Re Aloni

IN THE MATTER OF:

THE BY-LAWS OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA

AND

RON ALONI

2008 IIROC 10

Investment Dealers Association of Canada
Hearing Panel (Pacific District)

Heard: March 6, 2008 (Merit) and June 10, 2008 (Penalty) at Vancouver, BC
Decision: April 11, 2008 (Merit) and July 22, 2008 (Penalty)
(46 & 49 paras.)

Hearing Panel:
Leon Getz, Chair, Brian Field and Karen Henderson

Appearances:
Paul Smith for the Investment Dealers Association
Ronald Pelletier for Ron Aloni

REASONS FOR DECISION

Introduction – the Notice of Hearing

1. We were constituted as a panel pursuant to By-law 20 of the Investment Dealers' Association of Canada (the "Association") to hear certain allegations against Ron Aloni (the "Respondent").

2. The Notice of Hearing specifies one count. Essentially, it alleges that between April 1,2002 and June 17,2003 (the "Relevant Period"), while employed as a Registered Representative (RR) at Raymond James Ltd., a Member firm, Mr. Aloni failed to observe high standards of ethics or conduct in the transaction of his business, and/or engaged in business conduct or practice which was detrimental to the public interest, contrary to Association By-law 29.1. It is alleged that his breach consisted in facilitating the purchase of shares of two private companies in the RRSP accounts of as many as 35 clients without making any reasonable inquiries to determine certain particular matters.

3. At the Hearing counsel for the Association took a position that was slightly different from that outlined in the Count contained in the Notice of Hearing. Counsel for Mr. Aloni indicated that he took no issue with this and in the result nothing turns on it. The Association, in its description of the Contravention that it alleges (this was provided to us at the Hearing), says:

> 29. During the Relevant Period, the Respondent failed to observe high standards of conduct in the transaction of his business and engaged in business conduct or practice which was detrimental to the public interest, contrary to By-law 29.1 by facilitating the NBPPs in the manner described in the Statement of Agreed Facts and without making any reasonable inquiry to determine:

(a) Whether the private company shares were eligible for distribution by the seller or for purchase by his client, in circumstances where there was no prospectus or any applicable exemption from the prospectus requirements of the British Columbia Securities Act (the BC Act), the Ontario Securities Act (the Ontario Act) or any other applicable jurisdiction;

(b) Whether the private company shares were eligible to be held inside an RRSP; and

(c) Whether the NBPPs were a legitimate investment in circumstances in which a reasonably diligent RR would have determined to be suspicious or deserving of further inquiry.

4. We shall proceed, therefore, on the basis that Count 1 in the Notice of Hearing has been amended so as to be in the form set out above.

By-law 29.1

5. During the Relevant Period the material part of the Association's By-law 29.1 was as follows:

> 29. Members and each partner, director, officer, sales manager, branch manager, assistant or cobranch manager, registered representative, investment representative and employee of a Member (i) shall observe high standards of ethics and conduct in the transaction of their business, (ii) shall not engage in any business conduct or practice which is unbecoming or detrimental to the public . . . .

Statement of Agreed Facts

6. We heard no witnesses at the Hearing. A Statement of Agreed Facts ("SAF") was, however, entered as an exhibit. Appended to it is a substantial number of documents. We were advised by Association Counsel that certain paragraphs (32 through 39) of the Particulars contained in the Notice of Hearing were not included in the SAF, because they were argumentative and conclusory statements and the Association's position was that they are made out in the Contravention. Based therefore upon the SAF and our review of the related documents we set out below the facts that we consider material.

The Respondent

7. Mr. Aloni is a university graduate. He has been a licensed RR in British Columbia[1] since March 1997 and during the Relevant Period was working in that capacity in the Vancouver office of Raymond James Ltd., a Member Firm. Since being registered Mr. Aloni has successfully completed a number of courses offered by the Canadian Securities Institute, among them the Canadian Options Course and the Professional Financial Planning Course.

The circumstances giving rise to the alleged contravention

Client A

8. Some time in December 2001, Raymond James received a call from a prospective client ("Client A"), resident in Burnaby, B.C., inquiring about depositing private placement shares into a registered RRSP account. The call was forwarded to an administrator in the Registered Plans Department of Raymond James' back office but since back office employees do not deal directly with clients, Client A was referred to the then branch manager in the Raymond James office who advised the administrator to refer Client A to Mr. Aloni.

9. On or about December 19, 2001, Client A opened a self-directed RRSP account at Raymond James. Mr.

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[1] We understand that Mr. Aloni was under the impression that during the Relevant Period he was also registered in Ontario but this was not in fact the case. As we understand it, this was due to some administrative oversight in the office of Raymond James Ltd. We were advised that there was no issue regarding out-of-province dealing in the matter before us.

Aloni was the RR responsible for that account. Client A transferred into the account shares of a private company that he had purchased through another Member firm.[2]

10. Some time in March 2002, Mr. Aloni received a Letter of Direction (the "Letter of Direction") from Client A addressed to Raymond James directing it to accept delivery of a specified share certificate of a second private company, LMG, and to deliver $35,000 from Client A's RRSP account in payment for the shares to a lawyer (the "Lawyer") in trust. The Letter of Direction was enclosed with a letter from the Lawyer which also enclosed a certificate of LMG describing LMG as an eligible corporation and qualified for investment by an RRSP (a "Corporation Certificate"), a Qualified Investments Letter signed by Client A (a "Qualified Investments Letter") and a Valuation Letter (a "Valuation Letter") signed by an accountant (the "Accountant"). Mr. Aloni was advised by compliance personnel at Raymond James that they required these documents in order to swap private company shares into an RRSP account. There is no indication as to when this advice was given. The Clients also executed a "Non-Brokered Private Placement Waiver" which stated that Raymond James was not acting as agent, was not conducting any due diligence, had no opinion on the tax consequences or investment merits of the offering and was not able to determine whether the investment was suitable for the client. This was a form which Raymond James compliance requested after some of the initial transactions had been effected.

11. The Accountant who signed the Valuation Letter was a Certified General Accountant practising in Vancouver who worked as a consultant for small private companies. He provided book-keeping and consulting services to LMG and was the sole director and officer of another private company, SWC and, in that capacity, signed Corporation Certificates on its behalf.

12. Mr. Aloni neither solicited nor did he give any investment advice to Client A in relation to his purchase of LMG shares.

"S" and the Promoters

13. At some point Client A suggested to Mr. Aloni that he should meet "S". Client A told Mr. Aloni that S knew of others who might be interested in swapping private company shares into a self-directed RRSP account. S apparently worked out of the Lawyer's Vancouver law office though he was not a lawyer. In letters that he signed written on the Lawyer's letterhead, S described himself as the Project Manager. It is not clear what this description was intended to convey.

14. Mr. Aloni did meet with S and subsequently delivered to him a number of blank NAAFs. He expected that they would be forwarded to one of two people, described in the SAF as "the Promoters", who would either complete them for the prospective clients or assist them in doing so. The Promoters resided in Ontario and held themselves out as financial planners. They were unregistered.

The 35 clients

15. During the Relevant Period some 35 individuals who were referred to Mr. Aloni either by S or by one of the Promoters opened self-directed RRSP accounts with Raymond James Ltd. 33 of these individuals were Ontario residents; one resided in Saskatchewan and one in Nova Scotia. A number of these accounts were opened in each of the months during the Relevant Period.[3]

16. Collectively these individuals, through their newly-opened RRSP accounts, invested an aggregate of approximately $2,500,000 in shares (at $1.00 each) of either LMG or SWC. The amounts invested varied. At the low end approximately $23,500 was invested by a lady in her late 50s together with her husband, aged 63. Between them they had an estimated annual income of about $30,000. At the high

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[2] The SAF does not indicate whether Client A's private company shares were acquired at the other Member Firm by way of a private placement, non-brokered or otherwise, or by purchase from an existing security holder.

[3] Our review of the documents indicates that while in some months, e.g. October and December 2002 and February 2003, only one such account was opened, in other months several accounts were opened, e.g. August 2002 (5), September 2002 (9), April 2003 (5).

end a 65 year old employee assistance consultant invested $350,000.

17. In a number of instances the RRSP accounts were funded with cash transferred from existing RRSP accounts held at other investment dealers or financial institutions.

18. The profile of each of the 35 clients was similar in that:

    1. none had previously met Mr. Aloni;
    2. all were referred to him by one of the Promoters or by S; and
    3. according to their NAAFs all except one of the clients had virtually the same high risk Account Objectives and Risk Factors; 20 recorded 100% Venture Situations; 6 others recorded Venture Situations or Short Term Trading together at 100%; and 6 others recorded at least 80% Venture Situations.

19. Mr. Aloni did not know any of the 35 clients before their accounts were opened. According to the SAF:

> 29. Once the Respondent received the completed NAAFs and other documents from the RRSP Clients, the Respondent recalls speaking with each client to confirm the information contained on their NAAFs. The Respondent further recalls that, in many cases, he was unable to reach the client directly and either the Project Manager or one of the Promoters would contact the RRSP Client to ensure that they contacted the Respondent.
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> 30. Association Staff does not accept that the Respondent spoke to each client. Raymond James' outbound telephone records . . . and interviews with the RRSP Clients indicate that the Respondent only made initial contact with 16 out of 35 of the RRSP Clients before opening an account for them.

20. As we understand the facts, in the case of each of the 35 RRSP Clients, Mr. Aloni received the documents that he had been told by the compliance department were required for a purchase of private company shares through an RRSP. He received them from S, under a cover of a letter written on the letterhead of the Lawyer.

21. Mr. Aloni neither promoted nor recommended the purchase of the LMG or SWC shares to any of the RRSP Clients. He received no fees or commissions in connection with the purchases. In each case, it seems, the client had already made an investment decision. It seems that Mr. Aloni opened the accounts in the hope and expectation that the clients would do other business with him. For the most part, however, the only activity in the accounts was the investment in LMG or SWC. The Association does not say that these private share transactions were done by Mr. Aloni for any gain or benefit, nor is there any allegation that he was part of any scheme.

LMG and SWC and their shares

22. During the Relevant Period neither LMG nor SWC (both private companies incorporated in BC) had filed a prospectus or prepared an offering memorandum. Any distribution of any of their shares could only lawfully be made, therefore, by complying with the conditions of a limited number of exemptions provided for pursuant to applicable securities legislation.

23. One might have inferred from the description of the transactions as NBPPs that the private company shares purchased in the RRSP accounts were treasury shares. In fact, however, this was not the case. In each instance the shares – designated as "Class C Preferred Shares" - were acquired at $1.00 per share, not from the company, but from a seller who was either an individual or a corporation. Among the documents that in each case was sent to Mr. Aloni by the Lawyer, was a copy of a Share Purchase Agreement between the client and the seller who represented that he or it was "the sole owner of all the legal and beneficial title to the Securities" and that it had, or would, comply "with all laws applicable to the sale of the Securities under this Agreement" As we understand the facts Mr. Aloni did not know

either the sellers or their connection, if any, with S, the Lawyer or the Promoters during the Relevant Period.

24. Mr. Aloni also did not know at the material time that, in each instance, the seller(s) had acquired the shares for $0.05 pursuant to an option previously granted by one or other of the two private companies. The seller(s) thus made an instant $0.95 per share profit, when they exercised the options upon being notified by one of the Promoters that another client had opened an account with Mr. Aloni and that cash was now available to purchase the shares at $1.00. Mr. Aloni did not know that one of the sellers was a corporation whose signatory was the brother of the Lawyer, and that the other seller was the spouse of a former Alberta registrant, who was a colleague of the Lawyer. During the Relevant Period, Mr. Aloni had no personal knowledge of and no personal dealings with the spouse, the former Alberta registrant, or the brother. His knowledge of and dealing with third parties was limited to his contact with the Lawyer, the Project Manager "S", and one of the two Promoters.

The RRSP Stripping Scheme

25. It seems that the funds delivered by Raymond James to the Lawyer, in accordance with the Letters of Direction delivered by him to it, and representing the purchase price paid by the clients' RRSP accounts for the shares of LMG and SWC, cannot be accurately traced by Association staff. Unbeknownst to Mr. Aloni, sometime after the transaction had been completed, one of the Promoters contacted some of the clients to advise that a foreign currency trader had disappeared with their money. Further, all information available to Association staff indicates that the private companies are insolvent and/or bankrupt, the shares do not trade and have no value and the RRSP clients appear to have lost their entire investment in the NBPPs.

26. According to the SAF the Association "believes" that the actions and transactions described above constituted all or part of what is described as an RRSP Stripping Scheme. It is not necessary for us to come to any conclusion about this. According to the SAF "if the NBPPs were part of a RRSP stripping scheme, this fact was not known to" Mr. Aloni. We should say, however, that if there was indeed such a scheme, the RRSP Clients were willing participants in it.

Discussion

27. Against this background we turn to a consideration of the particulars of the matters that the Association says make up Mr. Aloni's breach of Bylaw 29.1.

28. We begin with the Association's contention that Mr. Aloni facilitated the NBPPs in the manner described in the SAF. As we have already noted,[4] according to the SAF "if the NBPPs were part of a RRSP stripping scheme, this fact was not known to the Respondent during the Relevant Period." Mr. Aloni's ignorance of the fact that the NBPPs were, or were possibly, part of such a scheme, does not in and of itself exculpate him. The allegation against him is not that he knew or ought to have known that what was happening was not "legitimate" but rather that there were sufficient "red flags" surrounding what happened during the Relevant Period that he ought to have been suspicious as to what was going on. He ought, therefore, to have made diligent further enquiry.

29. We agree.

30. In our view, the red flags included some or all of the following elements:

    (a) Client A's recommendation that Mr. Aloni should meet with S, a stranger, because S allegedly "knew of others who might be interested in swapping private company shares into a self-directed RRSP account". We appreciate that RRs have an interest in building their "book". The pursuit of contacts and suggestions to this end is a perfectly legitimate

[4] See paragraph [26] above.

activity and it seems clear that it was with a view to this that Mr. Aloni acted.[5] But Client A's recommendation seems to us on its face to have been unusual, both in the sense that it related to "others", contacts of S but apparently not known to Client A , who were suggested to have a very particular and somewhat out of the ordinary interest in swapping private company shares into self-directed RRSPs. In our opinion these were elements that should have raised Mr. Aloni's "antennae."

(b) The fact that Mr. Aloni delivered "a number" of blank NAAFs to S, whom he had only just met and that Mr. Aloni expected that these would be delivered to the Promoters, one of whom he did not know, who would then "sign-up" the prospective clients.

(c) The curiosity that the majority of the RRSP clients were Ontario residents interested in swapping the shares of one of two British Columbia private companies, neither of which had any prior connection with either Mr. Aloni or Raymond James, into an RRSP account apparently newly opened for the specific purpose of making the investment and that in each case the necessary documents were forwarded from the same source, S, who Mr. Aloni barely knew, working out of the office of the Lawyer.

(d) The fact (evidenced on the month-end statements included among the documents attached to the SAF) that in some instances the money transferring in to the newly-opened RRSP's was coming from other investment dealers (even if the client NAAF was completed indicating "no" accounts at other investment firms). If the client needed a self-directed RRSP to purchase these private shares, why would they want or need to deal with Mr. Aloni through a new such account, in another province, when they already had an RRSP account at an investment dealer?

(e) The significant similarity (see paragraph [18] above) in the investment objectives indicated by the 35 RRSP clients on their respective NAAFs.

31. Even if certain points were not immediately apparent to Mr. Aloni at the outset, they ought to have become apparent after, at most, a couple of months. By the end of August 2002 some 13 new RRSP accounts had been opened, each of them having the characteristics referred to. We note that each of the completed NAAFs indicated that the source of the referral was either S who, as we have noted, Mr. Aloni barely knew or one of the Promoters one of whom he did not know at all.

32. The Association further alleges in its Contravention that three specific aspects of Mr. Aloni's conduct amounted to breaches (or together constituted a breach) of Bylaw 29.1:

1. that Mr. Aloni did not make reasonable enquiry to determine whether the private company shares were eligible for distribution by the seller or for purchase by his client, in circumstances where there was no prospectus or any applicable exemption from the prospectus requirements of the British Columbia Securities Act (the BC Act), the Ontario Securities Act (the Ontario Act) or any other applicable jurisdiction;

33. Neither the SAF nor any of the related documents contains any information on this subject. We are unable to reach a conclusion, therefore, on the allegation that Mr. Aloni failed to make any enquiries on the lawfulness of the distribution of the SWC or LMG shares to the RRSP clients. There is nothing in the evidence that allows us to come to a conclusion, one way or the other, as to whether he failed in this respect. In those circumstances we have no choice but to consider this particular alleged failure unproven.

1. that Mr. Aloni did not make any reasonable enquiry to determine whether the private company shares were eligible to be held inside an RRSP.

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[5] See paragraph [21] above.

34. In our view this allegation also fails, and for two reasons.

35. First, there is nothing in the SAF on this subject. There is nothing to indicate that Mr. Aloni did, or did not, make any enquiries about this matter. So it is impossible for us to come to any conclusion, one way or the other, as to whether he failed in this respect. In those circumstances, we have no choice in respect to this alleged failure, as in the case of the alleged failure to enquire into the lawfulness of the distribution of private company shares, but to consider this allegation unproven.

36. Secondly, Mr. Aloni was told by compliance personnel at Raymond James that, in order to swap private company shares into an RRSP account, it was necessary that the Member received, among other things, a Corporation Certificate and a Valuation Letter.[6] In each case, as we understand it, Mr. Aloni received the documentation that his compliance department told him was needed, and submitted these documents for Raymond James to process.[7]

37. Counsel for the Association suggested, as we understood him, that certain features of the documents should have lead Mr. Aloni to make further enquiries. He referred, for example, to the fact that in the case of SWC the Accountant had signed the Valuation Letter in that capacity and had also signed the Corporation Certificate as a director of the company.

38. We were not made aware of any legal provision that would have made this improper. It may be – but once again there is no evidence on this subject – that the rules and code of conduct that governed the Accountant in his capacity as a CGA precluded him from giving the Valuation Letter given his status as a director of the company, or at the very least required him to disclose that status in the Valuation Letter. We are not persuaded, however, that the point would have occurred – or could reasonably be expected to have occurred - to someone who, like Mr. Aloni, is neither a lawyer nor an accountant. Putting the matter differently, we do not think that these facts alone should have aroused Mr. Aloni's suspicions and led him to undertake further enquiries regarding the issue of RRSP eligibility.[8] We were not made aware of any apparent issue with the LMG documentation regarding RRSP eligibility (which purchases were approximately $575,000 of the total dollars invested in this matter). Mr. Aloni obtained the documents required by his dealer, which documents described these private shares as RRSP eligible, and he gave them to his back office or compliance department. We think that is what a reasonable investment advisor would have done. For this reason and that set out in paragraph [35] we consider this particular alleged failure also unproven.

    1. *that Mr. Aloni did not make reasonable inquiry to determine whether the NBPPs were a legitimate investment in circumstances which a reasonably diligent RR would have determined to be suspicious or deserving of further inquiry.*

39. As we have already noted,[9] according to the SAF "if the NBPPs were part of a RRSP stripping scheme, this fact was not known to the Respondent during the Relevant Period." Mr. Aloni's ignorance of the fact that the NBPPs were, or were possibly, part of such a scheme, does not in and of itself exculpate him. The overriding complaint against him is not that he knew or ought to have known whether the NBPPs were a "legitimate" investment, but rather that there were sufficient "red flags" (identified in paragraph [30] above) surrounding what happened during the Relevant Period that he ought to have been suspicious as to what was going on. He ought, therefore, to have then made diligent further inquiry based on the entire facts of the "facilitation" of the NBPPs.

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6 See paragraph [10] above.

7 See paragraph [20] above.

8 Counsel for the Association also referred to the fact that the handwritten signatory on behalf of the corporate seller of some of the LMG shares,referred to in the SAF as "XYZ (the Bahamas company)", a company which used addresses both in the Bahamas and the United Kingdom, had the same surname as the Lawyer. We are not persuaded that this fact alone would have either been noticed by a reasonable investment advisor, nor could it reasonably be expected to have prompted further enquiry (since it was a relatively common surname, in our opinion).

9 See paragraph [26] above.

40. We agree. This does not, however, involve any conclusion on our part as to whether the NBPPs were, or were not, legitimate. In the first place, the meaning of "legitimate" is far from clear. In any event, according to the SAF, the Association only "believes" it to have been an RRSP stripping scheme (and hence, we assume, "illegitimate") and that belief is not a sufficient basis for us to make a definitive finding. Finally, we do not think that the Contravention, as framed, requires us to reach a conclusion on the point.

41. While he did not highlight in particular the matter of the solicitation of the clients in the first instance, counsel for the Association did indicate that it formed part of the Association's case. The principal facts in this connection, as revealed in the SAF, are that Mr. Aloni knew that the Promoters were financial planners who were not registered. He knew they were in Ontario. He knew the clients, as the forms arrived, were predominantly from Ontario. He had delivered blank NAAFs to "S", for onward delivery to the Promoter who would complete them with the client. We do not understand why Mr. Aloni would have allowed *any* third party (not a sales assistant or an associate in his branch) to complete his firm's New Account form, an extremely important, indeed a foundation, document for an RR. Why would these potential clients wish to be dealing with someone in BC? The SAF does not indicate whether Mr. Aloni made any enquiries about any of these matters or about what the clients had been told or led to believe about the private companies as an investment. According to the SAF Mr. Aloni did make phone calls to the clients but there is a disagreement about whether he spoke with all of them directly before opening the accounts.

42. The question before us is whether the circumstances ought to have prompted a reasonably diligent RR to determine that there was something suspicious or deserving of further inquiry. In our view, the answer is "yes". It is the cumulative effect of the "red flags" we have identified that we think would have caused a reasonable RR to make further enquiry and ought to have caused Mr. Aloni to do likewise. In our view, therefore, this aspect of the Contravention has been made out.

43. For the reasons we have given we have reached the conclusion that as alleged in the Contravention Mr. Aloni failed to observe high standards of conduct in the transaction of his business and engaged in business conduct or practice which was detrimental to the public interest, contrary to By-law 29.1.

44. No submissions were made to us concerning sanction or costs and accordingly we do not deal with those matters here.

Brian Field
Leon Getz, Chair
Karen Henderson

April 11, 2008

PENALTY DECISION

Introduction

1. We were originally constituted pursuant to By-law 20 of the Investment Dealers Association of Canada (the "Association") to hear certain allegations against Ron Aloni (the "Respondent"). In a Decision dated April 11, 2008 (the "April Decision") we reached certain conclusions on the merits of the allegations against Mr. Aloni that were adverse to him. The subject of the sanctions, if any, to be imposed on him as the result of our conclusions was deferred pending the receipt of any additional evidence that might be tendered and of submissions. At a hearing held on June 10, 2008 some evidence was tendered and submissions were made. This, accordingly, is our Decision on the subject of sanctions.

2. The material conclusion of our April Decision was that Mr. Aloni had, in the circumstances described, failed to observe high standards of conduct in the transaction of his business and engaged in business conduct or practice which was detrimental to the public interest, contrary to Association By-law 29.1 (now Bylaw 20.33). His failure, in our view, was that the circumstances surrounding certain transactions in a number of RRSP accounts that had recently been opened with him were such that a reasonably diligent RR would have made enquiries to determine whether there was something suspicious or deserving of further inquiry and that Mr. Aloni did not do so. The considerations that led us to this conclusion are set out in the April Decision and we do not repeat them here.

Mr. Aloni

3. Mr. Aloni is now about 41 years old, married with one young child. He was first registered as a Registered Representative in 1997, employed by Brink, Hudson & Lefever Ltd. That firm ceased to exist as an independent firm the following year and Mr. Aloni then joined Majendie Charlton Securities Ltd. As the result of a series of corporate combinations the details of which are not material the latter firm ultimately became absorbed into Raymond James Ltd. That is where Mr. Aloni was working during the time (the "Relevant Period") in 2002 and 2003 when the activities took place that have led him to this point. At that time, then, Mr. Aloni had been working in the securities industry for some six years. Since 2003 he has been employed by another Member, Leede Financial Markets Inc.

4. Mr. Aloni testified that he is currently a named defendant in 3 civil law suits arising out of the matters that are in issue here, initiated by two of the former clients and the estate of a third.

5. Mr. Aloni has no disciplinary record. We heard evidence from Mr. Robert Harrison who is the President and Chief Executive officer of Leede Financial Markets Inc. Their association pre-dates Mr. Aloni's employment with Leede. Between 1998 and 2002 when both of them were working at one of the predecessor firms of Raymond James Ltd., Mr. Harrison was Mr. Aloni's supervisor. Mr. Harrison testified that during that period Mr. Aloni was not the subject of any complaints nor were there any compliance issues relating to him and that the same has been true during his employment by Leede.

Sanctions - general

6. The range of permissible sanctions is broad, ranging from a reprimand to a substantial financial penalty, suspension for a period or "expulsion" from the industry. The aptness of any particular sanction or combination of sanctions depends on the circumstances.

7. In this case, counsel for the Association has asked us to:

   (a) fine Mr. Aloni an amount between $30,000 and $35,000;

   (b) suspend him for at least 3 months;

   (c) require him to pass the examination based on the Conduct and Practices Handbook within one year from the date of our decision; and

   (d) order him to pay the Association $10,000 on account of its costs in connection with this matter.

8. Counsel for Mr. Aloni has submitted that:

   (a) if any fine is to be imposed on Mr. Aloni it should not exceed $10,000;

   (b) it is not appropriate to suspend Mr. Aloni but that, if a suspension is considered appropriate it should not be for more than 4 weeks;

   (c) he had no objection to a requirement that Mr. Aloni successfully complete the CPH examination; and

   (d) he should not be ordered to pay more than $5,000 to the Association on account of its costs.

The Association's Disciplinary Sanctions Guidelines

9. The Association has for some years had in place certain "Disciplinary Sanctions Guidelines" (the "Guidelines"). These are divided into two parts: the first deals with general principles that the Association considers should inform the sanctioning decision; the second sets out the Association's views concerning the considerations that may be relevant to the imposition of sanctions for specified breaches of its Bylaws and Rules.

10. It seemed to be common ground between the parties – and we agree - that Mr. Aloni's contravention does not fall neatly into any of the specified breaches addressed in the second part of the Guidelines and that these have, accordingly, at best limited value as a source of guidance in the circumstances. We have therefore focused on the general principles described in the first part.

The general principles - background

11. The general principles set out in the first part of the Guidelines include among others the following general observations:

> **1. Disciplinary Sanctions Are Remedial In Nature**
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> As set out in *Re Derivative Services Inc*., [2000] I.D.A.C.D. No.26, at page 3, a District Council's main concerns in determining an appropriate penalty are:
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> i. Protection of the investing public;
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> ii. Protection of the Investment Dealers Association's membership;
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> iii. Protection of the integrity of the Investment Dealers Association's process;
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> iv. Protection of the integrity of the securities markets, and
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> v. Prevention of a repetition of conduct of the type under consideration.
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> The penalty imposed in a specific proceeding should reflect the District Council'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.
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> **2. Disciplinary Sanctions As Deterrence**
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> Registrants and Member firms have significant responsibilities that they must meet if investors are to be protected and market integrity maintained. Registrants who choose to act in ways that threaten the integrity of the capital markets must have the expectation that they will be held accountable through enforcement action by regulators. Sanctions should be based on the circumstances of the particular misconduct by a respondent with an aim at general deterrence.
>
> General deterrence will follow from an appropriate decision and deter others from engaging in similar misconduct and improve overall business standards in the securities industry. This can be achieved if a sanction strikes an appropriate balance by addressing a registrant's specific misconduct, but also being in line with industry expectations. As was observed by the Ontario District Council in *Re Mills*, [2001] I.D.A.C.D. No. 7, April 17, 2001, at p. 3:
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> > *Industry expectations and understandings are particularly relevant to general deterrence. If a penalty is less than industry understandings would lead its Members to expect for the conduct under consideration, it may undermine the goals of the Association's disciplinary process; similarly, excessive penalties may reduce respect for the process and concomitantly diminish its deterrent effect. Thus the responsibility of the District Council*

in a penalty hearing is to determine a penalty appropriate to the conduct and respondent before it, reflecting that its primary purpose is prevention rather than punishment.

. . . .

"Key considerations"

12. The Guidelines contain a non-exhaustive illustrative list of factors, described as "key considerations" that a panel should consider in deciding on appropriate sanctions, noting that "since sanctions should be tailored to address the misconduct involved in a particular case, a penalty must be proportionate to the gravity of the misconduct and the relative degree of responsibility of a respondent." The list refers to 14 such key considerations. It includes such matters as harm to clients, employer and/or the securities market; blameworthiness; degree of participation; whether the respondent was personally enriched and the extent to which he or she relied upon the expertise of others. Each of the considerations will not be relevant in every case.

13. We have considered these matters in coming to our conclusions.

Specific deterrence

14. We do not think that there is any need in this case to impose sanctions designed to discourage Mr. Aloni himself from future departures from the standards of reasonable behaviour expected of all participants in this industry. We are reasonably confident that he has learned the lessons of his involvement in this affair and think it is not only unlikely that he will repeat his conduct but it is highly probable that his experience has enhanced his sensitivity to the untoward and that he is unlikely to reoffend. This conclusion is to some extent instinctive[10] in the sense that it cannot be fully explained by reference to discrete elements of objective evidence. Nonetheless, several factors have influenced us. First, there is no evidence that Mr. Aloni was motivated by considerations of personal short term advantage – he received no fees for the transactions involved. His primary motivation seems to have been a desire to broaden his client base and a hope – naïve as it turned out – that his new RRSP clients would add to their accounts; second, he was not an instigator of whatever scheme was being perpetrated – rather, his naïvete and inattention permitted it to be effected; and third, his conduct before and since his acts or omissions during the Relevant Period has, so far as the record goes, been blameless.

15. We conclude, therefore, that considerations of "specific deterrence" have virtually no role to play in determining the appropriate sanctions. We turn, therefore, to questions of "general deterrence".

General deterrence

(a) Principles

16. Our object here is to devise sanctions that, in the words of the Guidelines, will "deter others from engaging in similar misconduct and improve overall business standards in the securities industry". Having regard to the particular circumstances of this case, another way of describing our purpose is to say that the sanctions must emphasize the importance of being alert to the existence of suspicious circumstances and to the need to make appropriate enquiries to determine whether the suspicions are well-founded. Those enquiries must focus on matters of substance, rather than merely on matters of form. By "matters of form" we refer, for example, to such questions as whether required pieces of paper are provided in support of transactions to be undertaken, to the exclusion of whether those pieces of paper, in the circumstances in which they are provided, suggest that there is more to what is happening than meets the eye.[11] This was Mr. Aloni's failure. The sanctions must encourage others in the industry to avoid such failures.

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[10] Cf. the decision in *Re Ng*, December 20, 2007 at page 5.

[11] In *Re Kasman and Anderson*, Decision and Reasons on the Merits, November 13, 2007 the Panel observed (at paragraph [41]) that a registered representative "should have an alert, curious attitude to the tasks his clients ask him to perform".

(a) Precedents

17. Counsel for the Association referred us to a number of cases which, he submitted, suggest parameters for our decision.

18. *Re Leung*[12] involved approval of a Settlement Agreement. It arose out of another so-called "RRSP stripping scheme" that involved the purchase, through RRSP accounts opened with the Respondent into which funds were transferred, of convertible debentures of a publicly traded company and not, as here, in shares of two private companies. In the Settlement Agreement Mr. Leung agreed that he had failed to use due diligence in relation to the clients who opened the new accounts; and secondly, that he had failed to satisfy himself that the transactions involved were compliant with applicable securities laws. For each of these admissions Mr. Leung was fined $50,000. In addition, he agreed, among other things, to a 5 year ban from the industry and that, if he applied thereafter for re-approval, that he successfully rewrite the examination based on the Conduct and Practices Handbook (CPH) for Securities Industry professionals. He also agreed to pay costs of $20,000. The Settlement Agreement was approved by a hearing panel.

19. As here, the respondent in *Leung* forwarded blank NAAFs to one of the instigators of the scheme to be forwarded to the investors and completed on the instructions of the instigator.[13] Mr. Leung appears to have made virtually no effort to contact the investors prior to opening the accounts; the evidence on this point in the case of Mr. Aloni is inconclusive.[14] Mr. Leung admitted to having completed material parts of the NAAFs – the sections dealing with investment knowledge and objectives – by himself without speaking to his clients. There is no suggestion that Mr. Aloni did any such thing. Mr. Leung made no enquiries about the public company or its track record or about the terms of the debentures. Similarly, Mr. Aloni made no enquiries about the two private companies or, as was equally the case with Mr. Leung, about the reasons for the transactions. Mr. Leung was compensated for each of the accounts opened, in an aggregate amount of $9,700. Mr. Aloni received no compensation.

20. *Re Kasman and Anderson* is a decision of a Hearing Panel of the Ontario District Council of the Association dated November 13, 2007. The Respondents were the registered representatives responsible for three accounts through which, the Panel held, trading was undertaken over a three month period in the shares of a publicly traded company "for the purpose of increasing the price of the stock, rather than for legitimate investment or profit-making", and hence was "manipulative and/or deceptive". The two instigators of the trading, both residents of upper New York state, were to the knowledge of the Respondents known to one another. Both had been found guilty of securities fraud in the United States – a fact that, though not known to the Respondents, was readily ascertainable upon inquiry. The Respondents made no inquiries about them or about the propriety or purpose of the trading in question.

21. The Hearing Panel found[15] that:

    (a) the Respondents' conduct "facilitated the manipulative and/or deceptive trading and that the conduct was in violation of Association By-law 21.9 [sic] and unbecoming and contrary to the public interest"; and

    (b) the Respondents were at the time "unthinking and unaware of the significance of the trading in question and did not willfully turn a blind eye to the manipulative and/or deceptive practices" though it did "wonder at the inadvertence and naiveness [sic] required to be attributed to the respondents for such a conclusion"; but that

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12 [2005] I.D.A.C.D. No. 45, November 16, 2005

13 April Decision, paragraph [14].

14 See April Decision, paragraph [19].

15 At paragraphs [49] and [50]

(c) their failure to make inquiries, to monitor and assess the trading of their clients, to treat record keeping and information gathering as "no more than a mechanical exercise", their reliance on the compliance department "that was providing them with little, if any, support" and their failure to understand the purpose and intention of their clients' trading, was conduct "falling far below that required and expected of a registered representative".[16]

22. In its Decision on Penalty in *Re Kasman and Anderson*, dated February 19, 2008, the Hearing Panel referred, among others, to the following "extenuating circumstances":[17] the fact that the manipulation lasted for a relatively short 3-month period; that the respondents did not plan, organize or participate in the manipulation; that neither the respondents' employer nor any third party suffered any harm; that the respondents had no disciplinary record; that both before and after the relevant period their performance had been blameless; and that their earnings attributable to the manipulative trading were relatively small.

23. Taking into account all of the circumstances, the Panel imposed a two month suspension; a fine of $25,000 each, a joint and several obligation to contribute to the Association's costs in the amount of $40,000; and a requirement to rewrite and pass the CPH examination within 12 months.

24. In *Re Ng,* an undated decision apparently rendered in 2007 following a hearing in June of that year, a Hearing Panel held that Mr. Ng had facilitated manipulative trading in publicly traded securities in circumstances in which his conduct showed a "wide divergence from that of a prudent registered representative in attempting to fulfill his obligation to know his client and to ensure that any order was within good business practice" and hence amounted to gross negligence.[18] There, as here, there were circumstances, detailed in the reasons for decision, that suggest that there were what we have in this case described as "red flags", which imposed on Mr. Ng an obligation of enquiry to determine whether, among other things, the orders that he was processing were within the bounds of good business practice.

25. In reaching its conclusions about sanctions, the Hearing Panel in *Ng* said, in its Penalty Decision dated December 20, 2007:[19]

(a) We have reached the conclusion that, because of the damage which a market manipulation can do to the investing public and to the apparent integrity of the investment industry, a sanction must include a suspension. In the circumstances of this case, anything less could lead those who are gatekeepers to think that a lack of vigilance would not be taken seriously and could result in little more than a slap on the wrist. The length of the suspension, the case of a worthwhile person like Mr. Ng, should not be such as to prevent any hope of his rehabilitation into the industry. We have decided that a balancing of the need for general deterrence with the hope of rehabilitation of Mr. Ng calls for the imposition of a one-year suspension. . . ."

26. Mr. Ng was suspended for 12 months, fined $40,000, ordered to pay costs of $25,000, to rewrite and, as a condition of re-approval, to pass the CPH examination and upon re-approval to be subject to close supervision for 6 months.

27. Counsel for Mr. Aloni referred us to two other decisions: *Re Noronha*[20] and *Re Loftus.*[21] Both cases involved approval of Settlement Agreements.

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16 At paragraph [51].

17 Paragraphs [22] to [31]

18 Decision, at page 43.

19 Penalty Decision at page 5.

20 [2002] I.D.A.C.D. No. 52, Bulletin No. 3095, December 23, 2002 (Ontario District Council).

21 [2004] I.D.A.C.D. No. 35, Bulletin No. 3306, July 9, 2004 (Ontario District Council).

28. In the former case Mr. Noronha, a registered representative, had a half interest in a partnership, H.N. Partnership. His employer was not aware of Mr. Noronha's interest in the Partnership. The Partnership received funds from a number of individuals, including clients of the employer and others, for the purpose of participating in a private placement. Mr. Noronha then executed a subscription agreement in the name of the Partnership and forwarded the aggregate of the funds to the issuer. This enabled the issuer to rely on an exemption from the prospectus requirements of the Ontario *Securities Act* that was conditioned on a minimum investment of $150,000. None of the individual investors contributed sufficient funds to permit reliance on the exemption. The distributions were carried out "off book" without the knowledge or approval of Mr. Noronha's employer. A second distribution, involving participation by clients in a rights offering, was similarly carried out off-book and without his employer's knowledge or approval.

29. Mr. Noronha entered into a Settlement Agreement with the Association. In it, he acknowledged that he had facilitated and solicited participation in each of the private placement and the rights offering; that in both cases he had acted without the knowledge or approval of his employer and that the distributions had been made "off-book" and that, in each case, he had engaged in "conduct unbecoming and detrimental to the public interest contrary to Bylaw 29.1". Mr. Noronha also acknowledged that he had misrepresented the Partnership as the participant in the private placement so as to permit reliance on the prospectus exemption and that this too amounted to "conduct unbecoming and detrimental to the public interest contrary to Bylaw 29.1."

30. By the Settlement Agreement Mr. Noronha agreed to a fine of $25,000[22]; to a requirement that he successfully complete the CPH examination within one year; and to pay $5,000 in costs to the Association. Mr. Noronha was not suspended.

31. In the Settlement Agreement approved in *Re Loftus* Mr. Loftus admitted that between September 1999 and January 2000 he had failed to ensure that investments in a private placement made on behalf of two investment clubs complied with the applicable requirements of the Ontario *Securities Act* and that he had thereby engaged in business conduct or practice unbecoming a registered representative or detrimental to the public interest, contrary to Bylaw 29.1. Mr. Loftus was at the time a Vice-President, Director and registered options representative at his dealer.

32. The Settlement Agreement originally contemplated a fine of $30,000, payment of $10,000 in costs, an 8-week suspension and a requirement to complete successfully the CPH examination within 3 months.

33. The Ontario District Council approved the Settlement Agreement subject to the reduction of the fine from $30,000 to $25,000 and the amount of costs from $10,000 to $7,500, on account of "the cooperation of [Mr. Loftus] and lack of prior offences."

Discussion

34. On the strength of the precedents discussed in paragraphs [18] to [26] above, counsel for the Association contended that any fine imposed on Mr. Aloni should be not less than $25,000 and that the period of suspension should be not less than 2 months, in each case being the "floor" established in *Re Kasman and Anderson* – the upper end of the range of fines being the $40,000 and of the period of suspension the 12 months in each case imposed in *Re Ng*. Specifically, he contended as we have noted that Mr. Aloni should be suspended for 3 months and fined between $30,000 and $35,000. In addition, as we have also noted, he sought orders that within 6 to 12 months Mr. Aloni write and pass the examination based on the CPH and that he pay costs of $10,000.

35. Counsel for Mr. Aloni argued, as we understood him, that *Leung* and *Ng* are distinguishable on their facts from the present in that they all involved conduct far more serious or egregious than that of Mr. Aloni, if only that the conduct in question affected or had the potential to affect public markets. That

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[22] The originally agreed amount of the fine was $40,000 but this was reduced by the Ontario District Council to $25,000.

was also true, he contended, in the case of *Re Kasman and Anderson* where, in addition, and as in *Leung,* the respondents were compensated for their improper transactions. He argued that rather than representing a "floor", *Kasman and Anderson* should be considered to establish a ceiling on the length of a suspension and the size of a fine in circumstances such as this.

36. Counsel for Mr. Aloni contended that the cases of *Noronha* and *Loftus* represented much closer analogies, though he was careful to note that *Noronha* involved deliberate deception with a view to circumventing certain statutory requirements; and *Loftus* concerned an experienced industry person who should have known better.

37. As we have noted, counsel for Mr. Aloni has argued that we should not suspend him for any period, especially having regard to the result in *Loftus* and the apparent reasons for the panel's conclusions in that case, but that if we considered a suspension appropriate it should not exceed 4 weeks in length; and that, in light of the differences between the facts of this case and the others we have referred to, a fine not exceeding $10,000 would be appropriate.

Conclusions

38. As we understand it these precedents were offered to us as evidence of what other Panels have in other circumstances considered an appropriate balance among the various elements outlined earlier in these reasons so that in the result, industry expectations will be satisfied by the sanctions imposed.

39. Against that background and in the light of the submissions made to us several questions arise:

Should Mr. Aloni be suspended and, if so, for how long?

40. Section 4.3.1 of the Guidelines says:

(a) A suspension may be appropriate where:

(b) there have been numerous serious transgressions;

(c) there has been a pattern of misconduct;

(d) the respondent has a disciplinary history;

(e) the misconduct has an element of criminal or quasi-criminal activity; or

(f) the misconduct in question has caused some measure of harm to the integrity of the securities industry as a whole.

41. Mr. Aloni has no disciplinary history and there is no element of criminal or quasi-criminal activity in his misconduct. It is doubtless possible to say that he committed numerous serious transgressions and that he engaged in a pattern of misconduct. In our view, however, there was a single transaction with the same fact pattern repeating itself in multiple accounts – namely, a failure in the circumstances to be alert to the possibility that suspicious circumstances existed that necessitated making appropriate due diligence enquiries.

42. Was Mr. Aloni's default serious? In our view the answer is "yes", notwithstanding that he did not act dishonestly or deceitfully or participate willfully in the wrongdoing of others; that he did not profit from his involvement; and that the RRSP investors appear to have made their decisions to invest in the private companies before opening their accounts with him and without any advice from him. The importance of the substantive obligation of vigilance implicit in Bylaw 29.1 cannot be over-estimated, nor, therefore, should the integrity of the securities industry be allowed to be impaired by anything that suggests that a lack of diligence will not be taken seriously.

43. In our view a suspension is appropriate. Having considered the precedents to which we have referred and the submissions of counsel, we have concluded that Mr. Aloni should be suspended for 30 days.

Should Mr. Aloni be ordered to pay a fine and if so, of what amount?

44. The considerations that led us to the conclusion that a suspension is required have also persuaded us that a fine should be imposed. Taking into account all of the circumstances, we have concluded that Mr. Aloni should pay a fine of $10,000. We heard some evidence concerning Mr. Aloni's financial circumstances, his commitments and his earnings. Beyond saying that the picture that emerged is not a particularly healthy one it is not necessary to go into the details. Counsel for the Association referred us to an observation of a Hearing Panel of the Pacific District Council in *Re Strocen*[23] to the effect that a respondent's "present ability to pay a fine" should not be an important factor. While we agree that it is not a factor to be considered in determining whether a fine should be imposed and if so in what amount, it is relevant to whether Mr. Aloni should be given time to pay this amount. We have reached the conclusion that he should be and that the fine must be paid in full in 12 equal monthly instalments commencing on September 1, 2008.

Successful completion of the CPH examination

45. While counsel for Mr. Aloni did not object to the Asssociation's request for an order that Mr. Aloni be required, within some period of time to be specified by us, to write and pass the CPH examination, we have concluded that no such order should be made. Such an order seems to us, in all the circumstances, merely a gesture with little substantive significance or benefit and we decline to make it.

Costs

46. The Association tendered evidence to the effect that it incurred investigative and related costs of approximately $48,000 in connection with this matter. This did not include any amount for the time of counsel. It has asked us to order Mr. Aloni to make a contribution of $10,000 to the defraying of these costs and we certainly have the authority to do that. Mr. Aloni's counsel, however, contended that he should not be ordered to pay more than $5,000 in this connection. He noted, in this connection, that Mr. Aloni's employer at the time of the default, Raymond James Ltd., entered into a Settlement Agreement with the Association dated December 17, 2007 in connection with the same events, in which it agreed to pay a fine of $140,000 and a contribution of $10,000 to the Association's costs of investigating and prosecution of the matter.

47. It is obvious that the numbers here are quite arbitrary and that there is no evident principle or reasoning that leads to the conclusion that $10,000, or $5,000, or any other amount, is correct.

48. In our view Mr. Aloni ought to make a contribution to the Association's costs and we fix that contribution at $5,000. This amount must be paid on or before December 31, 2008.

Summary

49. In summary, we order that Mr. Aloni:

    (a) be suspended for a period of 30 days from the date of publication of this Decision;

    (b) pay a fine of $10,000, payable in 12 equal monthly instalments commencing on September 1, 2008; and

    (c) pay, on or before December 31, 2008, an amount of $5,000 on account of the Association's costs in connection with this matter.

Leon Getz
Brian Field
Karen Henderson

Vancouver, B.C., July 22, 2008

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[23] [2002] I.D.A.C.D. No. 6, Bulletin No. 2966 dated February 28, 2002, at paragraph [66].