# Re Argosy Securities Inc & Sukhraj

**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**

**ARGOSY SECURITIES INC**

**AND**

**DAX SUKHRAJ**

2008 IIROC 22

Investment Dealers Association of Canada
Hearing Panel (Ontario District)

Heard: September 17, 22, 23 and 26, 2008 in Toronto ON
Decision: October 29, 2008
(39 paras.)

**Hearing Panel:**
The Honourable Fred Kaufman, C.M., Q.C., Chair
Duncan D. Webb, Member
George Dunn, Member

**Appearances:**
Tamara Brooks and Andrew Pilla, Enforcement counsel
Robert J. Brush and Jane Patterson, for the Respondents

## DECISION

### Introduction

¶ 1 The Investment Dealers Association of Canada ("IDA" or the "Association"), in the Amended Notice of Hearing served on Argosy Securities Inc. and Dax Sukhraj (collectively the "Respondents"), alleges that the Respondents committed the following contraventions:

> 1. From 2003 to 2007 inclusive, Argosy Securities Inc. ("Argosy"), a Member of the Association, contravened Association By-laws, Regulations and Policies and engaged in conduct unbecoming a Member by failing to respond in a timely manner to Association concerns regarding the design,

establishment, oversight and implementation of an effective sales compliance program to ensure proper compliance with regulatory requirements, contrary to Association By-laws 29.1 and 38.

2. From 2003 to 2007 inclusive, Dax Sukhraj, at all material times owner and sole member of the board of Argosy, and, from August 12, 2004 to 2007, an Approved Person and Senior Executive of Argosy, engaged in business conduct or practice that is unbecoming and detrimental to the public interest by failing to ensure that Argosy fulfilled representations to the Association that it would develop and implement policies and procedures to ensure compliance with regulatory requirements contrary to Association By-laws 29.1 and 38.

3. From January 2006 to April 2006, inclusive, Dax Sukhraj, Chief Compliance Officer of Argosy, engaged in business conduct or practice that is unbecoming and detrimental to the public interest by failing to properly supervise Yusuf Osman, an Approved Person employed by Argosy, contrary to Association By-law 29.1 and Regulation 1300.1(o).

**Particulars**

¶ 2 The Particulars, as set out in the Amended Notice, are as follows:

The Respondents

1. Since January 2002 and at all material times, Argosy has been a Member of the Association with its head office located in Richmond Hill, Ontario. Argosy is a Type 2 introducing broker and provides trading services and investment advice to retail clients in southern Ontario and the Ottawa area.

2. At all material times, Sukhraj was the owner and sole member of the board of directors of Argosy, a privately held company. He first became registered with the Association as the Ultimate Designated Person ("UDP"), CEO and Director of Argosy on August 12, 2004. He remains so registered with the Association. Sukhraj also became registered as CCO on January 27, 2006 and remained in that position until July 18, 2006.

Other Persons in Supervisory Roles at Argosy

3. At the material times, the following individuals were registered in supervisory and compliance roles at Argosy:

   (a) P.L. was the President, UDP and Designated Registered Options Principal ("DROP") from January 2002 to May 28, 2004, when he resigned from Argosy in good standing. P.L. is currently registered with the Association at another Member Firm.

   (b) There was no individual registered as UDP between May 28, 2004 and August 12, 2004.

   (c) A.K. was the CCO and Alternate Designated Person ("ADP") from December 2, 2003 to May 3, 2005, when he resigned from Argosy in good standing. A.K. is currently registered as a Compliance Manager at another Member Firm of the Association.

   (d) Upon A.K.'s departure, R.T. was given the responsibility to conduct the daily and monthly supervision. He eventually became registered as CCO and ADP on May 24, 2005. He effectively held this position until the end of December 2005 when he went on medical leave. He resigned in good standing on May 25, 2006 and is currently not registered with the Association. Sukhraj became registered as CCO on January 27, 2006 as a result of R.T.'s leave and remained so until July 18, 2006.

   (e) On July 18, 2006, J.J. received approval from the Association to become registered as Argosy's CCO, ADP and DROP.

Sales Compliance Reviews and Deficiencies

4. In order to monitor whether Members are in compliance with Association requirements in the supervision of account activity and activity relating to securities, the Sales Compliance Division of the Association conducts Compliance Reviews of Member firms. In the course of the review, Sales Compliance Officers attend at a Member's business premises and review documents and interview key compliance personnel.

5. If, after the review, problems or concerns are identified, Sales Compliance Staff will impose requirements to effect changes necessary for the Member to become compliant with the Association's by-laws, Regulations or Policies or the requirements of any federal or provincial law or regulation. Those requirements and recommendations are contained in a Sales Compliance Review Report that is provided to the Member, first in draft form, and later in a final form approved either by the Director, Sales Compliance, or by a Sales Compliance Department manager.

6. Where deficiencies in compliance practices or procedures are noted in a Compliance Review, the Member is required to provide a written response indicating what corrective measures will be taken to address the deficiencies. Any representations given to the Association by a member in response to Sales Compliance findings must be fulfilled by the Member. Senior Executives responsible for the Compliance function, including the CEO, must ensure that appropriate action is taken and completed expeditiously in accordance with any such representations given on behalf of the Member.

7. Sales Compliance Staff often has an on-going dialogue with Member firms to resolve the issues and concerns identified in the sales compliance reviews. If any issues or concerns raised by Sales Compliance Staff in a review are not remedied by the time that any subsequent sales compliance review takes place, they will be identified as a "repeat item" and/or "significant item".

8. In circumstances where there are significant breakdowns in compliance and/or repeat items, the Director, Sales Compliance, has the discretion to refer the matter to the Association's Enforcement Department for further action.

Sales Compliance Referral

9. Between 2002 and 2007, staff of the Association's Sales Compliance Department ("Sales Compliance") conducted five reviews of Argosy's sales compliance procedures, policies and practices. The reviews took place in 2002, 2003, 2005, 2006 and 2007.

10. For each Sales Compliance Review ("SCR"), a report was issued by Sales Compliance and a written response to that report was provided by Argosy to the Association.

    a. **2002 SCR** Report dated April 9, 2003; Response dated May 8, 2003

    b. **2003 SCR** Report dated January 19, 2004; Response dated March 22, 2004

    c. **2005 SCR** Report dated May 20, 2005; Response dated June 20, 2005

    d. **2006 SCR** Report dated October 11, 2006; Responses dated Nov. 16 and 17, 2006.

    e. **2007 SCR** Report dated November 6, 2007; Response dated December 10, 2007

11. Between 2002 and 2007, in addition to new findings, there were a number of previously reported findings that remained unresolved despite assurances and undertakings made by the Respondents to address them in response to the various Sales Compliance Reviews.

The 2005 SCR

12. The 2005 Sales Compliance Review ("SCR") report noted numerous deficiencies in the firm's sales compliance practices most of which had been previously noted and raised with Argosy in

the 2002 and/or 2003 SCR reports. By the 2005 SCR, the Association was concerned with "an ongoing disparity between the amount of risk assumed by the Member and the amount of risk the Member has demonstrated it can control." There were an increasingly high number of findings with an upward trend in the proportion of "Significant Items".

13. The 2005 SCR further reported that "the Association found considerably less evidence of the UDP's awareness of or active engagement in the Member's self governance than prudence, in its opinion, would have warranted". Sales Compliance referred these matters to the Association Enforcement Department.

14. As a result of the referral from Sales Compliance, staff of the Association Enforcement Department ("Staff") opened an investigation into the supervision and sales compliance practices of Argosy on September 9, 2005.

The 2006 SCR

15. Notwithstanding the referral to Enforcement, in light of the on-going and repeat deficiencies noted in the past SCR reports, Sales Compliance conducted a follow-up SCR of Argosy in the spring 2006. In general, the 2006 SCR determined that there were gaps in the care and attention paid to compliance responsibilities and supervision. The number of repeat and new significant items in the 2006 SCR was suggestive of a failure by the Respondents to devote adequate resources and expertise to compliance. The Association was also concerned by the number of previously reported findings that remained unresolved despite assurances and undertakings made by the Respondents in response to previous SCRs.

16. Findings from the 2006 SCR were referred to Enforcement in November, 2006.

The 2007 SCR

17. A further follow-up SCR was conducted in 2007, also in light of the on-going and repeat deficiencies noted in the past SCR reports. This was a "Strategic Follow-Up" SCR intended to review only those deficiencies noted in the 2006 SCR. During this follow-up review further deficiencies were noted.

18. The 2007 SCR noted that the Association was encumbered in conducting its review by the inability of Argosy to provide complete records on a timely basis.

19. Numerous significant items identified by Sales Compliance Staff included failings in the categories of compliance infrastructure; account opening and operation; registration and training; supervision of account activity; supervision of employees; advertising and sales literature; and, handling of complaints. In addition, Sales Compliance Staff identified deficiencies in complying with the rules regarding Corporate Governance and reporting to the board of directors.

20. The results of the 2007 SCR confirmed that Argosy's compliance regime and supervisory controls were challenged. In addition to new deficiencies, the Association was concerned by the number of previously reported findings that remained unresolved despite assurances and undertakings made by the Respondents in response to previous SCRs.

21. Findings from the 2007 SCR were referred to Enforcement in November 2007.

22. At all material times, Sukhraj was the sole shareholder and owner of Argosy. Prior to his registration with the Association in August 2004, Sukhraj was aware of the compliance deficiencies identified by Sales Compliance Staff. Sukhraj discussed the 2003 SCR with P.L. when it was received. He reviewed the response to the SCR with A.K., prior to it being submitted to the Association in March 2004. The 2005, 2006 and 2007 SCR reports were all addressed and sent to Sukhraj.

***Sales Compliance Review Findings***

Corporate Governance

23. The 2005 SCR had found no evidence of the CCO's compliance status report to the board of directors pursuant to By-laws 38.1, 38.8 and 38.9. Argosy was not able to provide evidence of any memoranda, notices or other correspondence addressed to the board.

24. In the firm's response to the 2005 SCR, Argosy stated that it was a privately held company with the President being the sole member of the Board. At the material time, Sukhraj was President and at all times sole member of the Board. In referring to Sukhraj, the response noted that "he has acknowledged that he will take a more active role in compliance matters. A copy of this response has been reviewed by the President prior to submission to ensure that he is aware of the issues and proposed resolutions."

25. By the 2007 SCR, Argosy's CCO had advised the Association that the annual status of compliance was forwarded to the UDP (the sole member of the board of directors) via e-mail. The Association was concerned that this process did not satisfy the requirement to document evidence of reporting and actions required pursuant to By-law 38. The evidence provided to Sales Compliance Staff did not reflect a review of the report or any determination of the necessary actions to be taken to address compliance deficiencies as required.

Branch Supervision

(a) Daily and Monthly Supervision in the Absence of the Branch Manager

26. In the 2003 SCR, the Association was advised that Head Office conducted the branch level daily and monthly reviews in the absence of the Ottawa Branch Manager. Argosy was required to implement a two-tier structure to adequately supervise client account activity at the branch level pursuant to IDA Policy 2. Further, Argosy was advised of its obligation to first obtain formal Association approval before implementing a modified approach to supervision at this level.

27. In its response to the 2003 SCR, Argosy indicated that "all head office branch reviews will be conducted by the Chief Compliance Officer and in the absence of the branch manager the reviews will be conducted by the president (the UDP) for branch review levels."

28. In the 2005 SCR, Argosy was unable to provide evidence that the UDP was conducting supervisory reviews during the absence or unavailability of the Branch Manager.

29. Once again, Argosy was reminded to implement a two-tier structure to adequately supervise client account activity. Further, Argosy was reminded of its obligation to obtain formal Association approval before implementing any self-modified approach.

30. In its response to the 2005 SCR, Argosy advised that in the absence of the Ottawa Branch Manager, the alternate Compliance Officer would do the daily trade reviews for that Branch over and above the CCO's review.

(b) Cross Supervision & Back-Up

31. The necessity of a two-tier supervision structure was further highlighted in the 2003 SCR where it was determined that there was not sufficient cross-supervision of the daily and monthly reviews of the activity in the UDP and ADP accounts.

32. In its response to the 2003 SCR, Argosy indicated that the CCO (ADP), or in his absence the President (UDP) will perform daily and monthly account reviews. In the absence of the CCO, the Chief Financial Officer ("CFO") will review the UDP's daily and monthly account activity. In the absence of the UDP, the CFO will review the ADP's daily and monthly account activity.

33. The 2007 SCR noted that the CCO was designated as the branch manager for the four sub-branches and there was no oversight or cross-supervision of the CCO as branch manager.

Lack of Evidence of Supervision

34. During the 2003 SCR, it was discovered that Argosy was not maintaining documentary evidence of its supervisory reviews at both the branch and head office level. The SCR report expressly stated that the firm was required to "commence the task of evidencing inquiries made, responses received, and action taken. Where there are no inquiries, a NIL report should be duly executed, filed and dated."

35. In its written response to the SCR report, Argosy confirmed that verbal inquiries and discussions would be evidenced by notes on the monthly statements and daily reports at both the branch and head office level.

36. Notwithstanding the response provided in 2004, the 2005 SCR revealed that even by the latter half of 2004 Argosy continued to fail to maintain documentary evidence of its daily and monthly supervision at the branch and head office level. This failure was noted as a significant item in the 2005 SCR report. While Sales Compliance Staff acknowledged the firm initialed and dated all reports relating to supervision, there were no written inquiries, responses or notes maintained.

37. The 2005 SCR report once again advised Argosy of its requirement to maintain evidence of supervision.

38. In its written response, dated June 20, 2005, Argosy assured Sales Compliance staff that verbal inquiries were now being followed up with emails and copies of the emails, the responses and actions taken were being kept as evidence of inquiry.

39. During its investigation, Staff reviewed a sample of the commission reports and monthly account statements from 2004 and 2005. This review confirmed that Argosy did not maintain sufficient documentary evidence of its daily and monthly supervision in 2004 and also in 2005 including several months after Argosy's response to the 2005 SCR report. For this sample period, while only some of the commission reports and monthly statements were signed and dated, even these contained very minimal qualitative notations relating to queries made, responses received, and action taken.

40. During the 2007 SCR, a review was done of Argosy's supervisory exception reports and evidence of daily supervision. The CCO stated that daily review was performed using the Member's trading blotter. The Association was concerned that restricting its supervisory review to this record limited the supervisor's ability to review for other types of concerns outlined in the minimum standards. This lack of evidence of review of other criteria was borne out as the Member's evidence of daily and monthly supervision included only suitability and credit issues.

41. During the course of its investigation, Staff determined that at all material times, Argosy's head office assumed responsibility for both the head office and branch office retail account supervision requirements.

Anti-Money Laundering Training Program

42. On May 27, 2002, the Association provided Member firms with Member Regulation Notice MR0143 advising them of revisions made to the Regulations promulgated under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act 2001* ("*PCMLTFA*"). The revisions applicable to Member firms included changes to the client identification and verification requirements for client accounts held at firms and a reporting requirement to the Financial Transactions Reporting and Analysis Centre of Canada for cash receipts in excess of $10,000.

These new Regulations also required Member firms to implement a compliance regime including on-going training programs for employees and agent of the Member to ensure adherence to the *PCMLTFA* and the Regulations.

43. During the 2003 SCR, it was determined that Argosy had not developed nor implemented an anti-money laundering ("AML") training program for its personnel. In its written response, Argosy stated that the CCO along with the CFO would develop a training program that would be implemented by way of a lecture by the CCO.

44. By May 2005, this program still had not been developed and was consequently noted as a significant item in the 2005 SCR report. In its response, Argosy stated it had developed and approved a training program, and it would be implemented in January 2006. The 2006 SCR revealed that the firm still had not established an AML training program.

45. AML training is required to be completed for all employees of a Member firm. The 2007 SCR found that only Registered Representatives had received AML training provided through the Canadian Securities Institute. Thirteen employees had not taken the AML training, including Sukhraj, the President and UDP, the Chief Compliance Officer, and sales assistants.

Client Identity Verification

46. The lack of a proper training program also created some potential business and market risk as evidenced by deficient account opening documentation. In particular, in 2005, Sales Compliance staff sampled fifty-two (52) accounts to review for document completeness. Approximately 20% of the sampled accounts revealed insufficient evidence of client identity verification as required by law. During the 2006 SCR, these same account deficiencies were still not corrected by Argosy.

47. A Compliance Examination was conducted by the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). This Examination was conducted to verify the Member's compliance with the requirements under Part 1 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act.*

48. Several deficiencies were noted by FINTRAC in its examination. Those deficiencies were also examined by Sales Compliance in the 2007 review.

49. During the 2007 SCR, it was evident that the Member had not collected and retained certain records and information required under the federal anti-money laundering legislation. As an example, accounts had incomplete and/or unacceptable identification verification. Some accounts did not have proper evidence of the existence of the corporation. Some accounts did not have proper beneficial ownership verification.

Branch and Sub-Branch Audits

50. During the 2005 and 2006 SCR, it was noted that there was no evidence of branch or sub-branch reviews conducted by Compliance. In the Member's response to the 2006 Sales Compliance Report, the Member had undertaken that the CCO would conduct branch audits to review all of its branches and sub-branches by January 31, 2007.

51. During the 2007 SCR, it was noted that the Member had still not conducted any branch audits, contrary to IDA By-law 29.27(a) and Policy 2.

Client Complaints

52. During the 2005 SCR, Sales Compliance staff noted a serious problem with Argosy's handling of client complaints. The SCR noted the firm's failure to report complaints to the Association and to acknowledge receipt of these complaints to the clients. This issue was noted as a significant item in the report.

53. Pursuant to Association Policy 8 I.B.1 (d), a Member firm is required to report written customer complaints (except service complaints) within twenty (20) business days to the Association through Comset, the Association's electronic Complaints and Settlement web-based database.

54. The following is a list of written client complaints that Argosy failed to post on Comset in a timely manner as required by Association Policy 8:

| Complainant | Date of Complaint | Date Posted on Comset |
|---|---|---|
| 1. P.C. | November 12, 2003 | February 23, 2005 |
| 2. C.C and D.C. | April 19, 2004 | November 21, 2006 |
| 3. C.L. and D.L. | August 16, 2004 | January 19, 2005 |
| 4. N.Z. and M.Z. | September 15, 2004 | February 24, 2005 |

55. As a result of Staff's discovery of complaints #1, #3, and #4 and resulting demands to report them, Argosy posted the complaints to Comset in early 2005. Complaint #2 was reported to Comset by J.J. once he was made aware of it.

56. Argosy did not respond to client complaints in a timely manner. With respect to complaint #1, it took over two months before a letter was sent acknowledging the complaint. A formal response was issued August 17, 2004. With respect to complaint #2, no formal response was provided until after the clients filed a statement of claim in August 2004. For complaint #3, Argosy's first response to the client was provided in a letter dated November 11, 2005 after this deficiency was specifically brought to Argosy's attention by Staff.

National Registration Database ("NRD") Omissions

57. During the 2003 SCR, Sales Compliance staff compared the firm's registration records with the NRD records and discovered that the insurance licensed status of four of the six registrants who were insurance licensed was not reflected in the NRD records. Notwithstanding the firm's written undertaking, as contained in its formal response to the 2003 SCR to make the necessary corrections by April 30, 2004, it failed to do so.

58. During the 2005 SCR, Sales Compliance staff found that eight out of the ten registrants who were insurance licensed had not disclosed this information on NRD. Once again, notwithstanding the firm's written undertaking to make the necessary changes to NRD, it failed to do so.

59. During the 2006 SCR, Sales Compliance staff noted seven out of the eight registrants who were insurance licensed had not disclosed this information on NRD. In its response, the firm stated that it would endeavor to make the necessary changes by December 31, 2006. As of early March 2007, the NRD records of three of the eight registrants had still not been updated.

Accounts Held under Terminated Registered Representative Codes

60. During the 2003 & 2005 SCR, Argosy advised the Association that the client accounts for a registrant that terminated would be reassigned to a house code.

61. During the 2006 SCR, the Association noted that, while the house accounts had been reassigned according to the firm's system, a sample of account files reviewed did not contain verified or updated documentation to reflect the material change. The Member's response to the 2006 SCR was that it would reassign these accounts to the Argosy advisors and restrict all accounts previously under the house code until proper documentation was obtained.

62. During the 2007 SCR, the Association found that the firm continued to lack controls over accounts for terminated Registered Representatives (RR) as well as accounts that were previously held under house codes.

63. During the 2007 SCR, the Association found there were client accounts assigned to at least three codes for RRs that had been terminated. These accounts were not reassigned to another RR nor were they on the Member's restricted account list.

64. The Association sampled six client accounts that had been reassigned from a house code to a servicing RR. There was no evidence in three of these accounts that the new RR had reviewed the Know-Your-Client (KYC) information.

65. Members are required to develop and/or maintain adequate policies and procedures regarding the assignment of accounts of terminated registered representatives, including the verification or update of client account documentation, in accordance with IDA By-laws 18.14(c), IDA Regulation 1300.1 and IDA Policies 2 and 3.

Client Documentation Deficiencies

66. The same accounts were found to have deficient documentation during both the 2005 and 2006 SCR pursuant to IDA Policy 2 and Regulations 1300.1 and 1300.2. All of the 21 accounts sampled by Sales Compliance in the 2007 SCR contained documentation deficiencies. These sampled accounts included 3 accounts previously identified as deficient in the 2005 and 2006 Sales Compliance Reports and new accounts opened in 2007.

67. None of the identified accounts had been noted as having pending documentation nor were they restricted from further transactions, contrary to the Member's own Policies and Procedures.

Written Policies and Procedures Manual

68. The 2005 SCR found that the Member's written policies and procedures manual had not incorporated a number of related industry requirements and rule changes that affected the Member, contrary to IDA By-law 29.27 and Policy 2.

69. In its response to the 2006 Sales Compliance Report, the Member had undertaken to incorporate highlighted deficiencies within 6 months time.

70. During the 2007 SCR, the Association found that the deficiencies from the 2005 & 2006 SCR had not been addressed. The compliance manual was the same that had been reviewed during previous SCRs.

Out of Jurisdiction Accounts

71. On November 13, 2001, the Association issued Member Regulation MR0114 advising all Members that effective March 1, 2002, the Member and individual registered representatives must either be registered in the Canadian or United States jurisdiction in which the client resides or be eligible with proof for an exemption under all securities legislation within that jurisdiction. If the firm or individual was not registered or subject to an exemption, the relevant accounts were to have been closed by March 1, 2002. Further, MR0114 advised that failure to comply with this requirement may expose the Member or registered representative to disciplinary action.

72. During the 2005 SCR, Sales Compliance noted that the Member allowed its RRs to deal with clients in jurisdictions where neither the Member nor the registrant was registered.

73. During the 2006 SCR, Sales Compliance found that although the firm advised that four US accounts had been frozen by the carrying broker, a review of the account activity indicated at least one of those accounts had taken on new positions twice since the last SCR. It was also

noted that the Member had not taken any action to register in the jurisdiction in which the clients resided or transfer out of the accounts.

74. In its response to the 2006 SCR, the Member stated that the accounts would be frozen and that no further trading would be permitted except for liquidations. It also responded that a review would be performed of its written policies and procedures in regards to frozen accounts to ensure that adequate supervision is maintained.

75. During the 2007 SCR, Sales Compliance found no evidence that the firm had followed through on the above noted undertakings. Sales Compliance found at least two clients resident in the United States with registered accounts that were permitted to purchase investments without the RR being registered in that jurisdiction. There was also no evidence of the Member's due diligence in determining whether it was required to become registered or was exempted from registration in dealing with clients in these jurisdictions.

76. In addition, Sales Compliance located accounts of clients resident in provincial jurisdictions, such as Quebec and Alberta, for which it was not registered.

77. The Member's failure to ensure compliance with registration requirements in all jurisdictions where clients are located is contrary to IDA By-law 18.2(a) and National Policy No. 34-201.

Cancellations and Corrections

78. During the 2005 SCR, Sales Compliance noted that the Member did not have evidence of the review and approval of its trading errors, cancellation and corrections Pursuant to Policy 2.

79. In the 2006 SCR, Sales Compliance noted at least two corrections which had not been pre-approved by the CCO, or his delegate. In the Member's response to the 2006 Sales Compliance Report, the Member had undertaken to monitor the daily trade blotter to ensure that trade errors were not being processed through the client's account without the CCO's approval. Furthermore, the Member had undertaken to effectively enforce its procedures with regards to trade errors, corrections and cancellations as indicated in the Policies and Procedures Manual.

80. During the 2007 SCR, Sales Compliance requested the CCO to provide records of his prior approval for a sample of eight trade cancellations and evidence explaining the reason for correction. No explanation or back-up documents were provided. Therefore, Sales Compliance was unable to assess whether the Member had followed through with its stated undertakings.

Evidence of Approval for Sales Literature and Marketing Material

81. During the 2005 SCR, Sales Compliance reviewed all advertising and sales literature issued by the Member. Evidence of approval for two items was not dated, one did not have the CIPF disclosure, and final copies of the approved advertisements were not maintained for Sales Compliance's review.

82. In the 2006 SCR, the content of the firm's approval of sales literature and marketing material since the 2005 SCR was reviewed. Several concerns were noted, each of which reflected deficiencies reported in the 2005 SCR and were at variance with the firm's own policies and procedures.

83. In its response to the 2006 Sales Compliance Report, the Member had undertaken to maintain a log and copy of all sales literature and marketing materials complete with the date of review and approval.

84. In the 2007 SCR, a sample of ten items of advertising and sales literature material was reviewed resulting in the following concerns:

(i) Absence of any evidence of review or verification of the actual tax advantages of the stated investment products;

(ii) Missing CIPF [Canadian Invvestor Protection Fund] disclosure

(iii) Missing reference to the Member firm;

(iv) Titles used by certain RRs were inconsistent and were not reviewed;

(v) Usage of designations in cases where there was no evidence that the RR had the relevant designation; and

(vi) One radio advertisement had no approval date or compliance person responsible for approval.

85. Furthermore, the Association reviewed a sample of five pieces of cooperative marketing material and noted that the rules of [the Canadian Securities Regulators'] National Instrument ("NI") 81-105 were not being followed:

(i) Some displayed questionable review and approval dates;

(ii) Compliance approved Radio shows with no record that it had seen the radio script;

(iii) Compliance approved an advertisement in Chinese with no record that it had seen the English translation;

(iv) Missing reference to CIPF Membership which would only apply to the IDA Member;

(v) Several items did not meet the purpose test per NI 81-105.1(a);

(vi) Missing disclosure of the names of all parties contributing to the cost of the advertisements;

(vii) Missing invoices or receipts issued for any direct costs incurred by the mutual fund company;

(viii) One instance where a request was made to the mutual fund company for an amount which exceeded 50% of the total cost of the advertisement;

(ix) Some were missing the cooperative marketing forms; therefore, the Association was unable to determine whether the mutual fund companies had contributed to the cost of the advertisement.

Failure to Supervise Yusuf Osman

86. Further reviews conducted by Sales Compliance in 2005 and 2006 revealed that the firm's failure to maintain evidence of supervision was not merely a documentary problem. In particular, during the 2005 and 2006 SCRs, Sales Compliance staff noted various questionable trading practices including bulk trading. Staff further investigated the issue of bulk trading with respect to Yusuf Osman ("Osman"), the Registered Representative and the branch manager at Argosy's Ottawa branch who conducted the majority of these bulk trades.

87. Staff's review of Argosy's trading blotter revealed that during the years 2004, 2005 and early 2006, Osman executed a significant number of trades in the same security at approximately the same time and price for a number of clients (hereinafter referred to as bulk trades). By way of example, during the period from March to August 2005, inclusive, Osman executed approximately thirty-three instances of bulk trades for client groups ranging in size from twenty (20) to one hundred and six (106) clients.

88. On some occasions, Osman did not obtain any prior authorization from the clients for whom these trades were executed. For those clients he did speak to prior to the trades, they were contacted days or even weeks in advance of the trades taking place.

89. None of the clients' accounts wherein these bulk trades took place were designated as discretionary or managed accounts. The securities that were the subject of these trades were not speculative nor deemed unsuitable for the clients involved. None of the clients made any complaints to Staff regarding the handling of their accounts.

90. None of these bulk trades were ever questioned by Argosy's Compliance Department or its Head Office.

91. On December 19, 2006, a Hearing Panel approved a Settlement Agreement negotiated between Staff and Osman. As part of the settlement, Osman admitted that from January 2005 to April 2006, he conducted his business consistent with the registration of a Portfolio Manager without being registered as such, thereby engaging in conduct unbecoming contrary to Association By-law 29.1. He was disciplined as follows: (1) a fine in the amount of $40,000; (2) a one-month suspension from approval with the Association; (3) strict supervision for nine months following his suspension; and (4) successful completion of the Conduct and Practices Handbook examination within six months from any subsequent re-employment with a Member firm.

92. At all material times, Sukhraj was registered with the Association as UDP, CEO and Director of Argosy. For the period of January 27 to July 18, 2006 he also held the position of CCO.

**Preliminary Comments**

¶ 3 Prior to the hearing, enforcement counsel withdrew paragraphs 47 and 48 of the Particulars. We were also informed that the Respondents "accept" the statements made in paragraphs 4, 5, 7, and 8, and that they "admit" the statements made in paragraphs 1, 2, 3, 9, 10, 11, 12, 13, 14, 16–46, 49-69, 70, 71-90, and 91. Paragraphs 6, 15, and the first sentence of paragraph 20, were specifically denied. We acknowledge counsel's efforts to thus shorten the proceedings.

¶ 4 It is also relevant to note (in connection with the third allegation) that Yusuf Osman, in proceedings initiated by the IDA against him, acknowledged that, from January 2005 to April 2006, inclusive, "he conducted his business consistent with the registration of a Portfolio Manage without being registered as such, thereby engaging in conduct unbecoming contrary to Association By-law 29.1." In virtue of a Settlement Agreement, Mr. Osman was fined $40,000, suspended from approval with the Association for one month, ordered to have strict supervision for nine months upon any subsequent re-employment with a member firm, and to successfully complete the Conduct and Practices Handbook examination within six months from any subsequent employment with a member firm. (See *In Re Osman*, [2007] I.D.A.C.D. No. 3.)

**The Facts**

¶ 5 As pointed out above, a number of facts are admitted. In essence, they demonstrate that Sales Compliance Reviews were conducted in 2002, 2003, 2005, 2006 and 2007, and that, over these years, in addition to new findings, there were a number of previously reported findings that remained unresolved despite assurances and undertakings made by the Respondents to address them in a timely and appropriate fashion.

¶ 6 Just what these deficiences were, and what was or was not done to address them, goes to the heart of the matter. For instance, while the audit points raised in the 2002 SCR, were "satisfactorily resolved" (see the Association's letter to Argosy, dated May 15, 2003), similar problems were noted in the following year. These, too, were "satisfactorily addressed" (see the Association's letter to Argosy, dated November 14, 2004), yet they cropped up again in subsequent years.

¶ 7 By 2005 matters began to change for the worse, and we find that five items were noted "which warrant[ed] a referral to the IDA Enforcement Department" (see Memorandum sent by the Senior Compliance Officer to the Director of IDA Sales Compliance, dated May 5, 2005.)

¶ 8 As explained by Karen Leslie Taylor, one of the managers of sales compliance, an "enforcement referral" is "where we hand over certain concerns to the enforcement division of the IDA or IIROC [as it is now known] because something has got to the point where it's out of our hands [and] we don't feel we can do anything more than we have." This was further explained by the witness that this occurred "in cases where we have extreme concerns about a finding at a firm, a high risk violation or continual non-compliance, [where] we get to the point that rather than continually repeating in a report that we hand it to enforcement for -- for them to consider what action needs to be taken." (Transcript of September 17, 2008, p. 43.)

¶ 9 A perusal of the documentary evidence filed by enforcement counsel tells the story: while some deficiencies found in 2005 were addressed by the Respondents to the satisfaction of the compliance department, others were not, and this despite repeated warnings by compliance that time was running out. Similarly, the 2006 follow-up sales compliance review, again found serious deficiencies, and three items were sent to enforcement for consideration (see Memorandum sent by the Senior Sales Compliance Officer to the Director if IDA Sales Compliance, dated November 17, 2006.)

¶ 10 Unfortunately, the 2007 sales compliance review still showed deficiencies, 14 of them "repeat significant items." Once again, the matter was referred to enforcement (see Memorandum of Karen Taylor et al. to Bruce Dickson, dated October 11, 2007.) The memorandum notes that there was evidence that company officers attempted to deal with some of these items, but did not succeed to do so satisfactorily. For instance, concerning defects in the sales literature, the memorandum points out that while "the CCO was now reviewing and approving sales literature and marketing material, it appeared that the materials were not being thoroughly reviewed due to the large number of deficiencies ..." This failure, the memorandum notes, appears to be due the Member's "lack of understanding" of the matter.

¶ 11 It is true, as the Respondents demonstrated, that numerous attempts were made by Argosy to correct the matters raised by the compliance reviews, but all-too-often these attempts fell short of the required norm. While good faith may not have been lacking, it appears from the evidence that frequently the persons involved did not have sufficient training to carry out the functions assigned to them, with the result that 'improvements' were insufficient and the deficiencies remained.

¶ 12 For instance, in August 2005, Argosy hired L.G. as a compliance administrator. Her background was in retail merchandising, but she had taken the one-year program on compliance administration at Seneca College and this was her first job in the investment industry. R.T. was the CCO at the time, but he was also the CCO for an associated company, Keybase Financial Group ("Keybase") -- both were owned by the Respondent Sukhraj -- and he clearly needed help, particularly in the face of ongoing discussions with the Association about deficiencies found in the sales compliance reviews.

¶ 13 T. gave G. "a week, max -- a week, max" training, "like sitting next to me and showing me stuff. And then, after that, I was doing the dailies on my own." (Transcript of September 22, 2008, p. 109.) In the beginning, there was a risk model, but Mr. Sukhraj didn't approve and G. stopped using it. It wasn't replaced by another model and the new compliance administrator "kept going to R.T. and telling him, 'We need something at Argosy to be put in place for me to use while I am doing the dailies.' And he kept telling me, 'Oh, I just started working on Argosy. Give me some time.' And he left in December." (*Ibid.*, p. 110.)

¶ 14 When T. left the company (he had been injured in an accident), Mr. Sukhraj took over as CCO, and while G. turned to him when she had questions, there was no spot-checking to see how she was doing. But Mr. Sukhraj did tell her that what she was doing "is great." (*Ibid.*, p. 117.) In the months which followed T.'s departure, G. tried "to fix as much" as she could. "There was a lot of red flags" and "Peter [Ingleton of the IDA] was calling every other day." (*Ibid.*, p. 127.) Not surprisingly, she decided employment with Argosy was not a good career move for her: "I did not feel I was able to do my job properly with the company and I got a good offer from Scotia, so I moved with them." (*Ibid.*, p. 128 ) That was in May 2006, less than 10 months after she had started.

¶ 15 In June 2006, Mr. Sukhraj hired J.J. to be the new CCO. They met twice, and J. was left with the understanding that "since it was a small shop, there wasn't much to do, you know, and that it would be, you

know, a mid role, not a senior role." (Transcript of September 22, 2008, p. 7.) But when he got there, he found "lots of deficiencies," which surprised him "for such a small job, there would be that many problems for that long of a period of time." (*Ibid.*, p. 8.)

¶ 16 After reviewing the sales compliance reviews for 2004, 2005 and 2006, he decided "something needed to be done right away," and he "talked to Dax [the Respondent Sukhraj] about getting a compliance consultant in," because "with the amount of things that I had to manage, I couldn't do it all by myself. I needed additional help." (*Ibid.*)

¶ 17 J. testified that Mr. Sukhraj was supposed to help him with his job at Argosy, but "a lot of it I figured out on my own. There was very little assistance." (*Ibid.*) But he did get a compliance consultant, L.R., whom he knew. The budget "was very limited," and the work R. performed "was piecemeal. R. did pieces, small things that needed to be done in response to the SCR." *(Ibid.*, p. 13.) He also "did the sub-branch audit to begin with, ... he did some policies and procedures, [and] he did the compliance manual. He [also] worked on complaints as I fed them to him." (*Ibid.*, p. 14.) Still, many things remained undone.

¶ 18 During much of that time, J. also occupied the position of CCO at Keybase, and to carry out both functions he had to work 12 to 14 hours a day: "I would come in and I would start at 8:00, 8:30 and I would go until about 5:30, 6:30, leave, go home, eat dinner. I would start up around 9:00, 10:00, maybe go until 3:00 in the morning." (*Ibid.*, p. 33.)

¶ 19 J. left Argosy at the end of March 2008. For one thing, he wasn't happy with a job review which Mr. Sukhraj had prepared:

> i. I wasn't happy with the way it was done. I wasn't happy with the fact that that the blame was being put on me ... and secondly, we had to -- me and Dax had a discussion that the compliance consultants we had working with us, that they were going to be released. And I thought to myself, 'At this point I have no support and I'm being blamed for things -- something -- things that I'm not responsible for.' So at that point I decided I didn't want to have any part of it anymore.
>
> ii. (Transcript of September 22, 2008, p. 53.)

¶ 20 In defence, Mr. Sukhraj testified that he had first come into the industry in 1977 as "a rep, a branch manager. And then, later on, I started my own company, Financial Concept Group. In 1983. Financial Concept Group had over 600 advisors, eight billion in assets under administration, and I was the president and CEO for both the mutual fund dealer and the securities dealer." (Transcript of September 22, 2008, p. 136.) Subsequently to that, he started Keybase Financial, and two years later Argosy Securities.

¶ 21 The positions he held over the years included a board seat on the Investment Funds Institute of Canada, including two years as vice-chair, followed by a year as chair. He also participated in an *ad hoc* committee which culminated in the creation of the Mutual Fund Dealers Association, which he chaired in its first year. Argosy started

> iii. because I had the mutual fund dealers and I saw an opportunity in the IDA world that there was disappearance of lots of independent dealer[s]. And I felt that, with my experience and background, that there might be a good opportunity for a niche boutique dealer to focus on -- primarily on advice giving to the retail investors.
>
> iv. (Transcript of September 22, 2008, p. 138.)

¶ 22 In 2002, Mr. Sukhraj bought Westminster Securities, a registered investment dealer, and turned it into Argosy, now owned by himself and his family. It was a small operation, with five registered representatives. At the time, Keybase had 40 to 50 representatives, and its head office premises were shared with Argosy. Westminster's president and UPD, P.L., remained, and so did D.M., the chief financial officer and chief

compliance officer. In fact, as Mr. Sukhraj testified, he bought Westminster largely because of the expertise of these two officers. M. reported to L., and L. reported to Mr. Sukhraj, who was Argosy's sole director. When M. left the company in 2003 "to pursue a career in being a priest" (*ibid.*, p. 146), L. appointed A.K. to take her place. This system remained until May 2004, when L. departed.

¶ 23 The circumstances surrounding L.'s leaving were described by Mr. Sukhraj as follows:

> v. A Well, L. was the UDP. I was – in looking at the business and the size of the business, and the work he was doing and how his time was being spent, we have had discussion that – that perhaps his position might not be one of a UDP, but more of a technical trader, because he was more interested in technical charting and having computers on his desk. And – and after discussions or whatnot, I – L. came in and he told me that he is leaving because there is an opportunity – this is what he told me – where he could follow a job along his area of interest.
>
> vi. Q What was his area of interest?
>
> vii. A Technical charting and, you know, stock picking based on technical charting.
>
> viii. Q So at the time L. left, did you discuss the sales compliance reviews and the status of the deficiencies with L.?
>
> ix. A Yes, I did discuss and I did get a status report.
>
> x. Q What did he tell you?
>
> xi. A That – that they have made – are making progress on – on the deficiencies that were mentioned, and how A.K. will continue to take responsibility on those – on the outstanding deficiencies.
>
> xii. Q Who replaced L. as UDP?
>
> xiii. A Well, the size of the company did not change much. At that time we had maybe – I don't know if we had one more reps or the still number. I apply to become the ADP [sic], and I think in August of that year I – I was approved to be the UDP.

¶ 24 As a result, Mr. Sukhraj spent more time in the day-to-day involvement of the business, and he and K. met on a weekly basis. Progress on the 2004 deficiencies was discussed, but he understood that progress was being made to meet the requirements. However, a letter sent by the IDA to K. on May 18, 2004, which suggested that no follow-up was undertaken by Argosy to certain matters raised in earlier correspondence, "indicated to me that there is five items -- six items that are outstanding as per that report. So I had felt that the company had made progress, and those six areas is what I -- I focus my attention in dealing with Alan, to try and complete the outstanding from this closing letter." (Evidence of Dax Sukhraj, transcript of September 22, 2008, p. 154.)

¶ 25 K. replied to this letter, and Mr. Sukhraj felt that the outstanding items were being dealt with. However, on October 20, 2004, the IDA wrote once again and pointed out that four deficiencies had not been addressed. Once again, K. replied, having discussed the matter with Mr. Sukhraj. By November 2004, the outstanding issues were resolved and, as Mr. Sukhraj recalled, "we both felt a sigh of relief, because we felt that the steps that Argosy have [sic] taken have dealt with those outstanding issues ... " (*Ibid.*, p. 160.)

¶ 26 Unfortunately, the relief was short-lived, and further problems soon emerged. In May 2005, when Argosy received the 2005 SCR report, Mr. Sukhraj was "shocked" to see "so many deficiencies, because I didn't believe that we were doing that much business." Gross revenues were less than two million dollars, "we were retail investors. We did 70 to 80 per cent of our business in mutual funds. We had few option trades, and most of the option trades were for two advisors." Furthermore, "we dealt with mostly blue chip stocks, and less than -- than one or two per cent of our revenues were dealing with penny stocks or stocks under a dollar. And I felt that, with the size of the organization and the resources we had devoted to it ... that we should not be

deficient." (*Ibid.*, pp. 165-166.) It is, however, relevant to point out that, at the time, Mr. Sukhraj was running two companies, Argosy and Keybase, and that the latter was much larger.

¶ 27 When questioned by his counsel, Mr. Sukhraj thought the description by the IDA of Argosy as being "uncooperative" was unfair, but he readily agreed that there had been a failure to meet undertakings. (*Ibid.*, p. 169.) As a result, he felt that he did not have the right person as CCO, but this became academic since K., who held that position, had resigned a few days before the report was received. Following K.'s resignation, T., who was "hired as a compliance person -- as an alternate compliance for Argosy and -- well, designated compliance with Keybase," became "the CCO for Argosy and an alternate compliance [presumably for Keybase], because he came with a lot of experience and credential." (*Ibid.*, p. 173.) As pointed out before, T.'s career at Argosy was cut short by an accident, and he was eventually succeeded by J.

¶ 28 It is not necessary to review what followed in detail. Some deficiencies were corrected, but new ones arose. It was a constant struggle, and even the engagement of a compliance consultant did not resolve all issues. It should be noted, however, that a new CCO has been appointed, that new consultants have been engaged, and that complaints are now being addressed in a more efficacious manner (see, for instance, Exhibits 11 to 14).

¶ 29 Concerning the third allegation in the Amended Notice of Hearing -- that Mr. Sukhraj failed to properly supervise Yusuf Osman -- the Respondent testified that he failed to recognize Mr. Osman's significant number of trades at approximately the same time as being bulk trading, and that he didn't realize until the review in 2006 that Mr. Osman's activities might be improper. But, he adds, this wasn't all that clear, since the reviewing officer herself was uncertain about this and had to consult one of her superiors. (Transcript of September 22, 2008, p. 206.) As soon as the impropriety was explained, the practice was stopped, and so it remains.

**Discussion**

¶ 30 It is clear that over a long period of time Argosy had serious deficiencies. Attempts were made by Mr. Sukhraj and his officers to deal with them, but many times their efforts were insufficient, and year after year they were told by IDA compliance personnel what must be done to make the firm compliant. Yet, even the most serious complaints were often dealt with by well-meaning but inadequately trained persons, and full compliance was never achieved in the years covered by the allegations set out in the Amended Notice of Hearing.

¶ 31 Regardless of Mr. Sukhraj's precise function at any given moment, the ultimate responsibility must lie with him. He was the sole director, and even when he was not the CCO or even UPD, these persons reported to him. When a consultant was finally engaged, the budget allocated was insufficient and his mandate was cut short. When Mr. Jackson quit, he did so because he felt he was not getting sufficient support. By his own testimony, Mr. Sukhraj was aware of the deficiencies raised, but his ultimate efforts were too little and too late.

¶ 32 Mr. Sukhraj suggests that Argosy, as a small firm and minor player, could not attract better trained people. That may be so, but this cannot be accepted as an excuse for defective compliance.

¶ 33 Be that as it may, Mr. Sukhraj's counsel submits that even if his client failed to take appropriate actions, this does not necessarily amount to "conduct unbecoming a member" (count 1) or "business conduct or practice that is unbecoming and detrimental to the public interest" (counts 2 and 3). As was said in *Re Doering*, [2007] I.D.A.C.D. No. 27, "not every violation necessarily results in culpability under terms of ... By-law [29.1]." Or, as described in *Re Bahcheli*, [2004] I.D.A.C.D. No. 12, "a charge of 'conduct unbecoming' involves a prosecution which clearly engages the professional reputation and possibly the livelihood of the Respondent. Implicit in the charge is a degree of moral turpitude or, at the very least, bad faith on the part of the Respondent."

¶ 34 Other cases have even gone further. In *Re Gareau*, [2005] I.D.A.C.D. No. 25, a majority of the panel held that By-law 29.1 is "primarily intended to focus upon quasi-criminal and unethical conduct, rather than negligent conduct," and in *Re Ng,* [2007] I.D.A. C.D. No. 47, the panel noted that a person's conduct, to fall within the terms of the By-law, "must amount to something more than mere inadvertence or negligence." Finally, in *Re Octagon Capital Corp.*, [2007] I.D.A.C.D. No. 16, it was held that "breach of a duty of care is

negligence, but it does not follow that mere negligence constitutes a disciplinary offence," but "aggravated negligence or negligent conduct which leads to conduct unbecoming can, in fact, lead to a disciplinary offence."

¶ 35 We agree with the proposition put in *Octagon* that mere negligence is insufficient to find "conduct unbecoming," but that "aggravated negligence," imprecise though the term is, may be sufficient to do so.

**Disposition**

¶ 36 The Respondents submit (Written Argument, para. 48), that "none of [the] evidence is consistent with Mr. Sukhraj acting unethically or in bad faith or being guilty of gross negligence that facilitated criminal or quasi-criminal conduct." However, the problem is that even if his conduct was neither unethical nor in bad faith, the long list of deficiencies which Argosy failed to cure cannot be described in terms other than gross negligence. As the record demonstrates, time and again promises were made and solutions proposed, only to lead to yet further shortcomings. Bearing in mind the number of years involved, there was a chronic failure to observe the rules, regulations and by-laws of the Association. While there is no evidence of any criminal or quasi-criminal conduct, it is precisely the non-observance of these rules, regulations and by-laws which may eventually lead to such conduct, leaving the public exposed to potential disasters.

¶ 37 There are three charges in the Amended Notice of Hearing. The first deals with Argosy, the second with Mr. Sukhraj, and so does the third. In our view, the first two are duplicitous since Mr. Sukhraj had complete control, and even though the company is separate in law, in fact Argosy and Mr. Sukhraj are one. As for the third count, the improper conduct alleged is subsumed by the allegations contained in the second count: in our view, the failure to supervise was but one of the manifestations of the shortcomings alleged in Count 2.

¶ 38 In the result, we find that Mr. Sukhraj committed the contravention alleged in Count 2. Counts 1 and 3 are dismissed.

¶ 39 In light of this conclusion, upon consultation with counsel, we will fix a date on which the parties can speak to the penalty.

Given at Toronto, Ontario, this 29th day of October, 2008.

Hon. Fred Kaufman, C.M., Q.C., Chair

Duncan Webb, Member

George Dunn, Member