

**Re Siska**

**IN THE MATTER OF:**

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

**The By-Laws of the Investment Dealers Association of Canada**

**and**

**Daniel Siska**

2015 IIROC 13

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

Hearing held: March 25, 2015

Decision: April 16, 2015

**Hearing Panel**

The Honourable Benjamin J. Greenberg, Q.C., C. ARB., Hearing Panel Chair; Lise Casgrain and François Demers

**Appearances**

For IIROC: Me Pascale Dionne-Bourassa, Enforcement Counsel on behalf of IIROC

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**UNANIMOUS DECISION ON THE SETTLEMENT AGREEMENT  
BETWEEN THE COMPLAINANT AND THE RESPONDENT**

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## **I. INTRODUCTION**

¶ 1 In the matter at hand, the RESPONDENT was charged with one count for which he acknowledged responsibility in the SETTLEMENT AGREEMENT that is the subject of this DECISION. The aforesaid count read as follows:

*“From November 2012 to April 2013, the Respondent engaged in personal financial dealings with several clients by borrowing money from them, without the knowledge and without the consent of the IIROC Dealer Member with whom he was employed, contrary to IIROC Dealer Member Rule 29.1.”*

## **II. HISTORY AND FACTS OF THE MATTER**

¶ 2 Between August 29, 2002 and June 20, 2013, the RESPONDENT was in the employ of Scotia Capital Inc. (“SCOTIA”), was registered with the IDA as a representative with unrestricted practice from August 29, 2002 to June 1, 2008, and became a registrant of IIROC as of June 1, 2008.

¶ 3 The complete history of all the Respondent’s approvals and his professional experience may be summarized as follows:

- a) Around August 29, 2002, the Respondent was in the employ of SCOTIA and was registered with the IDA as a representative with unrestricted practice;
- b) In the course of 2006, the RESPONDENT joined the team of another representative with unrestricted practice in SCOTIA’s employ. As a member of this team, the RESPONDENT interacted with RP’s clientele as an associate advisor;
- c) On June 1, 2008, the RESPONDENT became a registrant of IIROC;
- d) On or around June 20, 2013, SCOTIA dismissed the RESPONDENT for cause, for borrowing money from certain clients whose brokerage accounts he was assigned to manage as a representative with unrestricted practice;
- e) To date, the Respondent is no longer registered in the employ of an IIROC-regulated firm;

¶ 4 Over the course of 2012 and 2013, the RESPONDENT engaged in personal financial dealings with five (5) SCOTIA clients, borrowing a total of thirteen thousand dollars (\$13,000) from them without the knowledge and consent of SCOTIA, an IIROC Dealer Member. These clients had no family ties with the RESPONDENT. What’s more, in all five (5) cases, the RESPONDENT did not sign an acknowledgment of debt in the lender’s favour.

¶ 5 Then, on April 26, 2013, one of said five (5) clients complained to the other representative with unrestricted practice responsible for the SCOTIA team that the RESPONDENT was part of, because his loan to the RESPONDENT had not been repaid yet.

¶ 6 SCOTIA’s Compliance Department was informed of the complaint and an internal investigation was launched in respect of the RESPONDENT. Upon conclusion of the internal investigation at SCOTIA, the RESPONDENT was dismissed on June 20, 2013.

¶ 7 That said, the PARTIES agreed to jointly recommend that the HEARING PANEL accept the SETTLEMENT AGREEMENT and impose the following Penalty on the RESPONDENT:

- A. A one-month suspension of approval;
- B. A fine in the amount of \$15,000;
- C. Costs of up to \$3,000, payable to IIROC;
- D. Were the RESPONDENT to return to the securities industry, he would be subject to twelve (12) months of strict supervision with mandatory submission of a monthly report to the IIROC Registration Department; and
- E. Be required to pass the exam based on the Conduct and Practices Handbook Course within 6

months of applying for reapproval;

### **III. MISSION OF THE HEARING PANEL**

¶ 8 Our mission is not that of an appeal body. We are not required to consider whether, having heard the case in an adversarial proceeding in the first instance, we would have ruled or not as the Parties agreed in their SETTLEMENT AGREEMENT.

¶ 9 Neither is it up to us to consider whether the content of the SETTLEMENT AGREEMENT is too lenient or too harsh. That is not our role in the matter either.

¶ 10 Even were we of the opinion that, having heard the case in first instance, our decision on Penalties would have been more lenient or more severe than the SETTLEMENT AGREEMENT, that would not be our mission either.<sup>1</sup>

¶ 11 Rule 20.36 (1) states:

#### ***“Hearing Panel Powers***

*(1) Upon conclusion of a settlement hearing, the Hearing Panel may either:*

- (a) accept the Settlement Agreement; or*
- (b) reject the Settlement Agreement.”*

¶ 12 Consequently, here is what the Hearing Panel decreed in *Re: Graydon Elliot Capital Corporation*:<sup>2</sup>

*“The Panel accepts that its role under the By-laws in reviewing a Settlement Agreement is not the same as its role considering penalty following a hearing on the merits. As has been said in a number of cases, in considering a Settlement Agreement, the Panel should not simply substitute its discretion to that of Staff in negotiating the settlement. The Panel must be cognizant of the importance of the settlement process, and it should not interfere lightly in a negotiated settlement. We acknowledge that the settlement process is one of negotiation and compromise and the penalty imposed may be somewhat different than one imposed following a hearing where similar findings are made and the Panel determines the penalty.”*

¶ 13 Thus, what we must ask ourselves is this: considering all of the facts of this case, the mitigating factors, the aggravating factors, and the case-law in the matter, is the content of the SETTLEMENT AGREEMENT lenient or harsh to the point of being unreasonable, contrary to the public interest and/or of a nature to bring IIROC’s disciplinary process into disrepute?<sup>3</sup>

### **IV. COMPLAINANT’S POSITION**

¶ 14 Through Me Dionne-Bourassa, we are informed that COMPLAINANT is of the opinion that, considering all the facts in the matter, namely the age of the RESPONDENT, the mitigating circumstances, as well as the aggravating ones, and the case-law in the matter, the Settlement is just and fair to the RESPONDENT and also satisfies the guidelines established by IIROC’s disciplinary process.

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<sup>1</sup> See the hearing panel’s decision in *Re Jacques Turenne*, 2013 IIROC 43, in which paragraph 18 reads:

“¶ 18 The question for the Hearing Panel is whether, given the misconduct, the penalties fall within "a reasonable range of appropriateness". The Hearing Panel can either accept or reject the Settlement Agreement. It may not in any way alter the agreement or have knowledge of facts not in evidence in the Agreement. The Hearing Panel powers end there.”

<sup>2</sup> [2007] IDAC No. 43, par. 9.

<sup>3</sup> By analogy with the principles established in penal law, when Counsel for the Prosecution and the Defense agree and make a joint recommendation to the Court regarding the sentence to impose on a person charged with an offence who either pleads guilty or is found guilty. See the Québec Court of Appeal judgments in *Paradis c. R.* and *Poulin c. R.*, as well as the other cases cited therein, respectively at 2009 QCCA 1312 and 2010 QCCA 1854.

## **V. RESPONDENT'S POSITION**

¶ 15 For his part, the RESPONDENT tacitly echoes the COMPLAINANT's position, since he was not represented by counsel before us, did not testify at the hearing on March 25, 2015, and offered no commentary. He was present throughout the hearing, but remained silent.<sup>4</sup>

## **VI. ANALYSIS AND DISCUSSION**

¶ 16 The Penalty imposed in a case such as this must reconcile the needs of protecting the investing public with those of the IIROC membership. It must also strive to protect the integrity of the securities industry and the marketplace and act as a deterrent against any repetition of the misconduct in question.

¶ 17 A \$15,000 fine and costs in the amount of \$3,000 are within the bounds of what is reasonable and are consistent with the case-law in analogous matters.<sup>5</sup> The case-law shows, for similar types of offences, the imposition of fines and costs that are sometimes lower and sometimes higher than those agreed in the matter at hand. Usually the costs incurred by IIROC for this type of investigation and disciplinary proceedings by far exceed the amount of \$3,000.

¶ 18 It should also be noted that in paragraph 74 of the SETTLEMENT AGREEMENT, in the event that the HEARING PANEL accepts the AGREEMENT, the RESPONDENT waives his right, under IIROC Rules and any applicable legislation, to a disciplinary hearing, review or appeal.

¶ 19 As for the **AGGRAVATING FACTORS**, there are the facts that there were five (5) victims over an approximate six-month period, all without SCOTIA's knowledge, that none of the victims had family ties with the RESPONDENT and that, in all five (5) cases, the RESPONDENT did not sign and/or deliver acknowledgments of debt to the five (5) lenders.

¶ 20 There is also the prejudice that was caused to his employer and to the self-regulatory organizations'(SROs) approval process, which is another aggravating factor.

¶ 21 As regards the **MITIGATING FACTORS**, he collaborated with the investigation of his conduct, thus reducing IIROC's workload and costs. Also, he has no disciplinary record for the eleven (11) years he spent in the securities industry.

¶ 22 Still, there are those who consider this more of an absence of an aggravating factor rather than the existence of a mitigating factor. Regardless, it is the first time the RESPONDENT has been a party to a disciplinary proceeding and this works in his favour.

¶ 23 Another mitigating factor is the fact that none of his clients suffered any direct losses relative to the RESPONDENT's dealings, since all five (5) loans were reimbursed in full.

¶ 24 Elsewhere, another mitigating factor is the internal sanction imposed on the RESPONDENT;

¶ 25 What's more, the RESPONDENT has not worked in the securities industry for nearly two (2) years, since his employer, SCOTIA, dismissed him on JUNE 20, 2013.

¶ 26 In the SETTLEMENT AGREEMENT signed on December 22, 2014 and January 6, 2015, Staff of the COMPLAINANT and the RESPONDENT jointly recommend that the HEARING PANEL accept the SETTLEMENT AGREEMENT.

¶ 27 As we announced at the end of the Hearing on March 25, 2015, all three Members of the HEARING PANEL concluded, as stated above, that the components of the Settlement are justified in the circumstances of the matter, fall within "a reasonable range of appropriateness" and are consistent with the case-law in analogous matters.

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<sup>4</sup> He has however indicated that he hopes to return to the securities industry one day.

<sup>5</sup> See Re: *Jacques Turenne*, 2013 IIROC 43; *Stephen Moran*, 2012 IIROC 64; *Trevor Ian Gunderson*, 2012, IIROC 66; and *Wasseem Dirani*, 2014 IIROC 09.

¶ 28 Consequently, the SETTLEMENT AGREEMENT, including the penalties agreed to between the parties, will be approved and accepted by the HEARING PANEL.

¶ 29 We add this side note concerning the one(1)-month suspension which, in accordance with IIROC Rules, takes effect on the date this DECISION is rendered<sup>6</sup>. Because the RESPONDENT no longer works in the securities industry since June 2013, said suspension is more symbolic than real.

¶ 30 Thus, in a similar case, one possibility would be to order a minimum period before a respondent can re-apply for approval with IIROC.<sup>7</sup>

End of side note.

## **VII. FINAL DISPOSITION**

¶ 31 This UNANIMOUS DECISION ON THE SETTLEMENT AGREEMENT BETWEEN THE COMPLAINANT AND THE RESPONDENT shall be signed by the members of the HEARING PANEL in multiple copies. Each of these signed copies shall be equally valid and authentic and shall avail for all legal purposes.

## **VIII. CONCLUSIONS**

¶ 32 FOR ALL OF THESE REASONS:

WE, MEMBERS OF THE HEARING PANEL, HEREBY APPROVE AND ACCEPT THE SETTLEMENT AGREEMENT REACHED BY THE PARTIES AND SIGNED ON DECEMBER 22, 2014 AND JANUARY 6, 2015, AND IMPOSE ON THE RESPONDENT THE SANCTIONS AGREED TO BETWEEN THE PARTIES, **AS FOLLOWS:**

- a) Suspension of approval for one (1) month;
- b) A fine in the amount of \$15,000;
- c) The Respondent agrees to pay IIROC costs in the amount of \$3,000.
- d) Twelve (12) months of strict supervision with mandatory submission of a monthly report to the IIROC Registration Department; and
- e) Pass the exam based on the Conduct and Practices Handbook Course within 6 months of applying for reapproval;

## **IX. SIGNATURE PAGE**

Signed at Montréal (Québec), this April 16, 2015

THE HONOURABLE BENJAMIN J. GREENBERG, Q.C.

C. ARB., HEARING PANEL CHAIR

MS. LISE CASGRAIN

HEARING PANEL MEMBER

MR. FRANÇOIS DEMERS

HEARING PANEL MEMBER

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<sup>6</sup> Rule 20.36(2) provides:

“Settlement Agreements shall become effective and binding upon Corporation Staff and an Approved Person or Dealer Member upon acceptance by a Hearing Panel. An Approved Person or Dealer Member shall be deemed to have been penalized pursuant to Rule 20.33 or Rule 20.34 upon acceptance of a Settlement Agreement by a Hearing Panel.”

<sup>7</sup> As was ordered for a period of four (4) years in *Re Daniel Edward Smith*, 2013 IIROC 21.

## SETTLEMENT AGREEMENT

### I. BACKGROUND

1. The Enforcement Staff of IIROC and the Respondent, Daniel Siska, consent and agree to the settlement of these matters by way of this settlement agreement (“the Settlement Agreement”);
2. The Enforcement Department of IIROC has conducted an investigation (“the Investigation”) into the conduct of Daniel Siska;
3. The Investigation disclosed matters for which the Respondent may be disciplined by a Hearing Panel appointed pursuant to Part C of Schedule C.1 to Transition Rule No. 1 of IIROC (the Hearing Panel).

### II. JOINT SETTLEMENT RECOMMENDATION

4. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement;
5. The Respondent admits to the following contraventions of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:
  - 1) From November 2012 to April 2013, the Respondent engaged in personal financial dealings with several clients, by borrowing money from them, without the knowledge and without the consent of the IIROC Dealer Member with whom he was employed, contrary to IIROC Dealer Member Rule 29.1.
6. Staff and the Respondent have accepted the following terms of settlement:
  - a) A fine in the amount of \$15,000;
  - b) Suspension of approval for one (1) month;
  - c) Twelve (12) months of strict supervision with mandatory submission of a monthly report to the IIROC Registration Department; and
  - d) Pass the exam based on the Conduct and Practices Handbook Course within 6 months of applying for reapproval;
7. The Respondent agrees to pay IIROC costs in the amount of \$3,000.

### III. STATEMENT OF FACTS

- (i) Acknowledgment
8. Staff and the Respondent agree with the facts set out in this section and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts.

- (i) Factual Background

#### **Summary of the Respondent's alleged misconduct**

9. The Respondent borrowed a total amount of more than thirteen thousand dollars (\$13,000) from five of his clients for his own personal ends, thus allowing his personal interest to conflict with the interest of the clients. The money was borrowed without the knowledge and consent of the IIROC Dealer Member with whom the Respondent was employed.

#### **Respondent's Professional Experience**

10. Around August 29, 2002, the Respondent was in the employ of Scotia Capital Inc. (Scotia) and was registered with the IDA as a representative with unrestricted practice;
11. In the course of 2006, the Respondent joined the team of another representative with unrestricted practice in Scotia's employ. As a member of this team, Respondent interacted with RP's clientele as an associate advisor;

12. On June 1, 2008, the Respondent became a registrant of IIROC;
13. On or around June 20, 2013, Scotia dismissed the Respondent for cause, for borrowing money from certain clients whose brokerage accounts he was assigned to manage as a representative with unrestricted practice;
14. To date, the Respondent is no longer registered in the employ of an IIROC-regulated firm.

**Personal financial dealings with five clients without Scotia's knowledge**

Mr. KDB

15. KDB is a longtime friend of the Respondent. There is no family tie between the Respondent and this client;
16. In 2011, KDB retained the professional services of the Respondent and opened two brokerage accounts with Scotia, namely a Registered Retirement Savings Plan (RRSP) account and a margin account;
17. KDB's accounts were part of the team accounts of another representative with unrestricted practice, but the Respondent was the one assigned to these brokerage accounts to act as the registered representative with unrestricted practice for this client;
18. In February 2013, the Respondent borrowed three thousand dollars (\$3,000) from KDB, for his own personal ends;
19. At no time did the Respondent inform Scotia of the loan's existence;
20. The Respondent did not sign an acknowledgment of debt in KDB's favour for the money that was borrowed;
21. At no time did the Respondent explain to KDB that the loan placed him in a conflict of interest in his regard;
22. In April 2013, the Respondent repaid in full the amount borrowed from KDB.

Mr. SL

23. SL is designated as the liquidator for the account of Estate of MA (the Estate);
24. In July 2011, SL opened a margin account at Scotia in the name of the Estate;
25. The account opened by SL in the name of the Estate was part of the team accounts of another representative with unrestricted practice, but the Respondent was the one assigned to the brokerage account to act as the registered representative with unrestricted practice for this client;
26. In March and April 2013, the Respondent borrowed five thousand dollars (\$5,000) from SL, for his own personal ends;
27. There is no family tie between the Respondent, MA and SL;
28. At no time did the Respondent inform Scotia of the loan's existence;
29. The Respondent did not sign an acknowledgment of debt in favour of the Estate and/or SL for the money that was borrowed;
30. At no time did the Respondent explain to SL that the loan placed him in a conflict of interest in regard to the Estate;
31. In June 2013, the Respondent repaid in full the amount borrowed from SL, who was acting as liquidator for the Estate of MA.

Mr. AA

32. On June 29, 2000, AA opened a joint cash account at Scotia;

33. On August 10, 2005, AA opened a Life Income Fund (LIF) account with Scotia;
34. On July 8, 2011, AA opened a Registered Retirement Income Fund (RRIF) account;
35. The accounts opened by AA were part of the team accounts of another representative with unrestricted practice, but the Respondent was the one assigned to these brokerage accounts to act as registered representative with unrestricted practice for this client;
36. In November 2012, the Respondent borrowed two thousand dollars (\$2,000) from AA, for his own personal ends;
37. When the Respondent borrowed the two thousand dollars (\$2,000) from AA, he was acting in the capacity of the registered representative with unrestricted practice for these brokerage accounts;
38. There is no family tie between the Respondent and AA;
39. At no time did the Respondent inform Scotia of the loan's existence;
40. The Respondent did not sign an acknowledgment of debt in AA's favour for the money that was borrowed;
41. At no time did the Respondent explain to AA that the loan placed him in a conflict of interest in his regard;
42. On or around December 24, 2012, the Respondent repaid in full the amount borrowed from AA.

Mr. VS

43. On June 2, 2008, VS opened two brokerage accounts in the name of his company HHL, specifically a margin account and a short account;
44. On March 12, 2010, VS opened a Registered Retirement Savings Plan (RRSP) account;
45. VS's accounts were part of the team accounts of another representative with unrestricted practice, but the Respondent was the one assigned to these brokerage accounts to act as registered representative with unrestricted practice for this client;
46. On January 22, 2013 and February 1, 2013, the Respondent borrowed a total of two thousand dollars (\$2,000) from VS, for his own personal ends;
47. There is no family tie between the Respondent and VS;
48. At no time did the Respondent inform Scotia of the loan's existence;
49. The Respondent did not sign an acknowledgment of debt in VS's favour for the money that was borrowed;
50. At no time did the Respondent explain to VS that the loan placed him in a conflict of interest in his regard;
51. On or around June 11, 2013, the Respondent repaid in full the amount borrowed from VS.

Mr. WV

52. On or around December 20, 1999, WV opened a cash brokerage account;
53. On or around July 17, 2000, WV opened a cash brokerage account;
54. On or around September 18, 2006, WV opened a Registered Education Savings Plan (RESP) account;
55. WV's accounts were part of the team accounts of another representative with unrestricted practice, but the Respondent was the one assigned to these brokerage accounts to act as registered representative with unrestricted practice for this client;
56. On March 8 and March 18, 2013, the Respondent borrowed respectively twelve hundred dollars

(\$1,200) and two hundred and twenty-five dollars (\$225) from WV, for his own personal ends;

57. At no time did the Respondent explain to WV that the loans placed him in a conflict of interest in his regard;
58. There is no family tie between the Respondent and WV;
59. At no time did the Respondent inform Scotia of the loan's existence;
60. The Respondent did not sign an acknowledgment of debt in favour of WV for the money that was borrowed;
61. In April 2013, the Respondent repaid in full the amounts borrowed from WV.

#### **Scotia**

62. On April 26, 2013, KDB sent a complaint email to the other representative with unrestricted practice who headed the Respondent's team. In his email, he demands reimbursement of the cash advance that he made to the Respondent. He informs the other representative with unrestricted practice that he tried to reach the Respondent several times, that his attempts to reach him were unsuccessful and that he was now calling on the latter to restore the situation;
63. The representative with unrestricted practice to whom the complaint email was sent, immediately informed his supervisor of the email received from KDB. Shortly afterwards, Scotia's Compliance Department was informed of KDB's request and an internal investigation was initiated in respect of the Respondent;
64. At no time prior to receiving the complaint from KDB was Scotia informed of the existence of the personal loan that KDB made to the Respondent;
65. Yet Scotia's internal policy, which came into force between November 2012 and April 2013, is clear on the subject of personal financial dealings between employees and clients, and is similar in scope to the code of ethics for registered representatives with unrestricted practice. Essentially, it states the following:

[TRANSLATION];

- i. Employees are strictly forbidden from engaging in personal financial dealings with Scotia clients, without the prior approval of their manager and the compliance department;*
- ii. By personal financial dealings is meant any personal arrangements of a financial nature, any and all investments or securities that involve a Scotia employee or in which that employee has an interest;*

66. In the course of the internal investigation, Scotia learned that the Respondent had borrowed money from four (4) other clients, in addition to the cash loan from KDB. The other clients are: SL, AA, VS and WV;
67. At no time prior to the internal investigation was Scotia informed of the existence of the personal loans that SL, AA, VS and WV had made to the Respondent;
68. On or around June 20, 2013, upon conclusion of the internal investigation, Scotia dismissed the Respondent for cause, for borrowing money from certain clients whose brokerage accounts he was assigned to manage as a representative with unrestricted practice;
69. With the exception of KDB, all of the clients from whom the Respondent borrowed money still have a brokerage account with Scotia.

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

70. 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.

71. The Settlement Agreement is subject to acceptance by the Hearing Panel;
72. The Settlement Agreement shall become effective and binding upon the Respondent and Staff from the date of its acceptance by the Hearing Panel.
73. 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.
74. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his right, under IIROC rules and any applicable legislation, to a disciplinary hearing, review or appeal.
75. 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.
76. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel;
77. 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;
78. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately on the effective date of the Settlement Agreement;
79. 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 Montréal, Québec, this December 22, 2014.

\_\_\_\_\_  
(s) Witness

\_\_\_\_\_  
(s) Daniel Siska

**WITNESS**

**DANIEL SISKA**

**RESPONDENT**

**AGREED TO BY STAFF**, AT MONTRÉAL, QUÉBEC, THIS JANUARY 6, 2015.

\_\_\_\_\_  
«Linda Vachet»

\_\_\_\_\_  
(s) Myriam Giroux-Del Zotto

**WITNESS**

**MYRIAM GIROUX-DEL ZOTTO**

Enforcement Counsel,

for Staff of IIROC

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