her of which the client had no understanding, made many unsuitable, unauthorized, trades, 350 transactions in all. The client lost \$150,000 during a rising market. The respondent earned \$18,000 in commissions. The respondent was no longer in the investment industry and did not attend the hearing.

¶ 24 In *Phillips* over a seven month period the respondent purchased securities in the accounts of two clients which were not suitable for them. The father was an eighty-two year old retiree and the respondent was responsible for all of his assets of approximately \$668,000. In 30 purchases on 17 different days, 70% of the client's holdings were placed in high risk speculative junior mining stocks and small cap income trusts. The accounts lost in excess of \$169,000. The daughter was 57 years old and divorced. She had a total net worth of \$475,000 and an annual income of \$20,000. 90% of the assets were invested in high risk speculative securities and the account lost in excess of 50% of its value. They were particularly vulnerable clients and the respondent knew this. The securities were totally inconsistent with the clients' investment objectives and low tolerance for risk. Penalty imposed was: Fine of \$290,000; disgorgement of profits of \$10,350; suspension for three years; successfully complete all appropriate courses; if re-registered strict supervision for the first two years of re-entry of the securities industry; costs \$15,000. The respondent had left the industry and did not appear at the hearing; she had attended the interview. She was not charged with failure to cooperate. [The panel expressed concern about being limited by the Sanction Guidelines and the case precedents and concluded that they would not accept IIROC's recommended 10 year suspension. They "considered carefully whether the circumstances justified a permanent ban" but found no prior similar case to support that penalty. In our view this concern is

appropriately addressed by the panel in *Floyd and McDonald* (see quotation at p. 36 below).]

¶ 25 In *Jones (Settlement Agreement)* the respondent was unable to attend the hearing but was represented by counsel. He was of advanced age and in poor health and had been out of the industry, after being terminated, for two and a half years at the time of the hearing. He made unsuitable investments for six clients (three couples) who were unsophisticated investors. Their portfolios lost 50% to 74% of value but it was at a time of significant market decline. The respondent cooperated with IIROC.

¶ 26 As stated in the Notice of Hearing (above) contraventions 2 and 3 against Brian Malley are contrary to IIROC Rules 1300.1 (a) and (q):

Identity and Creditworthiness

- (a) Each Dealer Member shall use due diligence to learn and remain informed of the essential facts relative to every customer and to every order or account accepted.

Suitability Determination Required When Recommendation Provided

- (q) Each Dealer Member, when recommending to a customer the purchase, sale, exchange or holding of any security, shall use due diligence to ensure that the recommendation is suitable for such customer based on factors including the customer's financial situation, investment knowledge, investment objectives and risk tolerance.

[Panel's comment: The term "Dealer Member" includes any employees of the Dealer Member as per Dealer Member Rule 1.3: Where the context indicates, references to a Dealer Member include the partners, Directors, Officers, employees and agents of the Dealer Member.]

¶ 27 As submitted by Counsel for IIROC, Guideline 3.1, 3.2 and 3.4 of the IIROC **Dealer Member Disciplinary Sanction Guidelines** apply in this case:

IMPROPER SALES PRACTICE

3.1 Unsuitable Recommendations - Dealer Member Rule 1300.1(p)

The core of a registered representative's business activity is to make recommendations for his/her clients. Registrants have a basic duty to ensure that the recommendations are suitable, and in accordance with the clients' investment objectives and risk factors. The courts have generally held that a registrant owes a fiduciary duty to the client where the client relies upon the advice and recommendations of the registrant. This fiduciary relationship requires the registrant to act carefully, honestly and in good faith in dealing with the client. Therefore, a registrant who makes unsuitable recommendations has breached his/her fiduciary duty owes to the client.

Even in absence of general fiduciary relationship between registrant and client, there is at the very least, a relationship of trust and confidence that exists between a registrant and client. A client will rely upon and place confidence in the recommendations made by the registrant, who has an obligation to ensure the recommendations are suitable. Where the recommendations are unsuitable for the client, the registrant has breached his position of trust and failed to fulfill the most basic of responsibilities towards the client.

Considerations in Addition to General Principles

1. Extent of due diligence conducted with respect to recommended security.
2. Magnitude of losses directly attributable to the unsuitable recommendations.

Recommended Sanctions

- Fine: Minimum of \$10,000.
- Disgorgement of profits.
- Re-write of CPH.

- | | |
|--|---|
| <ul style="list-style-type: none"> 3. The number of clients affected. 4. The level of sophistication of the clients. 5. The existence of any pattern of making unsuitable recommendations. 6. Presence of any ulterior motive (i.e. financial gain to the Respondent). | <ul style="list-style-type: none"> • Period of Close and/or Strict supervision. • Period of suspension (in most egregious cases involving elements of deception and misrepresent- actions). |
|--|---|

[Panel note: The same considerations apply to Dealer Member Rule 1300.1(q) as apply to 1300.1(p) above.]

3.2 Failure to Know Your Client - Dealer Member Rule 1300.1(a) and (b)

The Know Your Client rule is of paramount importance for the securities industry. All registrants must make diligent and business-like efforts to learn and record the essential financial and personal circumstances, and the investment objectives of each client. Knowing your client is a fundamental ongoing obligation that a registrant is required to meet in order to be able to act in the best interests of his/her clients.

Considerations in Addition to General

Recommended Sanctions

Principles

- | | |
|---|--|
| <ul style="list-style-type: none"> 1. Nature and Extent of Failure to know your client. 2. Magnitude of losses directly attributable to the failure to know your client. 3. The level of sophistication of the client. 4. Extent of the due diligence conducted to determine the essential facts of the client. | <ul style="list-style-type: none"> • Fine: Minimum of \$10,000. • Re-write of CPH. • Period of close and/or strict supervision. • Period of suspension (in most egregious cases) |
|---|--|

¶ 28 As stated in the Notice of Hearing the contraventions regarding discretionary trading is contrary to IIROC Rule 1300.4:

SUPERVISION OF ACCOUNTS

1300.4. A Registered Representative may not exercise discretionary authority over a customer account unless:

- (a) the Dealer Member has designated a Supervisor or Supervisors to be responsible for discretionary accounts;
- (b) the customer has given prior written authorization in compliance with in compliance with Rule 1300.5;
- (c) a Supervisor designated under subsection (a) has approved the account as a discretionary account and recorded that approval;
- (d) the Registered Representative authorized to effect discretionary trades for the account has actively dealt in, advised on or performed analysis for a period to two years with respect to all types of products which are to be traded on a discretionary basis; and
- (e) the account is maintained at the Dealer Member of the Registered Representative.

¶ 29 The Disciplinary Sanction Guideline which applies to discretionary trading is:

3.6 Discretionary Trading - Dealer Member Rule 1300.4 & 1300.5

Discretionary trading, in and of itself, is not prohibited conduct for a registrant. The essence of the contravention relates to lack of proper written authorization by the client. A registrant cannot engage in discretionary trading unless the account has been properly designated as a “discretionary” or “managed” account, pursuant to Dealer Member Rule 1300.4 and 1300.5, respectively. The extent of the misconduct will vary greatly. At the low end of the spectrum, a breach of these regulations may only be minor in nature; where the client provided verbal authority to engage in discretionary trading without the proper written documentation prepared by the registrant. On the other end of the spectrum, discretionary trading can be egregious and involve elements of deception in that the registrant is not completely open and honest as to the type of trading taking place within the client’s account.

It should be noted however, that in cases where the client has provided verbal authority, the contravention should not be viewed simply as a paper violation. Obtaining proper approval to designate an account as discretionary or managed is not automatic. The process of approval is required to ensure that only properly qualified registrants trade in the accounts. These designated accounts are also subject to greater supervision. Discretionary trading without the proper authorization is therefore not subject to the safeguards that form part of the approval process, and puts the clients’ accounts at greater risk.

Considerations in Addition to General Principles

Recommended Sanctions

- | | |
|---|--|
| 1. Number of unauthorized trades. | • Fine: Minimum fine of \$5,000. |
| 2. Whether client provided verbal authority to engage in discretionary trading. | • Disgorgement of profits. |
| 3. Underlying reason for engaging in discretionary trading (eg. for personal financial gain). | • Period of close and/or Strict supervision. |
| 4. The number of clients affected. | • Re-write of CPH. |
| 5. Period of time discretionary trading took place. | • Period of suspension (in most egregious cases involving large number of large value trades). |
| 6. Suitability of discretionary trades. | |
| 7. Magnitude of client losses. | |

¶ 30 With respect to the contravention of failure to cooperate, IIROC Rule 19.5 provides:

RULE 19

EXAMINATIONS AND INVESTIGATIONS

- 19.5. For the purpose of any examination or investigation pursuant to this Rule 19, a Dealer Member, registered representative, investment representative, sales manager, branch manager, assistant or co-branch manager, partner, director, officer, investor or employee of a Dealer Member or any other person approved or seeking approval or under the jurisdiction of the Corporation pursuant to the Rules, may be required by the Corporation:
- (a) To submit a report in writing with regard to any matter involved in any such investigation;

- (b) To produce for inspection and provide copies of any books, records, accounts and documents, that are in the possession or control of the Dealer Member or the person, that the Corporation determines may be relevant to a matter under examination or investigation and such information, books, records and documents shall be provided in such manner and form, including electronically, as may be required by the Corporation; and
- (c) To attend and give information respecting any such matters;

And the person shall be obliged to submit such report, to permit such inspection, provide such copies and to attend, accordingly. Any person subject to an investigation conducted pursuant to this Rule 19 shall be advised in writing of the matters under investigation and may be invited to make submission by statement in writing, by producing for inspection books, records and accounts and by attending before the persons conducting the investigation. The person conducting the investigation may, in his or her discretion, require that any statement given by any person in the course of an investigation be recorded by means of an electronic recording device or otherwise and may require that any statement be given under oath.

¶ 31 The Disciplinary Sanction Guidelines relating to Rule 19.5 are:

5.1 Failure to Cooperate - Dealer Member Rule 19.5 and 19.6

Dealer Member Rule 19.5 provides that any person under the jurisdiction of the Corporation is obliged to submit a report in writing with regard to any matter being investigated by the Corporation, to produce for inspection and to provide copies of the books, records and accounts relevant to such an investigation, and to meet and give information respecting the investigation.

Once an examination or investigation is initiated, the Corporation’s staff is entitled to free access to any and all records of the Dealer Member or person concerned, who is prohibited from withholding or concealing any documents reasonably required for the purpose of the examination or investigation (Dealer Member Rule 19.6).

Consequently, failure to cooperate/impeding a Corporation investigation, whether by a Dealer Member firm or a registered representative, is serious misconduct because it subverts the Corporation’s ability to perform its regulatory function. This category of misconduct is broad enough to include the following.

- failure to cooperate or respond in a timely manner
- failure to respond truthfully
- failure to cooperate or respond completely

Considerations in Addition to General

Recommended Sanctions

Principles

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. The disciplinary history of the Respondent. 2. Was the contravention intentional or inadvertent? 3. Was there complete or only partial non- | <ul style="list-style-type: none"> • Fine: Minimum of \$10,000 Approved Persons and \$50,000 for a Dealer Member Firm. • Immediate suspension for 30 days to 90 days pending compliance with Dealer Member Rule 19.5 |
|--|--|

compliance?

4. The impact that the non-compliance had on the investigation.

5. Whether the Respondent can demonstrate that his or her refusal to cooperate was based on reasonable reliance on competent legal advice?

6. What is the nature of the document/information requested?

Were they of material importance to the pending investigation/hearing?

- Expulsion of Dealer Member or permanent ban from approval in any capacity of an Approved Person if the Respondent still fails to cooperate at the end of the temporary suspension.

¶ 32 The opening section of the Disciplinary Sanction Guidelines sets out the principles to be considered in assessing sanctions:

GENERAL PRINCIPLES

The following principles and rules are proposed to provide a framework for assessing the gravity of a particular breach of the Dealer Member Rules, and help to determine which sanction(s) is reasonable in the circumstances.

1. Main Concerns When Determining An Appropriate Penalty

As set out in *Re Derivative Services Inc.*, [2000] I.D.A.C.D. No. 26, at page 3, a Hearing Panel's main concerns in determining an appropriate penalty are:

1. Protection of the investing public;
2. Protection of the Investment Industry Regulatory Organization's membership;
3. Protection of the integrity of the Investment Industry Regulator Organization's process;
4. Protection of the integrity of the securities markets, and
5. Prevention of a repetition of conduct of the type under consideration.

The penalty imposed in a specific proceeding should reflect the Hearing Panel's assessment of the measures necessary in the specific case to accomplish these goals, ranging from a reprimand to an absolute bar, and may take into account the seriousness of the respondent's conduct and specific and general deterrence.

¶ 33 In the circumstances of this case we have no reservations about imposing a permanent ban as a penalty for the Respondent Brian Malley's contraventions. As described in paras. 3-6 of the "Particulars" in the Notice of Hearing (above), he acted in a manner which was, or could have been, very harmful to his clients and which tends to bring the investment industry into disrepute. The number of clients affected (possibly as many as the 56 who filed complaints and are in the process of a class action against him) and the losses for vulnerable clients are significant. Those circumstances, coupled with the very serious contravention of failure to cooperate, compels us to impose a permanent ban. The only circumstance in the Respondent's favour is that he had no disciplinary record. It is perhaps understandable to some extent that he flew under the radar for the several years because his wife was his supervisor and performed no supervision (see below). When the "Considerations in Addition General Principles" in Rules 5.1, 3.2, 3.1 and 3.6 (all set out above) are reviewed,

the Respondent falls under almost all the considerations to a significant degree including “number of clients affected”, “level of sophistication”, and “pattern of making unsuitable recommendations”. As to the factor of “magnitude of losses”, we recognize that not all of the above clients lost money but four of the clients had significant losses in percentage terms, two had gains but the percentages were considerably lower than the TSX increases, and two were relatively in line with the TSX. The notable exception was client SJ/RJ who gained a somewhat greater percentage than the TSX.

¶ 34 We recognize the severity of a permanent ban. The Disciplinary Sanction Guidelines - General Principles contain the following section:

4.3 Permanent Bar From Approval of Expulsion/Termination of Membership

A permanent ban from approval of an individual or the termination of membership or expulsion from the Corporation is a severe economic penalty and should generally be reserved for cases where:

- the public itself has been abused;
- where it is clear that a respondent’s conduct is indicative of a resistance to governance;
- the misconduct has an element of criminal or quasi-criminal activity; or
- there is reason to believe that the respondent could not be trusted to act in an honest and fair manner in all their dealings with the public, their clients, and the securities industry as a whole.

Hearing Panel may consider imposing a fine and requiring disgorgement even when a registrant is permanently barred in egregious cases involving significant harm to clients and/or to the integrity of the securities industry as a whole.

¶ 35 While we do not suggest that there was “an element of criminal or quasi-criminal activity” in the misconduct of the Malleys, we are of the view that the other listed factors exist in this case.

¶ 36 Because there is the failing to cooperate contravention (for which a permanent ban is a recommended sanction and has been imposed in many cases), we do not have the issue in this case which perplexed the panel in *Phillips* (above, p. 28). That panel concluded that a permanent ban would not be consistent with the Guidelines and the “prior similar cases”. We recognize that the Guidelines regarding each of the foregoing contraventions (except failure to cooperate) refer only to a “period of suspension (in most egregious cases)”. However, Guidelines being just that does not, in our view, preclude a permanent ban being imposed (even without the failure to cooperate) in very egregious circumstances such as the present. We had already concluded, without the benefit of the reasoning of the panel in *Floyd and McDonald* that a permanent ban was appropriate in this case even absent the failure to cooperate. That contravention was also absent in the *Floyd and McDonald* case and the respondents appeared at the hearing. We accept and adopt the rationale of the panel in that case at para. 49:

49 This Panel does not accept the absence of case authority to support imposition of a permanent ban as a compelling reason against such a penalty. If a hearing panel is satisfied on the evidence that a suspension will not achieve the requisite specific deterrence to a registrant or general deterrence to others who may be similarly tempted to cross the boundary against unsuitable trading behavior, such a penalty must be considered. This Panel is gravely concerned that Floyd is and will be continuously ungovernable. It has serious doubts that his professional attitude can be appropriately adjusted with strong and continuous encouragement and supervision to instill in him the importance of always observing the language and the spirit of the Member Dealers Rules.

¶ 37 We also recognize that *Floyd*, upon whom the permanent ban was imposed, had a prior disciplinary record, which the present Respondent did not have, but that does not alter our view of the severity of the Respondent’s contraventions. We are not judging the merit of the legal advice to the Respondent to not cooperate and not appear at the Hearing beyond the views expressed in our decision on the “Stay Application”

that none of the stated contraventions relate to the client VS, who was the murder victim and in respect of whom Brian Malley was charged.

¶ 38 Applying the general principles of protection of the investing public, protection of the integrity of the IIROC process, protection of the integrity of the securities market, prevention of a repetition of conduct of the type under consideration, and general deterrence, leads us to the conclusion that the following penalties proposed by IIROC are appropriate, and we so order:

- (a) a permanent ban from registration with IIROC in any capacity;
- (b) a fine of \$300,000;
- (c) the Respondent shall pay costs to IIROC in the sum of \$35,000.

¶ 39 We consider the fine (particularly without Malley being required to disgorge profits) and the costs appropriate and within the reasonable range based on other decisions of panels. We recognize that it is highly unlikely that the costs will fully cover IIROC costs in what has been a difficult, drawn-out process of investigation, preliminary hearing and final hearing.

7. DECISION AND REASONS REGARDING PENALTY - CHRISTINE MALLEY

¶ 40 There is no doubt, and it has been accepted as proven (para. 11 above) that Christine Malley was fully aware of the investments being made by her husband on behalf of the clients and that she exercised no supervisory oversight. There was a complete failure of supervision by her. She was present to observe circumstances beyond the “red flags” which are often referred to in the cases. We need not repeat, or summarize, all the details of the circumstances of Christine Malley’s responsibilities and her lack of supervision which are set out in paras. 156-164 of the Notice of Hearing (above). One reference is sufficient as an example of her involvement (para. 161 of the Notice of Hearing):

161. In addition to approving NCAF’s and updates with investment objectives and risk tolerance parameters when it was plain and obvious that they were inconsistent with the Clients’ true circumstances, she participated in entering trades on a volume basis when it was apparent that Malley was trading securities in client accounts with discretion.

¶ 41 There is also the circumstance in this case of her failure to cooperate with IIROC, presumably for the same reason as her husband, i.e. legal advice. Paras. 29 and 30 above regarding Disciplinary Sanction Guidelines also apply to Christine Malley, as does para. 32.

¶ 42 We admit to an initial reluctance to impose a permanent ban on Christine Malley, one of the sanctions proposed by IIROC. Her reluctance was based on the unfortunate situation in which Christine Malley found herself being responsible for supervising her husband’s investments on behalf of clients. These situations of “captive Branch Managers” are situations almost inevitably doomed to disaster, as it was in this case. We were not referred to nor are we aware of any IIROC cases similar to the present “captive Branch Managers” circumstance. They are situations fraught with difficulty and should be discouraged if not outlawed. Christine Malley would have taken the Branch Manager’s course and knew her responsibilities. She should not have accepted the position if she was not prepared to carry out her managerial role. She had an obligation to protect the interests of clients. As a result of her husband’s improper conduct and her default the clients suffered significantly. The fact that she would be reluctant to rein in her husband cannot excuse her from her responsibilities and the circumstances cannot mitigate against severe sanctions for her lack of action. General deterrence of such conduct by Branch Managers must be a fundamental objective in these proceedings.

¶ 43 The role of Branch Manager is well described in a passage from *Mills* at para. 155 of *Youden* (above).

155 As mentioned in the previous paragraph, the role of a Branch Manager is significant in the securities industry. In *Mills* [2000, 2001], the following is stated at paragraph 52:

A branch manager’s obligations to supervise the opening of new accounts and subsequent trading in them is intended to provide protection to member firms and their clients; a failure to fulfil these obligations may expose both to unwarranted losses. As a branch

manager is on the front line of investor protection when performing these functions, the exercise of reasonable diligence in complying with the Policy and a firm's internal manual is important to the goals adopted in the Association's Constitution. The District Council views a failure to fulfil supervisory responsibilities, such as occurred in this case, as a serious matter.

¶ 44 Rule 19 is entitled “**Examinations and Investigations**”. Rule 19.5 sets out the requirements of, inter alia, Branch Managers in responding to investigations including their submitting a report in writing, providing records and “to attend and give information respecting any such matters”. Rule 2500 is a very comprehensive rule entitled “**Minimum Standards for Retail Customer Account Supervision**”. It includes **Policy No. 2** entitled “**Minimum Standards for Retail Accounts Supervision, III. Branch Office Account Supervision**”. That section includes the following:

Introduction

Each branch manager must undertake certain activities within the branch for purposes of assessing compliance with regulatory requirements and the Member's policies. These activities should be designed to identify failures to adhere to required policy and procedure and provide a means of revealing and addressing undesirable account activity.

¶ 45 There follows subsections entitled “**Daily Reviews**” and “**Monthly Reviews**”. The Daily Reviews subsection commences:

1. The branch manager (or designate) must review the previous day's trading using any convenient means. This review is undertaken to attempt to detect the following:
(The extensive list includes lack of suitability, undue concentration of securities, excessive trade activity, inappropriate/high risk trading strategies.

¶ 46 The relevant Disciplinary Sanction Guideline regarding failure to supervise is:

4.3 Failure to Supervise - Dealer Member Rule 29.27, 1300.2, 2500 and 2700

Each Dealer Member must designate a director, partner or officer who is responsible for the opening of new accounts and the supervision of account activity (Ultimate Designated Person). An Alternate Designated Person may be appointed by the Dealer Member where necessary to ensure continuous supervision.

The Ultimate Designated Person (or Branch Manager appointed by Ultimate Designated Person) is responsible for establishing and maintaining procedures for account supervision and shall ensure that the handling of client business is within the bounds of ethical conduct, consistent with just and equitable principles of trade and not detrimental to the interests of the securities industry.

The minimum requirements for establishing and maintaining a system to supervise the activities of each partner, director, officer, registered representative, employee, and agent are set out in Dealer Member Rule 29.27. The minimum standards for retail account supervision are detailed in Dealer Member Rule 2500 (including branch office and head office account supervision). The minimum standards for institutional account supervision are detailed in Dealer Member Rule 2700.

Considerations in Addition to General

Recommended Sanctions

Principles

1. Extent of inadequacy in the procedures for supervision or the actual supervision of employee(s).

Dealer Member:

- Fine: Minimum fine of \$50,000

2. Extent of employee(s) misconduct.
3. Amount of losses or compensation for which the Dealer Member is liable as a result of the employee(s) misconduct.
4. “Red flag” warnings that should have been caught by a proper system of supervision/failure to follow-up or to conduct periodic reviews.
5. Corrective measures taken since discovery of problem.

- Consider condition that Dealer Member demonstrate that its procedures and practices meet the Corporation standards; additional monthly fine until the Corporation is satisfied.
- Suspension or expulsion of Dealer Member in egregious cases.

Designated Person/Supervisor:

- Fine: Minimum of \$25,000.
- Re-write of PDO.
- Period of suspension or permanent bar from director/officer/supervisory and or compliance responsibilities.
- Permanent bar from approval in all capacities in egregious cases.

¶ 47 We have no knowledge of whether Christine Malley, as a Registered Representative, ever engaged in investments on behalf of clients or whether she has any interest in doing so in the future. Given that she, nor Counsel on her behalf, appeared at the Hearing to make representations regarding penalty, we cannot speculate on her future intentions and whether she would have argued that any permanent ban be restricted to supervisory duties. In any event we are inclined to the view that suitability for a position as an investment advisor is severely undermined by her lack of judgment in allowing herself to be placed in the Branch Manager position supervising her husband and her lack of action to protect clients.

¶ 48 In the *Floyd and McDonald* case (above, para. 36) a permanent ban was imposed on Branch Manager Floyd. We reiterate the rationale of the panel, as set out in the above paragraph, and it applies specifically to Branch Managers such as Christine Malley.

¶ 49 In another case cited by IROC Counsel, *MacDonald* (above), the respondent cooperated with IROC and entered into a Settlement Agreement which was accepted by the panel. The circumstances were similar to the present case of Christine Malley except that in *MacDonald* there was not a failure to cooperate contravention. Mr. MacDonald admitted to (para. 3):

From June, 2004 to March, 2009, while the Branch Manager at DWM Securities Inc., he failed to take the supervisory steps that were reasonably required with respect to the suitability of holdings in the accounts of six clients, contrary to IROC Dealer Member Rules 38.4(a) and 2500...

¶ 50 The clients were, as were many of the clients in the present case, “vulnerable”, “inexperienced investors and retired or approaching retirement” and there were “numerous red flags” and very large losses (para. 3). The respondent in that case had no prior disciplinary history. The misconduct was over five years. Mr. MacDonald agreed to a suspension of five years, a fine of \$40,000 and costs of \$3,000. In comparison to that case, the circumstances of the present case, including failure to cooperate, justify the permanent ban and other sanctions proposed by IROC.

¶ 51 Therefore, we accept the sanctions proposed by IIROC as being appropriate regarding Christine Malley, and so order, as follows:

- (a) the Respondent, Christine Malley, is permanently banned from registration with IIROC in any capacity;
- (b) the Respondent shall pay a fine of \$250,000;
- (c) the Respondent shall pay costs to IIROC in the sum of \$15,000.

¶ 52 We have the same comments regarding the fine and costs as regarding Brian Malley (para. 39 above).

June 25, 2014

Alan V.M. Beattie, Chair

Neil Murphy, Industry Representative

William Welton, Industry representative

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