

Re Taub

IN THE MATTER OF:

THE DEALER MEMBER RULES OF THE INVESTMENT INDUSTRY REGULATORY
ORGANIZATION OF CANADA

AND

THE BY-LAWS OF THE
INVESTMENT DEALERS ASSOCIATION OF CANADA

AND

STEPHEN TAUB

2010 IIROC 2

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

Heard: January 18, 2010
Decision: January 18, 2010
(12 paras.)

Hearing Panel:

The Honourable John B. Webber, Q.C., Chair
Mr. David W. Kerr, Member
Mr. Michael Walsh, Member

Appearance:

Andrew P. Werbowski, Enforcement Counsel
Robert Brush, counsel for the Respondent

DECISION AND REASONS

- ¶ 1 The Panel accepts the joint settlement recommendation of counsel, which was as follows:
- (a) A permanent ban from receiving registration approval in any capacity with any Dealer Member of IIROC; and
 - (b) a global fine in the sum of \$50,000.
- ¶ 2 The Respondent also agreed to pay costs to the Association in the sum of \$15,000.
- ¶ 3 We were advised by counsel for IIROC and the Respondent that the entire fine and costs have been placed in escrow with Enforcement Counsel to be released upon completion of the settlement process.
- ¶ 4 The investigation by Enforcement Department Staff disclosed matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No. 1, Schedule C, Part C. The Minutes of Settlement contained the previous registration history of the Respondent ending in September 2004

with Research Capital Corporation. The Respondent is currently not registered with a Member Firm.

¶ 5 Five examples were given as to the conduct of the Respondent which clearly demonstrates that certain of the accounts displayed activities and characteristics that ought to have caused a reasonable registrant to investigate the owners and operations of the account to satisfy himself that the trading activity was not improper. All of the activities, documented in the Minutes of Settlement, were possible indicators of conduct that might be potentially illegal, manipulative, deceptive or an improper control block distribution. This activity was designated as gatekeeper issues as set forth in paragraphs 24 to 59 of the Settlement Agreement. Counsel agreed that the activity could be shortly described as the type of activity by clients that required investigation. The failure by the Respondent to make the appropriate and proper investigation resulted in a gatekeeping breach.

¶ 6 The Respondent admits to the contravention set forth in paragraph 60, which reads as follows:

Count 1: Between November 1998 and June 2003 (the “Material Time”), the Respondent engaged in conduct unbecoming contrary to Association By-law 29.1 in that he failed in his role as gatekeeper and facilitated certain trading activity for certain clients that, alone or in combination, was a possible indicator of conduct that was potentially illegal, manipulative, deceptive or an improper control block distribution.

¶ 7 We are urged by the counsel for Enforcement and for the Respondent that this is an agreement that should be accepted because it is in the public interest. The proposed sanctions, as set forth in paragraphs 61 to 64 of the Settlement Agreement, are appropriate given the nature and background of the activities of the Respondent.

¶ 8 We were referred to the Dealer Member Disciplinary Sanction Guidelines which assists panels in their consideration of the appropriate penalty to be imposed and, in particular, paragraph 4.3 dealing with a permanent bar from approval of membership. As stated in those guidelines, a permanent ban from approval of an individual is a severe economic penalty. The Panel was referred to the *Toban* case, [2007] IDACD NO. 9, dated November 17, 2006 as to an example of an appropriate penalty. In the *Toban* case, after a six-day hearing, the Respondent was permanently banned from approval by the Association. In addition, a fine of \$100,000 was imposed, together with payment to the Association of \$20,900 representing disgorgement of commissions, and a payment to the Association of \$25,000 for costs.

¶ 9 We were advised that this matter was scheduled to be heard over a period of approximately four weeks. Therefore, it is important to note that the resolution by way of a settlement agreement saved considerable time and expense to all parties involved. In addition, this is a long-standing matter covering the period from November 1998 to June 2003. Under all of the circumstances, we believe it is in the public interest to accept the proposed settlement. We are also aware that there was a previous disciplinary proceeding before a panel of the Exchange Hearing Committee of the Toronto Stock Exchange on January 28, 1997 which resulted in disciplinary penalties.

¶ 10 We are mindful of the words of the District Counsel in the decision of *Re Milewski*, [1999] I.D.A.C.D. No. 17, decided on July 28, 1999. In that decision, at page 9, the District Counsel makes this comment:

Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest benefits of the settlement process in its

consideration of specific settlements.

¶ 11 The settlement agreed to is, in the Panel's opinion, reasonable as it includes the removal of the Respondent from industry. In addition, the imposition of a fine in the amount of \$50,000, although perhaps lower than one might expect is, in our considered view, not unreasonable.

¶ 12 In the result, we conclude the sanctions and costs imposed are significant reflecting our concern as to the possible damages and the losses arising from the trading described. We are satisfied that the settlement agreement is reasonable on its face.

Dated at Toronto, this 18th day of January 2010.

The Honourable John B. Webber, Q.C., Chair

Mr. David W. Kerr, Member

Mr. Michael Walsh, Member

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SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The Enforcement Department Staff ("Staff") of the Investment Industry Regulatory Organization of Canada ("IIROC") has conducted an investigation ("the Investigation") into the conduct of Stephen Taub ("the Respondent").
2. The Investigation was commenced by Enforcement Department Staff ("IDA Staff") of the Investment Dealers Association of Canada ("IDA") prior to May 30, 2008. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada and Market Regulation Services Inc. Pursuant to the *Administrative and Regulatory Services Agreement* between IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions.
3. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C ("the Hearing Panel").

II. JOINT SETTLEMENT RECOMMENDATION

4. For the purposes of this settlement, the Respondent consents to be subject to the jurisdiction of IIROC.
5. Staff and the Respondent consent and agree to the settlement of these matters by way of this settlement agreement ("the Settlement Agreement") 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.
6. The Settlement Agreement is subject to acceptance by the Hearing Panel.
7. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
8. 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.
9. 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.

10. 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. If the Hearing Panel rejects the Settlement Agreement, the Respondent shall be entitled to raise any and all defences, including the defence that IIROC no longer has jurisdiction over him because more than five years have passed since the Respondent ceased to be an approved person.
11. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
12. 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.
13. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

III. STATEMENT OF FACTS

14. Staff and the Respondent agree, solely for the purposes of this Settlement Agreement, with the facts set out in this Section III and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts. Staff and the Respondent agree that this agreement of facts is without prejudice to the Respondent in any other proceeding of any kind.

A. Registration History:

15. The Respondent commenced employment in the securities industry as a junior analyst with Wood Gundy in January 1988. Since that time, he has been registered as a registered representative with the following Member Firms:

Firm	Dates of Employment
Scotia McLeod	April 1988 - June 1988
Richardson Greenshields	June 1988 - September 1988
Verlton Securities	September 1988 - November 1991
Marit Investments Corp	November 1991 to April 1995
Brant Securities Ltd	April 1995 - September 2001
Research Capital Corp	September 2001 - September 2004

16. The Respondent is currently not registered with a Member Firm.

B. Description of the Respondent's Book of Business

17. Between November 1998 and June 2003 (the "Material Time"), the Respondent's book of business dealt substantially with client accounts (the "Accounts") that traded stocks on the Canadian over-the-counter market (the "OTC") and the U.S. Over-the-Counter Bulletin Board (the "OTCBB"). These stocks were frequently traded by individual clients or small groups of clients. Most of the Respondent's clients were corporate clients and some were offshore entities.
18. In addition, during the Material Time, the Respondent's book of business involved clients selling shares pursuant to Securities and Exchange Commission ("SEC") Rule 144 exemptions which allows public resale of restricted and control securities if a number of conditions are met.
19. The Respondent acted for individuals and one or more corporate accounts for which the same individuals had influence over trading decisions and whose trading activity ought to have caused the Respondent to make inquiries because it had the appearance of acting in concert. Frequently,

these client groups traded heavily in the same limited group of securities.

20. In addition, many of the Respondent's clients frequently transferred securities in from third parties that were ostensibly provided as compensation for services rendered or as repayment for debts owed.
21. Some Accounts were owned or operated by, or associated with non-residents of Canada who were experienced market participants, such as insiders, control persons, promoters or persons engaged in investor relations activities.
22. Some Accounts were owned, operated by, or associated with persons with criminal or securities regulatory histories. Particulars of certain individuals with criminal or regulatory histories who owned, operated or were associated with Accounts for which the Respondent was the registered representative include:

Name	History
RS	RS was arrested in BC in connection with a bank fraud case in which it is alleged that RS embezzled \$88 million from a bank in Thailand. He is currently under house arrest in Vancouver awaiting the outcome of extradition proceedings.
HR	HR is a former stockbroker and stock promoter who has served multiple prison sentences in Canada and the U.S. for fraud and wash trading. HR has since been pardoned.
RP	<p>RP is a California-based former lawyer who was disbarred in 1984 after his conviction for selling drugs to undercover agents.</p> <p>In 1995, RP pleaded guilty in a Los Angeles federal court to participating in a fraudulent scheme to use overvalued stocks to inflate an insurance company's balance sheet.</p>
PH (aka PS)	<p>PH was arrested in France and sentenced to 3 years in prison on April 16, 2004 for providing false banking statements in connection with Aerolyon (now L'Air Holdings).</p> <p>A U.S. Department of Justice news release dated June 18, 1999 indicated PH represented himself as an investment banker. He has been charged with a 23 count indictment in which it is alleged that he, along with co-conspirators, laundered more than \$5 million from stock sales from the acquisition and sale of a shell corporation.</p>
RK	In May 2000 the SEC barred RK from associating with any broker or dealer (with a right to reapply for association after five years) for his role in the manipulation of several stocks. In 2002 the SEC alleged that RK had violated the terms of his order and sought testimony from RK's wife, Mrs. RK. The SEC alleges that Mrs. RK and other family members allowed RK to use brokerage accounts held in their names.

IB Sr. and IB	Named in March, 2004 as defendants along with other individuals in an SEC action relating to a broker bribery scheme involving the stocks of nine public companies.
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23. Throughout the Material Time, certain of the Accounts displayed activities and characteristics that ought to have caused a reasonable registrant to investigate the owners and operations of the Accounts to satisfy himself that the trading activity was not improper, because each activity, alone or in combination, was a possible indicator of conduct that was potentially illegal, manipulative, deceptive or an improper control block distribution.

C. Gatekeeper Issues

The Respondent's Involvement with RS

24. During the Material Time, the Respondent opened numerous accounts at Brant Securities Ltd. ("Brant") for the following individuals and entities:
- a) TM Corp., a corporate entity controlled by RS. RS was referred to the Respondent by another one of the Respondent's clients, HR;
 - b) AS, who is RS's mother. RS had trading authority over AS's account;
 - c) HR;
 - d) IC, a business associate of RS and HR whom the Respondent considered to be the "dealmaker" for these individuals;
 - e) FK, a business associate of IC;
 - f) AdeR, a business associate of IC;
 - g) JK Ltd., a corporate account over which RS had trading authority.
25. TM Corp, RS, AS, HR, IC, FK, AdeR and JK Ltd. engaged in trading activity and movement of securities which ought to have caused a reasonable registrant to investigate and satisfy himself that the accounts were not engaged in manipulation or deception. Trading activity in the securities of Wavetech Networks Inc. ("Wavetech"), Millenium Equities Limited ("Millenium"), Digital Cybernet Corporation ("Digital") and Armac Capital Corp. ("Armac") exhibited characteristics that should have caused the Respondent to investigate and satisfy himself that the trading activity was not manipulative or deceptive.
26. Each of Wavetech, Millenium, Digital and Armac traded on the former CDN market in Canada. The pattern of trading activity involved the delivery in of a large quantity of physical share certificates by IC or one of his associates to accounts at Brant. These physical certificates would represent anywhere from 35% to 45% of the issued and outstanding shares. The certificates would then be transferred to other accounts at Brant or other Member Firms, but controlled by these same individuals. In addition, certain transactions had no change in beneficial ownership.
27. Furthermore, some of the transfers of Wavetech, Millenium, Digital and Armac shares constituted distributions from control block positions which did not comply with the requirements of the Ontario Securities Act regarding control block distributions.
28. By facilitating this activity without first conducting an investigation to satisfy himself that the activity was not manipulative or deceptive, the Respondent failed in his duties to act as gatekeeper for the securities industry.

The Respondent's Involvement with MJL

29. During the Material Time, the Respondent opened certain accounts at Brant which were connected to an individual named MJL.
30. Between July 1997 and April 1999 the Respondent opened accounts (the "Brant MJL-Related Accounts") for:
 - a) MJL in her personal capacity;
 - b) MJL's husband, SL, over which MJL had trading authority;
 - c) PF Ltd., a corporate account controlled by SL;
 - d) MCC, MJL's mother and a resident of Hong Kong;
 - e) CdSA Corp., a Panamanian corporate account over which MJL had trading authorization; and
 - f) Y Asset Management, a seemingly unrelated company which was referred to the Respondent by SL, but for which the Respondent's sales assistants' rolodex indicates MJL as the contact person.
31. Commencing in November 1998, the above-noted accounts engaged in trading activity in two OTC-BB traded securities:
 - a) Factory 2U Stores Inc. (formerly known as Golden Spirit Minerals, formerly known as 2U Online Dotcom Inc., formerly known as Power Direct Inc.); ("2U Online") and
 - b) Avalon Gold Corp. (formerly known as Asdar Group Inc., formerly known as Asdar Inc., formerly known as Iceberg Brands Corp., formerly known as Precise Life Sciences Ltd.), ("Precise Life").
32. The Brant MJL-related Accounts engaged in trading activity which ought to have caused a reasonable registrant to investigate and satisfy himself that the accounts were not engaged in manipulation or deception.
33. 2U Online owns more than ten percent of Precise Life. The telephone number for Precise Life is MJL's office telephone number. The telefax number for 2U Online is MJL's telefax number.
34. The pattern of trading activity in the Brant MJL-Related Accounts involved large blocks of physical share certificates of 2U Online and Precise being received into the accounts. Once received, the shares were actively traded in the open market. Hundreds of transactions were conducted in such fashion that no payment was ever required for the purchases.
35. These transactions continued through the Brant MJL-Related Accounts until October 2001 when the Respondent transferred his registration to Research. Accounts were opened for each of the above-noted clients at Research (the "Research MJL-Related Accounts"). Trading authority was identical for the Research MJL-Related Accounts as the Brant MJL-Related Accounts with the exception of CdSA Corp., which did not provide trading authority to MJL.
36. In January 2002, when Research compliance personnel required the Respondent to close his B.C. accounts, the shares of 2U Online and Precise Life in the Research MJL-Related Accounts were transferred to various other Member Firms.
37. Shortly after closing the Research MJL-Related accounts, the Respondent opened two new off-shore corporate accounts in the Cayman Islands, (the "Cayman Accounts"). The signatories, addresses, telephone numbers and telefax numbers for these two Cayman companies are the same as for Y Asset Management. Within a few weeks the shares of 2U Online and Precise Life were received in from other Member Firms to the Cayman Accounts.
38. Trading activity in 2U Online and Precise Life continued in the Research accounts until November 2002 when, in response to questions raised by an IDA Sales Compliance Review, Research compliance personnel required these accounts to be closed.

39. Throughout this entire period, the Respondent and his sales assistants placed over 880 calls to MJL, however, no calls were made to Panama regarding CdSA Corp. trading activity. When the Respondent was required by Research compliance personnel to close the accounts, he did not contact anyone in Panama. He did, however, at this time, place a number of calls to MJL's cell phone number.
40. By facilitating this activity without first conducting an investigation to satisfy himself that the activity was not manipulative or deceptive, the Respondent failed in his duties to act as a gatekeeper for the securities industry.

The Respondent's Involvement with RP and PH (a/k/a PS)

41. During the Material Time, the Respondent facilitated a series of transactions regarding L'Air Holdings Inc. ("L' Air"), a company whose securities trade on the OTCBB. L'Air was formerly known as Superior Networks Inc., ("Superior Networks").
42. Also involved in the series of L'Air transactions are the following individuals:
- a) PH (a/k/a PS, a/k/a HH);
 - b) RP, a personal friend of the Respondent and resident of the United States;
 - c) F MacK;
 - d) NG, a personal friend of the Respondent and a B.C. resident; and
 - e) JS, a U.S. resident who has been disciplined by the SEC for promoting penny stocks on the internet.
43. On or about January 8, 2003, the Respondent opened the following accounts at Research:
- a) GE Ltd., a Panamanian company apparently connected to RP;
 - b) PS in his personal capacity; and
 - c) UCP Corp., a corporate account controlled by PH.
44. Prior to the opening of the above-noted accounts, in October 2002, Superior Networks shares were crossed in accounts for which the Respondent was the registered representative.
45. In late January and early February 2003, trading activity occurred in the PH and UCP Corp. accounts which exhibited characteristics that ought to have caused the Respondent to investigate and satisfy himself that the trading activity was not manipulative or deceptive.
46. On February 26, 2003, Research compliance personnel discovered that the GE Ltd. account was apparently connected to a company of the same name in California whose president (RP) was a former lawyer who had been disbarred in 1984 for drug trafficking. Research compliance personnel advised the Respondent that only sales at low volume of L'Air shares would be permitted or that the L'Air shares could be delivered out to another firm.
47. On February 27, 2003, Research compliance personnel learned further that Universal Capital was an investor relations firm for L'Air. Accordingly, Research compliance personnel prohibited any buying or selling of L'Air securities by PH, UCP Corp. or any one connected to it.
48. In March 2003, the volume of transactions and price of L'Air shares collapsed.
49. By facilitating this activity without first conducting an investigation to satisfy himself that the trading activity was not manipulative or deceptive, the Respondent failed in his duties to act as gatekeeper for the securities industry.

The Respondent's Involvement with FIDRA Holdings and IB

50. During the Material Time, the Respondent opened off-shore corporate accounts at Brant for an individual named IB in the name of FIDRA Holdings Ltd., FIDRA Holdings Ltd. 001, FIDRA Holdings Ltd. #2, FIDRA Holdings Ltd. #3 and FIDRA Holdings Ltd. #4, (collectively , "FIDRA").
51. The Respondent routinely accepted hundreds of cheques from third parties for deposit into the FIDRA accounts. Over a 14-month period, the Respondent wired a total of \$8,700,000 from the FIDRA accounts to its off-shore bank accounts. Minimal trading activity was conducted in the FIDRA Accounts.
52. The Respondent made no, or minimal, efforts to determine the economic basis for the wire transfers. His only knowledge was that he "believed the accounts belonged to wealthy Canadians" who "had little private dealings".
53. Ultimately, Brant compliance personnel required IB to take his business elsewhere and required the FIDRA accounts to be closed.
54. The transactional activity in the FIDRA accounts would have required a reasonable registrant to make appropriate inquiries as to the purpose of the transactions and to satisfy himself that the transactional activity was not improper. In failing to do so, the Respondent failed in his duties to act as gatekeeper for the securities industry.

The Respondent's Involvement with MS

55. During the material time, the Respondent opened an account at Research for an off-shore corporate entity, IM Inc. The principal for IM Inc. and the individual who provided trading instructions was MS. The NCAF indicates that MS was a resident of Hong Kong.
56. Between January 2003 and March 2003, the Respondent's staff sent daily faxes to MS at a telefax number in Florida.
57. In March, 2003, while reviewing the exercise of stock options by IM Inc. for a company called UIB, Research compliance personnel discovered that MS was actually a resident of Boca Raton, Florida.
58. Research Compliance personnel permitted the deposit of the UIB shares in the account of IM Inc., on the understanding that once an existing short position was covered, the account would be closed as a result of MS's U.S. residency.
59. The Respondent is not registered to deal with U.S. residents. The fact that the daily faxes to MS were being sent to a telefax number in Florida ought to have caused the Respondent to make appropriate inquiries to determine the residency of MS. In failing to do so, the Respondent failed in his duties to act as gatekeeper for the securities industry.

IV. CONTRAVENTIONS

60. The Respondent admits to the following contraventions of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:

Count 1: Between November 1998 and June 2003 (the "Material Time"), the Respondent engaged in conduct unbecoming contrary to Association By-law 29.1 in that he failed in his role as gatekeeper and facilitated certain trading activity for certain clients that, alone or in combination, was a possible indicator of conduct that was potentially illegal, manipulative, deceptive or an improper control block distribution.

V. TERMS OF SETTLEMENT

61. The Respondent agrees to the following terms of settlement:
 - a) a permanent ban from receiving registration approval in any capacity with any Dealer Member of IIROC; and
 - b) a global fine in the sum of \$50,000.
62. The Respondent agrees to pay costs to the Association in the sum of \$15,000.00.
63. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
64. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

AGREED TO by the Respondent at the City of Toronto, in the Province of Ontario, this 11th day of January, 2010.

“WITNESS SIGNATURE”

WITNESS

“STEPHEN TAUB”

STEPHEN TAUB

AGREED TO by Staff at the City of Toronto, in the Province of Ontario, This 18th day of January, 2010 .

“ROBERT BRUSH”

WITNESS

“ANDREW WERBOWSKI”

ANDREW P. WERBOWSKI

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

ACCEPTED this 18th day of January, 2010, by the following Hearing Panel:

Per: “John Webber”

Panel Chair

Per: “Michael Walsh”

Panel Member

Per: “David Kerr”

Panel Member

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