Re Georgakopoulos

IN THE MATTER OF:

THE BY-LAWS OF THE
INVESTMENT DEALERS ASSOCIATION OF CANADA

AND

KONSTANTINOS GEORGAKOPOULOS

2009 IIROC 25

Investment Industry Regulatory Organization of Canada
on behalf of the Investment Dealers Association of Canada
Hearing Panel (Pacific District Council)

Heard: December 1 to 5, and December 8 to 10, 2008, at Vancouver, BC
Decision: May 12, 2009
(110 paras.)

Hearing Panel:
Stephen D. Gill, Chair
Robert Travers
Christopher Lay, Member
Appearances:
Barbara G. Lohmann, W. Gerber, for IIROC
Douglas R. Eyford, for the Respondent

DECISION

1. The Investment Industry Regulatory Organization of Canada ("IIROC") on behalf of the Investment Dealers Association of Canada ("IDA"), and pursuant to the By-Laws of the Investment Dealers Association of Canada issued a Notice of Hearing to Konstantinos Georgakopoulos, ("Georgakopoulos" or the "Respondent"). The Notice of Hearing alleged that Mr. Georgakopoulos had committed two contraventions. The alleged contraventions, and the relevant Regulation and By-Law are:

COUNT 1

Between January and December 2004, the Respondent, at all material times a Registered Representative ("RR") at Golden Capital Securities Ltd. ("Golden"), a Member Firm, failed to properly perform his role as gatekeeper to the capital markets and acted contrary to Association Regulation 1300.1 (a) by facilitating certain transactional activity in certain client accounts without making diligent inquiries to ensure the legitimacy of the transactions in circumstances which should have called the transactional activity into question because it was peculiar, suspicious or appeared to be consistent with market manipulation, deception or other improper market related activity.

RULE 1300
SUPERVISION OF ACCOUNTS

1300.1 Identity and Creditworthiness

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

COUNT 2

Between January and December 2004, the Respondent, at all material times an RR at Golden, a Member Firm, failed to properly perform his role as gatekeeper to the capital markets and acted contrary to Association By-Law 29.1 by failing to observe the high standards of ethics and conduct in the transaction of his business by facilitating certain transactional activity in certain client accounts without making diligent inquiries to ensure the legitimacy of the transactions in circumstances which should have called the transactional activity into question because it was peculiar, suspicious or appeared to be consistent with market manipulation, deception or other improper market related activity.

RULE 29
BUSINESS CONDUCT

29.1 Dealer Members and each partner, director, officer, sales manager, branch manager, assistant or co-branch manager, registered representative, investment representative and employee of a Dealer 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 interest, and (iii) shall be of such character and business repute and have such experience and training as is consistent with the standards described in clauses (i) and (ii) or as may be prescribed by the Board of Directors.

For the purposes of disciplinary proceedings pursuant to the Rules, each Dealer Member shall be responsible for all acts and omissions of each partner, director, officer, sales manager, branch manager, assistant or co-branch manager, registered representative, investment representative and employee of a Dealer Member; and each of the foregoing individuals shall comply with all Rules required to be complied with by the Dealer Member.

2. The charges against Mr. Georgakopoulos involve the period, January, 2004 to December, 2004 (the "Review Period") and the dealings between Mr. Georgakopoulos and two of his clients: Mayer Amsel ("MA") and David Amsel ("DA"), two brothers, and their trading in the securities of East Delta Resources Corp. ("EDLT") and accounts they maintained through the Respondent, at Golden. The Notice of Hearing provided detailed particulars, in some 61 paragraphs. Those particulars set out significant details of the Respondent's activities and trading with DA and MA at Golden. It included detailed descriptions of DA's and MA's regulatory history, relationship to EDLT and associated companies, their trading patterns at Golden, and other matters which the IDA alleged should have put the Respondent on notice, and that he failed to make any or sufficient inquiries, or reports, and failed to perform his role as gatekeeper. In essence, the IDA alleges that the Respondent was aware of, but ignored, or was wilfully blind to numerous red flags during the Review Period; that is, trading activity of the Amsels that was peculiar, suspicious, or appeared to be consistent with a scheme of market manipulation, deception, or other improper market related activities.

3. The Panel had the benefit of the testimony of Mr. Georgakopoulos, and also the transcripts of interviews of Mr. Georgakopoulos (at which he had counsel) conducted by the IDA on August 15th and 31st, 2006. We also had the benefit of the evidence of Ms. Kathryn Tanaka, an experienced senior investigator with the IDA, who was the lead investigator and who conducted the IDA interviews of the Respondent in 2006, and who presented in evidence much of the IDA's documentary evidence, and who conducted an analysis of the trading by the Amsels, at Golden, during the relevant period. We found Ms. Tanaka to

be a straightforward, honest and credible witness, who was prepared to make admissions against interest in cross-examination.

4. We also had the benefit of the evidence of William D. Park, a securities brokerage industry regulator in the United States who was currently a Director in the Department of Enforcement of the Financial Industry Regulatory Authority, or FINRA, formerly known as the National Association of Securities Dealers, or NASD. Mr. Park is a highly qualified U.S. securities brokerage industry regulator, and has impressive qualifications. He has conducted numerous investigations pertaining to suspicious trading, including investigating the trading activities in EDLT in the U.S., and the brokers there, Golden, and the Amsel brothers. On behalf of FINRA, he conducted the investigation and prosecution in the United States in respect of the trading activities in EDLT of the Amsels and the market makers and brokers in the United States. The Panel held that the expert report of Mr. Park tendered to the Panel (Exhibit "A" for identification) did not meet the requisite legal tests (in Canada) for the admission of an expert report. However, Mr. Park had caused various analysis of trading patterns to be performed, which in some instances were similar to analyses the IDA had performed, and those schedules, reflecting the FINRA analyses were admitted in evidence (Exhibit 18: Ex. 2 to Ex. 9).

5. At the request of the parties, a pre-hearing conference was held during September and October, 2008, and a written decision was rendered with respect to the admissibility of certain evidence and with respect to the Respondent's application to strike out paragraphs 51 through 55 of the Notice of hearing. The letter of Acceptance, Waiver and Consent of John V. Hull (Exhibit 14) and transcripts of two interviews of John V. Hull by NASD investigators (Exhibits 15A and 15B) were held to be admissible, at the hearing, and it would be for the Panel to determine the weight to be given that evidence. The application to strike out paragraphs 51 through 55 was dismissed.

6. The Panel were cognizant of the By-Laws and rules relating to the conduct of the hearing. Rule 1.2 of the Rules of Practice and Procedure states:

> **General Principal**
>
> These rules shall be interpreted and applied to secure a fair hearing and a just determination in the interest of justice, with a view to securing such result in a timely and cost effective manner.

7. By-Law 20.2, part of the Association Hearing Processes (By-Law 20), states:

> **20.2 Exercise of Authority**
>
> (1) A panel may make any determination, hold any hearing and make any decision, order, interim order or impose any terms required to implement such order, required or permitted under By-Law 20 or under IDA Rules of Practice and Procedure.
>
> (2) A panel is not bound by any legal or technical rules of evidence and may admit as evidence in a hearing, whether or not given or proven under oath or affirmation, anything that is relevant to the proceedings.
>
> (3) A panel may require presentation of evidence or testimony under oath or affirmation."

8. Rule 1.5 of the Rules of Practice and Procedure states:

> **1.5 Procedural Power of the Panel**
>
> (1) A Panel may:
>
> (a) make any determination, hold any hearing and make any decision, order, interim order or impose any terms required to implement such order, required or permitted under these Rules;
>
> (b) admit as evidence in a hearing, whether or not given or proven under oath or

affirmation, anything that is relevant to the proceedings;

…

GATEKEEPER RESPONSIBILITIES

9. It is well established that the securities industry is a regulated industry which imposes serious obligations on the participants in the industry, including registered representatives ("RR's"). In *Pezim v. British Columbia (Superintendent of Brokers)* (1994) SCJ No. 58, the Supreme Court of Canada commented on the framework which regulates the securities industry throughout Canada:

> 59. It is important to note from the outset that the Act is regulatory in nature. In fact, it is part of a much larger framework which regulates the securities industry throughout Canada. Its primary goal is the protection of the investor but other goals include capital market efficiency and ensuring public confidence in the system: David L. Johnston, Canadian Securities Regulation (1977), at p. 1.
>
> 60. Within this large framework of securities regulation, there are various government administrative agencies which are responsible for the securities legislation within their respective jurisdictions. The Commission is one such agency. Also within this large framework are self-regulatory organizations which possess the power to admit and discipline members and issuers. The VSE falls under this head. Having regard to this rather elaborate framework, it is not surprising that securities regulation is a highly specialized activity which requires specific knowledge and expertise in what have become complex and essential capital and financial markets.

10. The IDA (IIROC) is one of those self-regulatory organizations that is charged with, inter alia, the regulation and discipline of its members.

11. It is also important to understand the role of RR's in the securities industry. This was described by the Alberta Securities Commission in Re *Wenzel* (2005) A.S.C.D. No. 153 as follows:

> 50. The role of a registrant in our system of securities regulation is a key one. It combines privileged access to the capital market with important responsibilities.
>
> 51. In the absence of applicable exemptions, all securities trading must be conducted through a registrant. Registrants interact directly with investors, and it is from investors that registrants receive compensation in the form of commissions.
>
> 52. Registrants in turn protect investors, and help to sustain the integrity of the capital market. Securities salespersons are meant to know and understand the capital market, securities laws, their client and the client's investment objectives and financial circumstances. **They must then apply this knowledge and understanding to ensure that every purchase or sale of a security that they participate in for a client is in accordance with the law,** suitable for the client and, in the absence of valid discretionary authority, specifically authorized by the client.
>
> 53. All of this is designed to protect the particular client, directly. **It also serves a broader purpose. A salesperson who fulfils these obligations to the particular client will be in a position to spot suspicious or unusual circumstances that could have an effect on the integrity of trading and the capital market.** The salesperson can then alert the client (or the employer firm, regulators, or all three) to potential improprieties, inadvertent or otherwise, and decline to participate in or facilitate improper activity. **In this way, the registered salesperson is a gatekeeper for the broader public interest.**
>
> (emphasis added)

12. The IDA produced a copy of Golden's 2004 Policy and Procedures Manual and the 2004 Trading Compliance Manual. It sets forth the gatekeeper rule as follows:

6.14 THE GATEKEEPER RULE

Security Regulators look to IAs to be the Gatekeepers within the securities industry. That is to say to be the first line of defence through their knowledge of the client and securities regulations to detect that the intention or effect of the trading done by a client would be in breach of the securities act or impugn the integrity of the market place.
IAs are in the best position to be aware of potential signs of market manipulation and any market scheme at its outset, because of their knowledge of their clients and their trading patterns.

The Exchange, in assessing whether an IA is participating in any market scheme will ask the question; "Did you know or ought you to have known that there was a scheme afloat?" Wilful blindness on the part of the IA may be construed as a failure to meet "Know Your Client" obligations.

13. Further, Golden's Manual stated the following with respect to trading:

7.0 TRADING

NOTE:
This section (7.0) is to act as a guideline only concerning the activities of the IA. For specific procedures relating to the control and monitoring of trading activity, please consult the Trading Compliance Manual.

7.1 General Considerations

The Trading Department is the first line of defence to protect Golden Capital from trading violations and possible losses that could result from executing such trades. The following is a partial list of such concerns, which must be reported to the Compliance Department before the trades are executed, or immediately upon becoming known to the Trading Department:

- Concentration of orders in a particular security;
- Unusual trading, same day trades, unreasonable price movements;
- Large orders that could lead to credit problems;

…

Prior to the entry of an order on a marketplace by the firm, the IA must comply with Universal Market Integrity Rules ("UMIR"), and in particular:

(a) applicable regulatory standards with respect to the review and approval of orders;

(b) the specific policies and procedures adopted by the firm as per this Procedures Manual and Trading Compliance Manual which is available from the compliance department;

(c) all requirements of the UMIR, as can be found on the RS web site.

14. Also applicable is the Canadian Securities Institute Conduct and Practices Handbook Course materials. In Section II: Dealing with Client Accounts, Chapter 2 – Sales and Trading Conduct (page 95-96), there are instructions for RR's dealing with concerns about client trading:

IV. Concerns about Client Trading

Registrants should be concerned not only about their own trading practices, but also about any unusual or suspicious trades by clients. The reasons for this are both financial and regulatory. Financially, the firm's capital will suffer if a client has left a bad debt. In terms of regulation, any market manipulation or other Securities Act violation which has been perpetrated by a client

through an IA and a member firm could result in regulatory action against the client, the IA and the firm depending on the degree of negligence or culpability as determined by a regulator. In an extreme case, this could include prosecution under the Criminal Code.

The following are examples of situations in which trading activity may be a cause for concern. **Should an IA have reason to believe that any such activity is in process, or has already taken place the situation should be brought immediately to the attention of the branch manager or a compliance officer of the firm.**

Example A:

A group of clients is trading in a particular security and the security is not one normally followed by the IA and/or the member firm's research department. The IA must particularly note if one of the group has trading authority for some or all of the others. **In addition, the IA must remain alert to detect other indications that the clients are connected and are acting in concert. This might include use of the same mailing address, same employer, or same last name or phone numbers. Similarities in the timing and pricing of orders would be another clue. Clients engaging in this conduct may be manipulating the price of the stock by trading among themselves or may be attempting to give the appearance of an active market.** … (emphasis added)

15. In Re *Pacific International Securities Inc.*, 2006 LNBCSC 603, the B.C. Securities Commission majority decision commented on gatekeeper responsibilities:

> 316 The gatekeeper role is not defined or mandated in the Act. The role comes from a series of VSE Notices, and a notice issued by this commission. The notices focus on the public interest obligations of investment advisors and dealers to be alert to potential illegal trading and to advise the regulators. The notices also remind dealers of their obligations under the know your client rule and the business procedures rule.
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> 317 Following are extracts from VSE Notice to Members #96/97, issued in 1997:
>
> > … it is the duty of RR's to act in the best interests of their clients. However, the RR's must also act in the best interests of their employers and through them the whole Securities Industry. From this it follows that if the RR becomes aware, through knowledge of the client or otherwise, that the intention or effect of the trading by a client would be in breach of the Securities Act or impugn the integrity of the market place, then it is incumbent on the RR in the capacity of "Gatekeeper" within the Securities Industry, to draw the matter to the attention of Management of the firm and the Member shall draw its to the attention of the Exchange. Further, wilful blindness on the part of RR's, may equally be construed as failure to meet their responsibilities.
>
> Particular attention is drawn to Rules F.2.17.1(5) which address the areas of deceptive and manipulative trading and market corners.
>
> **It is, in this regard, important for each RR to be aware of potential signs of market manipulation.**
>
> 318 The VSE's gatekeeper notice was essentially copied by this commission when it issued its own notice.
>
> 319 In our view, the gatekeeper notices provide the industry with guidance on how to comply with the know your client rule. **It also provides the industry with guidance on their public interest obligation to report potential illegal activity.** Also, in our view, that illegal activity would include not only market manipulation, as is suggested in the notices, but also activity such as insider trading and money laundering.
>
> 320 The know your client and public interest obligations do not, as the Executive Director

argued, extend to activities of a client outside of their account at the firm, unless the firm has knowledge of those activities. In that case, we say the registrant would have an obligation to make inquiries of the client under the know your client rule, if those activities cause doubt as to the business or financial reputation of the client.

321 **Every firm has an obligation to assess the risk of dealing with a client and to properly supervise the activity in the client's account.** This obligation comes from the know your client rule, which does not include a prohibition against dealing with a client.
(emphasis added)

16. The Vice-Chair of the British Columbia Securities Commission in her dissenting Reasons in Re *Pacific International Securities Inc.* also commented on the gatekeeper role of RR's. The Vice-Chair stated:

584 It was because the Legislature and the Commission recognized this that they imposed the gatekeeper responsibility on registrants. **Registrants deal with their clients on a daily basis. They can monitor their activity, question that activity and seek out additional information as required from inside and outside the firm. If registrants perform their gatekeeper role properly, they will identify possible improper or illegal market activity at an early stage and prevent it from continuing.** They are far better placed than regulators to perform that role. **Registrants, and registrants alone, bear the responsibility to know their clients, from the aspects of both suitability and gatekeeper.** Whether a regulator may also have information about a particular client is irrelevant; **the registrant is expected to act independently and make reasoned judgments on the basis of the information that is available to it.** The registrants can not assume that the person is an acceptable participant in the capital market simply because no regulator has removed him from the market.

589 Account supervision for gatekeeper purposes is not that simple. In many cases, the activity in a single account, or group of accounts, at a single registrant will be only part of a broader scheme, such as market manipulation or money laundering. And that activity, in itself, will not be illegal or improper, such as deposits of securities or third party wires. **However, even if that activity is not, in a vacuum, illegal or improper, the registrant is expected to be cognizant of the role that activity could be playing in a broader illegal scheme.**

590 **One of the essential facts a registrant needs to know about a client is whether the client is using his account as part of a broader illegal scheme.**

591 **If the registrant learns of something that raises a concern in this regard, the registrant must make inquiries, using all sources of information available to it. The registrant must then exercise its judgment on the basis of that information.**

592 In many, if not most, cases, the registrant will not be able to know with certainty that the client is, for example, participating in a manipulation. In such a case, the registrant must exercise its judgment, on a fully informed basis, recognizing that it has a responsibility to act in the public interest to protect the integrity of the capital market.
(emphasis added)

17. Decisions of the IDA have also addressed the gatekeeper role of RR's. In Re *Boulieris* (2003) IDA CD No. 7, Bulletin No. 3118, February 18, 2003, the Ontario District Counsel heard evidence relating to allegations of misconduct by Boulieris during the time he was employed as an RR with First Delta Securities Inc. The Panel stated in paragraph 13 of its Reasons:

> … the Respondent failed to carry out his gatekeeper role as a registrant. A registrant must be vigilant in ensuring that related clients are not trading OTC Bulletin Board securities to create a false appearance of trading activity or otherwise engage in manipulative activities. …

18. The Panel found the Respondent engaged in conduct unbecoming by carrying out the trading of a client

who had indicated that he would attempt to manipulate the market price of a company.

19. In *Jeffery Bradford Kasman and Clinton Anderson, IDA*, November 13, 2007, an Ontario District Counsel dealt with allegations two RR's violated association By-Law 29.1 and engaged in conduct unbecoming, or detrimental to the public interest, by facilitating manipulative and/or deceptive trading. In respect of the duties of RR's, the Panel stated:

> [40] In addition to his duties to his client, a registered representative has duties to his firm, and to the marketplace. These duties require a registered representative to undertake various tasks. he must know his client. He must determine that trading is suitable for the client. He must gather and analyze prescribed information. He must keep records. He must supervise assistants. he must analyze and understand markets and the trading he does.
>
> [41] He must make reasonable inquiries and be reasonably satisfied with answers where a duly diligent person would do so in similar circumstances. In this regard a registered representative should have an alert, curious attitude to the tasks his clients ask him to perform. (See, in this regard, Toban [2007] I.D.A.C.D. No. 9 Bulletin No. 3615, March 16, 2007.)
>
> [42] He can be greatly assisted by a competent compliance function at his firm. He can reasonably rely on others. But he cannot abdicate his functions by unreasonable reliance on his firm or administrative assistant. The purpose of the compliance function is not to supplant the registered representative's own responsibilities to monitor the clients' trading and other activities at the firm.

THE RESPONDENT

20. Mr. Georgakopoulos became employed in the securities industry as an RR in January, 1996, with Georgia Pacific Securities Corp. In December, 1997, he became an RR with Wolverton Securities Limited ("Wolverton"). From Wolverton he transferred to Golden on or about July 9, 2002. The Respondent remained at Golden until February, 2007, when Golden ceased business operations. The Respondent is currently employed by Gateway Securities Ltd.

21. The Respondent has no previous disciplinary history.

22. The Respondent acknowledged that he had completed the Conduct and Practices Handbook course, and he was fully aware of the gatekeeper rule and his obligations as an RR as per the course. He acknowledged the gatekeeper rule, and his obligations as an RR, and as outlined in Golden's Compliance Manual. His position was that he had complied with his responsibilities as a gatekeeper in relation to the Amsels trading during the Review Period.

23. In 2004, the Respondent had approximately 400 clients, mainly individuals but some corporate accounts. He was registered in B.C. and Ontario and approximately 75% of his clients were in B.C. By way of background, at Wolverton he traded for U.S. based clients when that was permitted, but stopped when it became prohibited. He stated he did not have any offshore or U.S. clients in 2004.

24. The Respondent testified that he has been significantly involved in the U.S. markets since his introduction to the securities industry in 1996. Frequently, clients are referred to him by other clients, and 90% to 95% of his business is unsolicited. The majority of his clients are sophisticated, do not seek advice, nor does he give advice. His service is doing their trading, that is, the quick and efficient execution of trades. He testified that quick and efficient trade execution is key in the speculative markets that his clients are involved in. He described a typical transaction with his clients in 2004: he would get a client call; he would obtain quotes from his screens; he would get an order; write up the ticket, stamp it, and then execute the trade. He was experienced in trading Over The Counter Bulletin Board (OTCBB) stock, and in the function of market makers, and the fact there were minimum share orders, etc. By 2004, the Respondent was a very experienced broker, specializing in OTCBB trading.

25. In executing a trade he would write out a ticket and stamp the ticket in his office; the stamp was beside

the two screens in his office. With respect to OTCBB trades using market makers, he would usually do it directly himself, although at times he would use a trader, but he preferred, if he could, to call direct to the market maker himself. He testified that he did the majority of his trades.

26. He admitted that during the Review Period he did many, many trades through the U.S. market maker Public Securities Inc. ("Public"). There was a dedicated direct line which he used to execute his trades.

27. With respect to executing trades through the U.S. market makers, he testified he would obtain his order, write it up and would telephone and discuss the trade and the price with the market makers. He stated he knew them by name, and he would call the trading desk, and there were up to four people at Public who would answer. He knew the four by name as Public was a smaller firm. He testified that Public was "THE" market maker for EDLT.

28. In the interviews conducted by the IDA of the Respondent on August 15 and 31, 2006 (Exhibit 4) he gave significant insight into the relationships that he cultivated with market makers. He testified:

> Answer: But there might be someone that we call, like Schwab, Yeah, hi. It's Dino from Golden, I have a bid. I can buy up to 10,000 shares at 65¢. You know, I mean, there are certain places you don't know someone, it just makes it easier if you do. But that's just convenience, and that's not a reason you know –
>
> Question: So you are saying that it was just random, like you didn't pick (inaudible) –
>
> Answer: Well it just happens because when you call, not just on EDLT or AVIC, but when I am dealing with 10 or 20 or 30 other stocks and I phone Knight or Vertical 20/30 times, well, Kathryn's going to be on the other side. And – and if I know her and I have already started that relationship, when I see your firm up on the block well that's who I am going to phone because –
>
> Question: Yeah
>
> Answer: - If I phone you I'm starting over like who are you, from Golden, you'll know right away. Oh, you're from Golden, okay, GNCF perfect. What can I do for you? Well you're up on the offer at 65¢, I can buy up to 10,000. What can you do for me? (Exhibit 4, page 114, line 21 to page 115, line 10.)

29. John V. Hull was one of the brokers who was active at the market maker Public in relation to EDLT during the Review Period. He was interviewed by NASD personnel on March 16, 2005 and May 2, 2005 in a procedure analogous to the IDA's interviews of RR's in this jurisdiction. Because we only have the transcript, and Mr. Hull was not available to be examined, we treat the transcripts of his testimony with a significant degree of caution and scepticism. However, upon review there is a certain flow to some of the questions and answers, and Mr. Hull's responses, in a number of instances, appear to be candid and consistent with the Respondent's description of the trading process. Mr. Hull testified that of four people at Golden that he dealt with (John, Dino, Jason and a woman) he primarily dealt with Dino (the Respondent). He also testified that Dino mentioned Mayer, a New York customer, to him. (Exhibit 15A, pages 143 – 144).

30. In the interview of John Hull on May 2, 2005 (Exhibit 15B) Mr. Hull was asked by the investigators about trades that occurred in close proximity such as six minutes apart; he said the orders came from Golden and probably from Dino. Mr. Hull was asked if he was ever told, in the same conversation with Dino at Golden, if he got a buy and sell in the one phone call; he testified that he did and that was in relation to a "cross". He stated:

> Q Okay. So, do you remember – you remember that happening where they said – where someone at Golden Capital said they wanted to do a cross of some sorts?
>
> A Yes.
>
> Q And you remember that happening before January of 2005?

A Yes.

Q What was your understanding of what that meant, cross?

A That they were gonna buy or sell to us **and we were going to do the opposite side sometime that day.**

Q Now, what else did they say?

A And you're gonna get paid to do it.

Q Can you give me, you know, what is it that – **was it Dino that gave those orders?**

A **Yeah. yes.**

Q **Anyone else?**

A **No.**

(Emphasis added)
(Exhibit 15B, page 204, line 24 to page 205, line 18)

DAVID AMSEL and MAYER AMSEL

31. The Respondent described his relationship with the Amsels in both his transcripts (Exhibit 4) and in his testimony before the Panel. The Respondent initially opened an account for David Amsel at Wolverton. In the process of opening that account, the Respondent met with the Compliance people at Wolverton as they had identified issues with respect to David's brother, Mayer Amsel. Mayer Amsel had been the subject of two regulatory proceedings in the U.S., which the Respondent recalled he knew of and thought he had seen the paperwork on. As a result of Mayer Amsel's history, it was agreed (at Wolverton), that the Respondent would deal with David Amsel with care, or be careful. He testified in the interview:

> I mean we would deal with the account as if any other – but we – we still have knowledge that there was a situation there with his brother and we – we had to keep that in the back of our minds, being, you know, gatekeepers, so we have to understand that. (Exhibit 4, page 54, line 28 to page 55, line 3)

32. It's common ground that the history of Mayer Amsel could be obtained easily, such as by a Google search. The Respondent said he knew of Mayer Amsel's history; this is important, in respect of what the Respondent knew (or ought to have known) with reference to how he would view the trading of the Amsels at Golden, and both had active trading accounts with him, and he was executing numerous trades for them.

33. In a decision dated April 10, 1996 the U.S. Securities and Exchange Commission conducted a review of disciplinary action taken by NASD in respect of Mayer Amsel. Mayer Amsel's address on the face page of the decision is 1941 New York Avenue, Brooklyn, New York. The disciplinary proceedings were in respect of violations of the U.S. rules and regulations and were: parking stock in a fictitious account; other unauthorized transactions; creation of false records; obtaining improper extensions of credit; improper trading to detriment to employer and customers; and failure to comply with record keeping requirements. The headnote summary by the SEC states:

> Where trader for member firm of registered securities association engaged in scheme to park stock from his trading account in inactive and fictitious customer accounts and, in connection with that scheme, created false records, effected unauthorized transactions, and obtained improper extensions of credit; and where trader engaged in trading that improperly diverted profits from his firm and disadvantaged customers, and, in connection therewith, failed to comply with record keeping requirements, held, association's finding of violation and the sanctions it imposed sustained. (Exhibit 5, Tab 1)

34. The SEC decision recited that MA admitted all of the NASD's charges with respect to the scheme involving the parking of stock from the firm's trading account. From May through August, 1990, he opened seven customer accounts at the firm (the "fictitious accounts") four of which were opened in the names of fictitious persons, and three real persons who were unaware that accounts had been opened in their names. **Amsel used his brother's address for all of the accounts.** There were other details of MA's conduct set forth in the decision.

35. In its decision upholding the NASD decision, the SEC said:

> Although we have not sustained all of the NASD's findings of violation, we do not believe that any reduction in sanctions is warranted. Parking stock to conceal a firm's true net capital position is serious misconduct. Thus, even assuming that Amsel acted solely for that purpose, it would hardly be a mitigative factor. However, contrary to Amsel's assertions, his stock-parking scheme was conducted for his own benefit, not the firm's, and his improper trading in Frontier, which continued for nearly a year, cost the firm substantial sums of money. Moreover, customers were unquestionably harmed by the unauthorized transactions he effected in inactive accounts and his preferential pricing of Frontier. Amsel's remaining misconduct was no less serious because the firm was his victim rather than public investors. And, despite his claim of inadequate training, Amsel was admittedly aware that he was engaging in improper conduct in connection with the parking of stock from his trading account.
>
> As we have pointed out on numerous occasions, the appropriate sanctions in a disciplinary action depend on the particular circumstances of each individual case. Amsel has exhibited a disturbing disregard for the standards that govern the securities industry, a business that is rife with opportunities for abuse. In light of his deliberate and serious misconduct, we consider his exclusion from that business a desirable safeguard for both broker-dealers and members of the investing public. Thus we do not find the sanctions imposed by the NASD excessive or oppressive. (Exhibit 5, tab 1, pages 39-40)

36. The NASD decision censured Mayer Amsel, barred him in all capacities, and fined him $100,000. The SEC confirmed the NASD sanctions.

37. Mayer Amsel was the subject of a second Securities and Exchange Commission investigation, and the SEC rendered a decision on June 19, 1998. The SEC had instituted proceedings in relation to Cortlandt Capital Corp., Mayer Amsel and Joseph Michael Guccione; Mayer Amsel submitted an Offer of Settlement which the SEC accepted. Under the terms of the Offer, Mayer Amsel consented, without admitting or denying the findings contained in the Order, for the purposes of the proceedings, to the issuance of the Order making findings, imposing remedial sanctions and making Orders in respect of Mayer Amsel.

38. The decision states:

> RESPONDENT
>
> Mayer Amsel was the head equities trader at Cortlandt Capital Corp. (Cortland), responsible for the market making activities in Vertex stock. He also was a registered representative with active clients. On October 11, 1995, the NASD barred Amsel from association with any member firm because of conduct at a previous employer, unrelated to the present matter. …
>
> SUMMARY
>
> From September 1993 through February 1994, Amsel manipulated the market for Vertex common stock. Between March 2, 1993 and September 2, 1993, Cortlandt's customers, at Amsel's urging, accumulated large, margined positions in Vertex stock after Cortlandt's clearing broker improperly designated Vertex stock a margin security in its internal computer system. Upon discovering its mistake in late August 1993, the clearing broker required Cortlandt to

reduce the margin debits in its customers' accounts, and eventually conducted sell-outs of Cortlandt's customers' margined Vertex holdings.

In order to stabilize or increase the price of Vertex stock in the face of substantial selling pressure, Amsel (1) made unauthorized purchases in customers accounts, (2) refused to execute customers sell orders with respect to Vertex stock, (3) arranged for customers to transfer margined Vertex shares to newly opened accounts at other broker-dealers, (4) directed nominees to purchase stock at other broker-dealers, and (5) interpositioned wholesale broker-dealers between Cortlandt and the nominees in order to disguise Cortlandt as the source of the shares sold to the nominees. **Amsel, therefore, used manipulative and deceptive devices in a scheme to defraud the market for Vertex stock.** (Emphasis added) (Exhibit 5, tab 2, page 49)

39. The SEC decision continues:

> Amsel knew that liquidating Cortlandt's customers' holdings in Vertex would cause the share price to decline sharply because Vertex stock was illiquid and thinly traded, and Cortlandt controlled approximately two-thirds of the float. The potential consequences to Cortlandt of an imminent sharp decline in the price of Vertex were obvious – it could cause a wave of margin defaults by Cortlandt customers which could threaten Cortlandt's solvency.
>
> In response to this problem, Amsel employed manipulative and deceptive practices to create artificial demand for, and restrict the supply of, Vertex stock in the market. Amsel restricted the supply of Vertex stock by refusing to execute customers sell orders and by transferring margined shares that would have been sold-out to other broker-dealers, without disclosing to Cortlandt customers or the other broker-dealers the manipulative scheme to support Vertex's stock price. Moreover, Amsel created artificial demand for Vertex stock by making unauthorized purchases in customers accounts and by directing nominees to purchase shares at other broker-dealers for his benefit. Amsel and his nominees never paid for the majority of these shares, leaving debit balances totaling approximately $2.3 million with six broker-dealers. Finally, Amsel was able to unload thousands of Vertex shares from Cortlandt's proprietary trading account and customers accounts by disguising Cortlandt as the source of shares sold into the market. **Amsel did this by interpositioning wholesale broker-dealers between Cortlandt and his nominees who were purchasing Vertex shares at other broker-dealers.** (Emphasis added) (Exhibit 5, tab 2, page 50)

40. As part of its 3 part penalty, the SEC barred Mayer Amsel from association with any broker, dealer, municipal securities dealer, investment adviser or investment company. (Exhibit 5, tab 2, page 51)

41. These two decisions established that Mayer Amsel was guilty of serious securities fraud, and that he was quite willing to use devious manipulative schemes and third parties to carry out his objectives. He used his brother's address as part of one of the schemes. The Respondent and the Compliance people at Wolverton were prudent in red flagging these decisions and earmarking the David Amsel account for special attention.

42. On or about July 9, 2002, the Respondent became registered as an RR with Golden. At that time, DA had an existing account at Golden with another RR. On or about August 8, 2002, a New Account Application Form (NAAF) was completed to update DA's account. On that update, the RR of record was changed to the Respondent and he signed the form. The NAAF update recorded that DA's trading was 100% speculative and the risk factors were 100% high; that he was a sophisticated investor and that he was self-employed as a financial consultant. The Respondent sent the NAAF update to DA who completed the information thereon, and on its return to the Respondent he contacted DA and discussed and verified the information.

43. The Respondent testified in his interview that DA was a sophisticated, speculative trader and that his object or strategy was in trading highly speculative stock to try to make money on penny differences.

He also stated that these were MA's objectives.

44. The Respondent knew that David Amsel was a consultant to OTCBB companies, and that he had been paid for his services in stock by those companies. He said DA also knew well the market system and the market jargon. In other words, he was a sophisticated trader.

45. There was no comment or notation on the NAAF for DA's account regarding MA's regulatory history.

46. A year later, on or about July 24, 2003, Mayer Amsel opened an account with the Respondent at Golden. The NAAF for MA's account stated his investment objections were 100% speculative and risk factors were 100% high. It indicated the Respondent had personally known MA for five years.

47. There is a place on the NAAF form for "special comments". Notwithstanding the Respondent's knowledge of Mayer Amsel's scandalous regulatory history in the U.S., there is no comment whatsoever on the NAAF form. Indeed, the Respondent stated that both his firm Golden, and he kept a file for each of the Amsels, but he testified that he wasn't able to locate it. No documentation or files were received from Golden. There is no paper trail from the Respondent (or Golden) to support or corroborate his evidence.

48. In his interview, the Respondent stated that he recalled having a discussion with Mayer Amsel at the time of the account opening because he knew his history. He testified that they discussed Mayer Amsel's history and that he laid out parameters to MA that he had to "… trade properly and within the market and not, you know, go outside those boundaries". (Exhibit 4, page 55, lines 6 to 9)

49. The Respondent testified that at the time of the opening of the Mayer Amsel account he told Compliance and management at Golden of Mayer Amsel's history; that the subject came up in 2004 at a couple of meetings; and that the concern expressed by Golden was that he should be careful with respect to debit exposure. The Respondent admitted he did not have any paper trail to confirm that he had informed Golden about MA's regulatory history.

50. By letter dated January 15, 2007, the IDA asked Golden whether they were aware of MA's regulatory past, and if so to send all documents which would show Golden was aware of MA's regulatory past and indicate who, when and how Golden became aware of those facts. Furthermore, they requested information as to whether Compliance advised the Respondent with respect to Golden's accounts held by DA and MA on learning of MA's regulatory past. Also they asked whether the Respondent had informed anyone at Golden at any time about MA's regulatory past, and if so to provide documents. In its answer, dated January 30, 2007, Golden stated that they were unable to locate any documents recording the provision of advice from the Respondent to Golden of the Respondent's knowledge of MA's regulatory history.

51. Several other important matters are disclosed by the Amsels' NAAF forms at Golden. Obviously, the Respondent and Golden knew that David and Mayer Amsel were brothers, but their addresses in the forms are the same: 56 Theodore Place, Thornhill, Ontario. Admittedly, Mayer Amsel put "#2" as part of his address, while David did not, but the Respondent had no knowledge as to what existed at the Theodore Place address, or whether there was any significance to this.

52. Also, the home phone number in the forms is the same for both the Amsels. The Respondent acknowledged that the Amsels used the same telephone number, and stated that when he phoned that number, either brother would answer. He thought they had an office there. He said in practice they called him 95% of the time, and that they each called him daily, often 10 or 15 times per day, if they were trading.

53. There was an interesting exchange between the IDA investigators and the Respondent in the August 15, 2006 interview. They asked the Respondent how he typically received orders and he stated:

> Question: So how did you typically receive orders from Mayer and David Amsel?
>
> Answer: Typically?

Question: Yeah.

Answer: I would get a phone call.

Question: Okay.

Answer: And they would leave an order, buy – buy up to 10,000 shares of AVIC at 65¢.

Question: Okay.

(Emphasis added)
(Exhibit 4, page 111, lines 16-23)

54. The Respondent also stated that the activity in DA's account and in MA's account was 100% unsolicited.

AVIC/EDLT

55. Avic Technologies Ltd. ("AVIC") a public company whose shares are recorded on the OTCBB, was not a stock followed or recommended by Golden. It was the Amsels' stock. The Respondent testified he specialized in speculative trading, and his procedure was to review news releases and other public documents to see what the Amsels' companies were doing. In his experience, the OTC market reacted to what a company was doing and, for example, if it was releasing news about financing, or properties, or hiring personnel, it could effect the price and activity in the stock, and it was his procedure to follow those things.

56. According to the public records in evidence, both Mayer and David Amsel were closely associated with EDLT during 2004. The initial company, AVIC, was a development enterprise incorporated in Delaware and its initial intention was to participate in the building industry in China and other parts of Asia. In 2002, AVIC changed to participate in the field of waste recycling. In 2003, AVIC changed again and intended to participate in the textile industry. In 2004 AVIC changed direction again to participate in mineral exploration and mining.

57. East Delta Resources Corp. ("EDR") was a private company owned in part by DA. EDR, through a subsidiary, was in the business of exploration and mining of gold and other precious metals with a focus on Southeast Asia and other developing countries from the former Soviet Union. EDT changed its name to Omega Resources on April 28, 2004 and DA, who had been the president of EDR, became the president of Omega. DA also became a shareholder of Omega.

58. On March 1, 2004 AVIC announced in a current report its intention to change its corporate name to East Delta Resources Corp. ("EDLT"). This became a public filing on or about March 10, 2004. AVIC also indicated that in February, 2004 it executed a Share Exchange Agreement with the EDR shareholders whereby AVIC would acquire all issued and outstanding shares in EDR in consideration of the issuance of an aggregate of 25.65 million shares of the common stock of AVIC to the EDR shareholders. The transaction was to close in April, 2004.

59. A preliminary information statement filed on March 23, 2004 and posted on the SEC website confirmed that the Share Exchange Agreement would permit AVIC to undertake a new direction oriented toward mineral exploration and mining. That filing directed anyone with questions about the transaction to contact David Amsel.

60. An EDLT Quarterly Report for the period ended March 31, 2004, and filed on May 13, 2004 disclosed that in February, 2004 the EDR subsidiary signed a Joint Venture Contract with a province and a county of China to explore and mine gold within their territories. The company acquired the rights to develop property, and earn a percentage of net revenues from that property, and the success of the venture was contingent on AVIC obtaining the necessary funding which was disclosed in a June 30, 2004 Quarterly Report to be at least $10,000,000 over the next five years.

61. The Share Exchange Agreement announced in March, 2004 was filed on EDGAR on July 15, 2004. In

that Agreement, the contact address for EDR was shown as 1941 New York Avenue, Brooklyn, New York, 11210. This address is Mayer Amsel's address as noted in the SEC decision of April, 1996.

62. A registration statement filed on August 30, 2004 by EDLT announced that on August 26, 2004, EDLT had entered into a two year Consulting Agreement with Mayer Amsel. The Consulting Agreement described MA as a businessman, and that his responsibilities were, inter alia, to commence an analysis of the financial, engineering and mining experiences of all Canadian and American mining entities operating in China and issue recommendations re possible projects. The services he was to provide were valued at $250,000 and were paid through the issuance of 1,000,000 common shares of the company.

63. The Respondent testified that, from time to time, he was aware of price increases in EDLT, and that it was his practice to keep an eye on it, review the news releases, etc. as he had clients in it. He said that 2004 was a very buoyant market, and he didn't think the price increases were suspicious because EDLT was doing things.

64. We had in evidence the Golden securities account statements for both David Amsel and Mayer Amsel for the Review Period, January, 2004 to December, 2004. We also had copies of the Golden share receipt questionnaire for share receipts for both David and Mayer Amsel. We also had a compilation of commission earnings on the AVIC/EDLT trading in the Mayer Amsel and David Amsel accounts at Golden for the Respondent. On February 25, 2004, 614,000 shares of AVIC were received into DA's account. In accordance with Golden's procedure, a questionnaire dated February 25, 2004 was completed by DA in respect of these shares, and indicated, inter alia, that DA had held the shares for two months, had received the shares as "payment of fees" and during the past three months he sold 150,000 of the same class of security. The shares were issued through a Regulation S offering.

65. On July 22, 2004, 100,000 shares of EDLT were received into MA's account. In accordance with Golden procedures, a questionnaire was completed by MA in respect of these shares which indicated, inter alia, that MA had held the shares for two months, that he acquired the shares through a private purchase, and that he had sold 50,000 shares of the same class within the past three months, and that the shares were issued through a Regulation S offering.

66. On August 31, 2004, 200,000 shares of EDLT were received into MA's account, and the questionnaire, dated August 31, 2004, completed by MA, indicated, inter alia, that MA had held the shares for one week, and that he had received the shares as "fees for services".

67. The IDA (Ms. Tanaka) performed analysis of the trading at Golden in the Review Period in EDLT, by the Respondent and MA and DA. Detailed graphs were entered into evidence which highlighted entries where the Amsels were trading on opposite sides of the market on the same trade date (Exhibit 10); possible matched trade analysis which highlighted when the Amsels were trading on opposite sides of the market on the same trade date, and when the Amsels were trading on opposite sides of the market on the same trade date using the same market maker for both sides of the transaction, and buy and sell transactions of possible matched trades (Exhibit 11). The IDA also produced a graph of the running stock balance analysis for David Amsel's account for the Review Period (Exhibit 12) and for Mayer Amsel's account (Exhibit 13).

68. Mr. Park and FINRA also conducted analysis of the Amsels' account statements at Golden and the Amsels' trades in EDLT and identified combined block trades in EDLT with MA and DA on the same side of the market; a combined account analysis of MA and DA trades in EDLT, and an analysis of MA and DA trades in EDLT on the same day on opposite sides of the market. In this analysis, opposing block trades executed within one hour of each other were highlighted in yellow. A copy of this graph analysis is attached hereto as Appendix A.

69. Counsel for the Respondent also put together a binder of trade documentation covering various trades for February through October (Exhibit 17). His counsel took the Respondent through each of the trades

in Exhibit 17, and the Respondent commented and gave his views as to what he recalled was occurring. The Respondent had a separate copy of Exhibit 17 with him in the witness stand as he was giving his evidence. This is not unusual, and it appeared as if the Respondent was giving candid answers to the questions put by his counsel, and testifying to the best of his recollection. However, later in the hearing, we learned this was not the case. The copy of Exhibit 17 that the Respondent had in front of him contained significant notes and highlighting placed therein by the Respondent prior to the hearing. Neither his counsel, or counsel for the IDA, or the Panel, were aware that the Respondent was using a "noted up" version of the Exhibit. We will have more to say about this later in these Reasons.

70. In reviewing the trading, and the patterns therein, it must be remembered that the Respondent was handling all of the Amsel brothers trades. He was receiving the phone calls, he was writing up the tickets and stamping them, and he was making the calls to execute the Orders. He also stated that it was his general practice to review his clients' trading, and with respect to the Amsels' trading, he did that on a daily basis, including noting how active they were in the market as a percentage of the overall market activity in the stock. He said he knew the percentage that they traded, and reviewed that on a daily basis. When asked, in his interview, whether he noticed that the Amsel brothers had traded on a given day, between 40% to 50% of the stock, and would that have been a cause for concern or would it have been a red flag, he said "I think in that situation it would be a red flag if it was frequent and if it was consistent" (Exhibit 4, page 118, lines 25-26). Moreover, he testified that he did not find the Amsel brothers trading to be of concern. He did not bring it to the attention of the Compliance Department, or Branch Manager, at Golden.

71. A review of the Amsel brothers trading starting in February, 2004, reveals very unusual trading patterns. It must be remembered that during the Review Period, MA and DA had business relationships with EDLT, to the knowledge of the Respondent. The Respondent also knew that MA had a very reprehensible regulatory history involving serious market manipulation and securities fraud.

72. Experience tells us that if businessmen are closely associated with a company like EDLT, and believe the company would be a sound investment, one would not be surprised to see them purchasing the stock, either in the open market or through private placement. Similarly, if these individuals are associated with the company as consultants, and are paid in stock as compensation for services rendered or to be rendered, or hold a significant amount of shares, it would not be surprising to see them eventually sell some of their stock to realize a profit, or realize their compensation. However, that is not what occurred in this case.

73. From the evidence in this case, it is clear that in the Review Period, starting in February, MA and DA were trading in EDLT, through the Respondent at Golden, on opposite sides of the market on the same day. For example, on February 26/04 MA bought 70,000 shares at 14.5¢ and later DA sold 125,000 shares at 14.2¢; on March 10/04 DA bought 110,000 shares in five trades and MA sold 105,000 shares in two trades. On March 26, DA sold 50,000 shares, and MA purchased 37,000. There are numerous instances of irregular and suspicious trading in the Review Period. Much of it looks uneconomic, even considering the cost of the Amsels' stock.

74. In summary, on 14 occasions during the Review Period, DA and MA traded shares in EDLT where one brother would be on the buy side, and the other would be on the sell side, on the same trade date, using the same market maker for both sides of the transaction.

75. The timing of the orders and trades directed by the Amsels is also unusual, and should have elicited concern. For example, on July 29/04 DA put in three orders to sell: 30,000 shares at 9:13 a.m., and 15,000 and 10,000 both at 9:43 a.m. respectively. On the same day, MA put in two buy orders: 40,000 shares at 9:26 a.m. and 20,000 shares at 12:26 p.m. In summary, DA sold 55,000 shares and MA bought 60,000 shares.

76. Similarly, on July 30/04 DA placed two orders to buy 50,000 shares: at 11:09 a.m. a buy of 30,000 and at 11:34 a.m. a buy of 20,000. On the same day MA did two sells: a sell of 20,000 at 11:09 a.m. and a

sell of 30,000 at 11:28 a.m. In summary on July 30, DA bought 50,000 at 42¢ and MA sold 55,000 at 41.5¢.

77. The Respondent testified that with respect to the July 30/04 trades he recalls receiving the telephone calls from the Amsel brothers and said he telephoned them, and was informed that they were not talking to each other about their trades. He testified that in his view these weren't possible matched trades because he was dealing with a market maker, and the Amsels said they weren't knowledgeable of each other's trades.

78. Similarly, on August 6/04 DA placed four orders to sell: three orders to sell 20,000, 5,000 and 5,000 were entered at **10:02 a.m**., and one order to sell 20,000 was entered at 10:37 a.m. On the same date, MA entered four orders to buy: 25,000 at **10:02 a.m.**, 15,000 at 10:59 a.m., 5,000 and 10,000 both at 11:15 A.M. In total, DA sold 50,000 at 40.5¢ and MA bought 55,000 shares at 41¢.

79. The Respondent admitted that some of these orders did come in at the same time, namely 10:02 a.m. He said he was concerned that if the Amsels were talking to each other, it could be market manipulation. Again it appears that he was satisfied with what the brothers told him - that they were acting independently. In any event, he testified it didn't matter if the buys and sells were closely timed because he was using a market maker for the trades.

80. As the analysis performed by the IDA and FINRA demonstrate there were many instances where the trading by the Amsel brothers in EDLT was very unusual, and did not appear motivated by usual investor concerns. In the Review Period, EDLT was traded on 198 days, and the Amsels at Golden traded on 138 of them. For 59 trading days, the Amsel brothers accounted for over 50% of the total volume, **and for 14 days the Amsels were responsible for 100% of the trading volume**. According to the Respondent, he was aware, on a daily basis, of the percentage of trading in EDLT that was created by the Amsel brothers at Golden; he reviewed the figures the next day.

81. In 2004, the Respondent's gross commissions on the MA account were $21,886; on the David Amsel account, $27,266.

82. The IDA also tendered in evidence documentation from NASD in relation to John V. Hull. In July, 2006, John V. Hull, one of the market maker traders the Respondent admits he used at Public, entered into a Letter of Acceptance, Waiver and Consent (AWC) with NASD. The penalty that Mr. Hull consented to in the AWC was his being barred from any association with any NASD member firm in all capacities, and an undertaking to co-operate with NASD enforcement staff, or any other regulator, in any further investigation relating to Public. Thus the consequences to Mr. Hull of agreeing to the AWC were very significant in that he was barred from the brokerage business.

83. In the first paragraph of the AWC, it stipulates that it is submitted to Mr. Hull on condition that if accepted "… NASD will not bring any future actions against Respondent alleging violations based upon the same factual findings". Further, on the same page in paragraph 3, the Respondent Hull confirms that he understands that if accepted the AWC will become part of his permanent disciplinary record, the AWC will be made available through NASD's public disclosure program in response to public enquiries about the Respondent's disciplinary record, NASD may make a public announcement concerning the agreement and the subject matter thereof, and "Respondent may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying directly or indirectly that the AWC is without factual basis".

84. In our view, this portion of the AWC makes it clear that Hull has agreed that the factual findings in the AWC will become part of his permanent disciplinary record, will be publicly disclosed, and that he cannot deny the AWC is without factual basis. It is to be noted that in his acceptance and consent of the AWC, the Respondent Hull accepted and consented "… without admitting or denying the findings". In our view, this caveat is in fact ineffectual when in the AWC itself the Respondent has agreed that he cannot take any action or make any public statement "denying directly or indirectly that the AWC is

without factual basis". In essence, Hull did not contest the factual findings set forth in the AWC. By agreeing to the AWC, he avoided prosecution by NASD.

85. The AWC contained a summary of the conduct of Hull:

> During the period February 2004 through March 2005 (the "review period"), Hull, an equity trader at Public, engaged in a series of pre-arranged and other manipulative trades, including trades with Canadian firms, primarily for the benefit of the Canadian accounts of Mayer and David Amsel. Specifically, Hull made a market in EDLT (formerly, AVIC), a thinly traded pink sheet stock, and moved his quotes and traded over 7.5 million shares of the stock, at the direction of a barred individual, Mayer Amsel. Hull's manipulative trading of EDLT contributed to an increase of over 600 percent in the inside bid price of EDLT. As a result of this trading, during the review period, Hull generated approximately $18,500 in his wife's IRA account. By engaging in such trading, Hull violated Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 promulgated thereunder, and NASD Conduct Rules 2120 and 2110.

86. In the body of the AWC, Hull's manipulation of AVIC/EDLT was set forth in detail. It states:

> The majority of Hull's trading volume in EDLT, 58 percent, was the result of transactions with a Canadian firm, Golden Capital Securities, Ltd. ("Golden Capital"). More specifically, all of Hull's trades in EDLT with Golden Capital were for the Golden Capital accounts of either Mayer Amsel or his brother, David Amsel. Between February 2004 and March 2005, Hull traded EDLT with Golden Capital approximately 174 times – buying approximately 1,121,500 shares and selling approximately 2,214,000 shares with Mayer or David Amsel's accounts at Golden Capital. This accounted for approximately 21 percent of the total volume of the trading in EDLT. …
>
> During the review period, Mayer Amsel called Hull throughout the trading day, sometimes as frequently as 10 to 15 times per day. Mayer Amsel told Hull where to move his quotes on EDLT and where to buy and sell shares of EDLT. Hull then acted on these instructions and moved his quotes and traded accordingly.
>
> On numerous days during the review period, Hull's trading of EDLT accounted for significant percentages of the total market volume and inside quote movement. For example, on approximately 52 days, Hull's trading of EDLT accounted for 70 percent or more of the total market volume for EDLT. On approximately 18 of those days, Hull's trading of EDLT accounted **for 100 percent** of the total market volume for EDLT.
>
> Most of the EDLT transactions executed by Hull were large blocks (10,000 shares or more) and several of those large blocks accounted for the largest single trade amounts on numerous days. On approximately 16 occasions, Hull bought and sold those large blocks of EDLT **throughout the same day with Golden Capital** – *i.e.*, Hull bought EDLT from Golden Capital and sold EDLT back to Golden Capital or vice versa. Approximately 10 of those buys and sells accounted for 70 percent or more of the total market volume for the day. Approximately four of these instances accounted for 100 percent of the total market volume for the day.
>
> As noted above, **all** of Hull's trades with Golden Capital in EDLT involved Mayer and/or David Amsel's accounts at Golden Capital and many of the trades in EDLT were being crossed between their accounts. **Hull moved the inside bid on EDLT up (or upticked) approximately 89 times, including 11 instances where the inside bid was moved to new, all-time highs. Most of Hull's upticks took place within minutes after telephone contact with Mayer Amsel.** (Emphasis added) (Exhibit 14)

87. The AWC also describe Hull's violations of provisions of the *Securities Exchange Act* and NASD conduct rules:

> Hull's trading and other conduct, described above, including the pre-arranged trades, **created the false appearance of trading volume and market interest in EDLT and artificially affected the market price for the security.** By virtue of this conduct, Hull knowingly or recklessly engaged in manipulative or deceptive devices or contrivances in connection with the purchase or sale of securities, and knowingly or recklessly effected transactions in, or induced the purchase or sale of securities by means of manipulative, deceptive or other fraudulent devices or contrivances, thereby violating Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 promulgated thereunder, and NASD Conduct Rule 2120. Also, by virtue of this conduct, Hull did not comply with high standards of commercial honour and just and equitable principles of trade, thereby violating NASD Conduct rule 2110. (Emphasis added) (Exhibit 14)

88. We appreciate that the Review Period in the AWC is not exactly the same as that set forth in the particulars in the Notice of Hearing, but there is sufficient overlap to make the findings in the AWC relevant and persuasive in the Respondent's case. The Respondent, in his evidence, denied that he ever told Hull, when he gave him an Order, that he would take care of the other side later; he denied he ever did a cross; he denied that he left Orders with the market maker.

CREDIBILITY OF THE RESPONDENT

89. Mr. Georgakopoulos was in the stand testifying for two and one-half days. The panel were able to observe him closely while he gave his evidence both in chief and in cross-examination. We did not find him to be a credible witness, for a number of reasons.

90. When the Respondent was giving his evidence, and he was asked pointed questions, whether in chief or in cross, with respect to the trading by the Amsel brothers, he frequently paused and took a significant amount of time before he answered. He appeared nervous and evasive. His answers, when they were given, were frequently self-serving, and did not have the ring of truthfulness.

91. For example, the Respondent was questioned about the Amsel brothers' unusual trading patterns when they were often on both sides of trades; when they were 100% of the market on a significant number of days; when they appeared to be buying and selling together; and when there appeared to be possible match trades using the same market maker. In respect of some of these trades, the Respondent said that he was alerted to the unusual pattern and so he called the brothers, and was satisfied when one said that they were not aware of each other's trading. He felt that they were "independent". We don't believe the Respondent made those calls; or if he did, that a prudent RR, in the position of the Respondent, given Mayer Amsel's regulatory history, and the pattern of the brothers' trading, would accept at face value the answers that he alleged he was given.

92. Further, the Respondent, at one point during his evidence, said he believed that the Amsel brothers' trading patterns were simply coincidental. This answer, coming from an experienced RR, is not believable. The Amsels were 100% of the trading on 14 days. The Respondent must have suspected the purpose of this trading was to create the false appearance of an active market. This was another instance of the Amsels' unusual trading being frequent and consistent, a red flag by the Respondent's own test.

93. With respect to the history of MA, the Respondent said he told Golden verbally of the regulatory history. However, the Respondent could not produce any documentation to establish that he had conveyed this information to Golden, and Golden denied it. We don't believe him. This was extremely important information that a prudent RR would have noted, and would have kept a paper trail of his concerns and his actions, to verify the fact that he had noted these red flags, and had dealt with them appropriately.

94. Further, the Respondent was taken through Exhibit 17 in considerable detail by his counsel, and he appeared to give reasoned answers or excuses from memory, for his failure to take steps to shut down the Amsel brothers' trading. We then found, late in the hearing, that the Respondent had noted up his copy of Exhibit 17 with highlighting and written answers which allegedly justified his conduct, etc.

This discovery caused us to have serious reservations about all of the Respondent's answers in chief, in relation to Exhibit 17.

95. Further, notwithstanding his notes, we found that in many instances, his purported excuse for not dealing with or reporting the Amsel brothers' trading to Golden, simply weren't believable. For example, that he didn't see some of the Trading Tickets; he didn't think there were match trades; he wasn't sure it was uneconomic as he didn't know their cost for sure; etc. This flies in the face of highly suspicious trading that should have been seriously questioned. The Respondent should have used the resources available to him at Golden.

96. The Respondent also denied that he had conversations with "John" (John Hull) at Public with respect to Mayer Amsel. Although the Respondent denied any such conversations, the evidence put in by the IDA with respect to John Hull indicates that Hull testified that he did have conversations with the Respondent about Mayer Amsel, including Mayer Amsel's health, and about in-house cross trades, purchasing back stock that the Amsels sold, etc. The panel has examined carefully the circumstances under which John Hull was interviewed, and the early stage of the FINRA investigation at that point. The AWC is entered into much later in the investigation (about two years), and we infer that the FINRA investigation had likely filled in significant gaps, and that FINRA was prepared to present a very compelling case against John Hull alleging his participation in the Amsels' market manipulation. We don't accept the Respondent's evidence re his relationship with John at Public.

97. The Respondent, in his testimony, did admit that it was his preference and practice to use people he knew at the market makers, and particularly at Public. He admitted he knew "John", although he denied he knew his last name. We are satisfied that, even given the inherent dangers of relying upon the Hull transcripts, or the AWC, that the Respondent was a willing participant in that he either knew, or ought to have known of what appeared to be an ongoing market manipulation by the Amsel brothers **with John at Public** during the Review Period. If the Respondent was not a willing participant in that market manipulation, he was wilfully blind to trading activity by the Amsel brothers which was in our view very peculiar, suspicious, and appeared to be consistent with market manipulation, deception or other improper market-related activity.

98. Counsel for the Respondent mounted a vigorous attack upon the evidence led by the IDA with respect to the alleged pre-arranged or matched trades. We do not share those concerns. The evidence doesn't have to be exactly the same volume, or the timing the same, to be "matched". In fact, sophisticated manipulation would ensure things didn't line up exactly. We find there was pre-arranged or matched trades in the Review Period.

99. The Respondent knew that the Amsels were sophisticated, experienced market investors, and that Mayer Amsel had a very egregious regulatory history. He used his brother's address in one fraudulent scheme, the possible inference being the brother was complicit. Clearly DA was an active participant, at Golden, in the EDLT trading.

100. The Amsel brothers shared the same telephone number and the same address; the Respondent thought that they shared an office. He testified that "they" would give him Orders. In our view, given the timing of the Orders, the volumes, being on both sides, etc., in many instances, we are of the view that the Respondent did receive Orders for both accounts, either from the same Amsel brother, or that the Orders were so close in timing that it would be ridiculous for an experienced broker to believe that they were not acting in concert. It is no answer to say that the trading was not of concern because it was conducted through a market maker. Clearly the Amsel brothers were likely making a market in EDLT, and were likely engaged in covert market manipulation. The Respondent ignored numerous red flags. He failed to make timely dilligent enquiries of all sources available to him.

101. There is no suggestion that the Respondent did not know and understand the capital market, securities laws, and the gatekeeper responsibility of an RR. Further, the Respondent did admit that there were unusual trading patterns by the Amsel brothers, and that it could have the intention of effecting, or could

effect the integrity of the market place. We conclude that he knew these things.

102. The Respondent knew that he was the person who had to assess the risk of doing the trades the Amsel brothers requested, and properly supervise the activity in the Amsel brothers' accounts. He states that he knew, on a daily basis, the trading they were doing (in total) and the percentage of the market each day. They were very active. So it cannot be suggested that he was ignorant of the manner and volume of their trading. On the contrary, he was intimately aware of what they were doing with EDLT.

103. It is critical to note that the obligation on the Respondent, as gatekeeper, was to identify possible improper or illegal market activity at an early stage. He was required to make a reasoned judgment, on the basis of the information that was available to him. In our view, the information that was available to the Respondent, at an early stage, should have caused him to seek the advice of the Compliance Department, and the Branch Manager, at Golden. The Respondent should have been cognizant of the possible role the trading activity of the Amsel brothers could be playing in a broader illegal scheme, particularly given the regulatory history of Mayer Amsel.

104. Counsel for the Respondent submitted, in argument, that counsel for the IDA did not cross-examine the Respondent with respect to his evidence that he made calls to the Amsel brothers when the Orders for trades he had received caused him concern. He cited the so-called rule in *Browne v. Dunn*, and suggested that it was not open for counsel for the IDA to argue that Georgakopoulos ought not to be believed on this point.

105. In our view, a careful examination of the authorities in respect of the rule in *Browne v. Dunn* indicates the seriousness or significance of the failure of counsel to cross-examine on a particular point varies greatly from case to case, and depends on the nature of the evidence. The Court in *Regina v. Albrechtsen*, 1993 Can LII 2126 (BCSC), a decision of the Honourable Mr. Justice Meiklem, addressed an issue in relation to the rule in *Browne v Dunn*. The Court cited the Supreme Court of Canada decision of *Palmer and Palmer v. The Queen* (1979) 50 CCC (2nd) 193 at 210; in that case the SCC approved the analysis of McFarlane, J. of the B.C. Court of Appeal:

> In my opinion the effect to be given to the absence or brevity of cross-examination depends upon the circumstances of each case. There can be no general or absolute rule. It is a matter of weight to be decided by the tribunal of fact … . (Page 9)

106. The fact of the matter is, a number of collateral points were covered in cross-examination, and further, the Respondent was asked a number of questions, on a variety of topics, by the Panel. Counsel for both parties had the opportunity to adduce further evidence from the Respondent after the Panel had concluded their enquiries. We also had the revelation that the Respondent was giving much of his evidence when he had the noted-up copy of Exhibit 17 in front of him.

107. In any event, we are of the view that this is not an appropriate case to exclude consideration of evidence of the Respondent, or limit the argument of counsel for the IDA. It is a matter of weight, and we have considered all of counsel for the Respondent's submissions in coming to our conclusions.

SUMMARY

108. Having considered all of the evidence that has been adduced at the hearing, we are unanimously of the view that the IDA has proven all of the elements of Count 1 and Count 2 of the Notice of Hearing, and that the Respondent, Konstantinos Georgakopoulos, committed the contraventions alleged therein.

109. We have not heard submissions in respect of penalty. We would ask that the National Co-ordinator arrange a hearing date so that penalty can be addressed.

110. These reasons may be signed in counterpart.

Dated this 12th day of May, 2009.

Stephen D. Gill, Chair
Christopher Lay, Member
Robert Travers, Member

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