Re Collias

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

JOHN ANASTASIOUS COLLIAS

2009 IIROC 27

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

Heard: May 12 & 13, 2009
Decision: May 26, 2009
(15 paras.)

Hearing Panel:
Wade Nesmith, Chair
Don Teatro
Robert Travers

DECISION ON LIABILITY

Introduction

1. We are constituted as a Hearing Panel under By-Law 20 of the Investment Dealers Association of Canada (the "IDA" or the "Association"). A hearing into certain conduct of John Collias ("Collias" or the "Respondent") was re-commenced following a period of adjournment, on May 12 and 13, 2009. The Association presented, with the consent of the Respondent, a volume of documents. In addition, the Association called one witness, Kathryn Tanaka, the investigator in this matter. The Respondent had earlier filed a Response to the Notice of Hearing and filed, on the first day of the hearing, an amended Response (the "Response") in which a number of admissions were made. No other evidence was proferred by the Respondent. Both counsel then made submissions on the matter of liability.

Notice of Hearing

2. The Notice of Hearing (the "Notice") was comprised of two counts as follows:

Count 1

In or about January and February 2005, the Respondent, at all material times a Registered

Representative with Golden Capital Securities Ltd., ("Golden") a Member firm, failed to properly perform his role as a gatekeeper to the capital markets and acted contrary to Association By-law 29.1 and/or Association Regulation 1300.1(a) by failing to make diligent inquiries to ensure that he learned about the essential facts of two clients with respect to the opening of their accounts.

Count 2

In or about January and February 2005, the Respondent, at all material times a Registered Representative at Golden, a Member Firm, failed to properly perform his role as a gatekeeper to the capital markets and acted contrary to Association By-law 29.1 and/or Association Regulation 1300.1(a) by facilitating certain transactional activity in three 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.

Facts

3. Most of the important facts are not in dispute. The Notice is appended hereto.

4. For purposes of this decision, the facts may be summarized as follows:

1. Collias was first employed in the brokerage industry in 1996 and continued, without any disciplinary history, until his retirement from Gateway Securities Inc. in 2008. During the material time he was employed as a Registered Representative by Golden. When Golden was made aware of the investigation into the Respondent's conduct in this matter, it placed him on a period of close supervision which appears to have continued until his retirement.

2. Public Securities, Inc. ("Public") was, at all material times, a U.S. registered broker dealer and market maker. In January 2005, Public contacted Collias and introduced him to Brian Smith. Brian Smith advised Collias that his two adult children, Mark Smith and Erin Smith (together, the "Smiths"), wanted to open brokerage accounts (the "Accounts") with Collias.

3. Collias forwarded account opening documentation for the Smiths to those individuals and received the documents back, each filled out and signed. Following receipt of the signed documents, Collias changed the "Investment Knowledge" section of each document from "limited" to "good". He did so without consultation with the Smiths.

4. Although each form was filled out completely, it is acknowledged by Collias that he failed to use due diligence to learn the essential facts relative to the Accounts, in contravention of Regulation 1300.1(a). In particular we find as a fact that with respect to the Accounts, Collias failed to determine the following:

    a. the backgrounds of the Smiths, including where they went to school and their sources of income;

    b. the relationship, if any, between the Smiths and Public, the market maker that referred the accounts to Collias;

    c. the actual depth of their investment knowledge;

    d. the nature of the Smiths' assets; and

    e. the purpose of the accounts.

5. Beeston Enterprises Ltd. ('Beeston") was a Nevada incorporated, British Columbia based company that on March 5, 2004, filed an SB-2 registration statement with the United States Securities and Exchange Commission. At the time of the filing of the registration statement, Beeston had no real operating history, no source of revenue and insufficient funds to proceed

with its business plan. We find that Beeston displayed, at all material times, the attributes of what is known as a "shell" company and that such was clear from a reading of the registration statement. On January 11, 2005, Beeston's shares were listed for trading on the Over the Counter Bulletin Board (the "OTCBB").

6. Brian Smith, the father of Mark and Erin Smith, was the President and Chief Executive Officer of Beeston. Public was a market maker for Beeston.

7. Shortly after the Accounts were opened, a deposit of $5,000 was made to the Mark Smith account and $1000 was deposited to the Erin Smith account. At approximately the same time, 50,000 shares of Beeston were deposited by certificate into each of the Accounts. Collias followed internal procedures with respect to ensuring the authenticity of the certificates and cleared them with the transfer agent. However, Collias made no inquiries with respect to the source of the shares and at that time, did not know of the relationship between Brian Smith and Beeston. Further, he made no attempt to determine whether there was a relationship or, apparently, to research Beeston.

8. Public also maintained an account at Golden for which Collias was the broker.

9. During February 2005, Collias conducted the following trades in the shares of Beeston:

    a. February 15 – Sell – 50,000 shares @ $0.05 for Mark Smith

    b. February 15 – Sell – 50,000 shares @ $0.05 for Erin Smith

    c. February 17 – Buy – 3,000 shares @ $3.69 (average) for Public

    d. February 25 – Buy - 400 shares @ $6.34 (average) for Mark Smith

    e. February 25 – Buy – 400 shares @ $6.34 (average) for Erin Smith

10. Golden received a total of $445 in commissions as a result of the trades enumerated in Paragraph 9 above.

11. During February 2005, there were no news releases or other public disclosure to provide an obvious reason for the rapid rise in the share price for Beeston. We find that the share price rise was "…peculiar, suspicious or appeared to be consistent with market manipulation, deception or other improper market related activity…" as described in the Notice.

12. We listened carefully to Mr. Eyford's submissions wherein he said it was incumbent upon the Association to prove that there was a market manipulation in order to be able to rely on that finding as outlined in the Notice. We disagree. The Notice says "…peculiar, suspicious or appeared to be consistent with market manipulation…" In our view, conduct can appear to be consistent with a number of outcomes. In this matter, it is our view that the trading could be consistent with a market manipulation. That said, we are of the view that little hangs on this point, as it is clear to us that the trading activity, which saw the shares rise from $0.05 to over $6.00 on no news, was at a minimum peculiar or suspicious. It was a "red flag" – a point to which we will return.

13. While admitting a lack of due diligence with respect to the facts surrounding the trading as it relates to the Accounts, Collias does not make a similar admission with respect the trading regarding the Public purchase on February 17. Mr. Eyford argued that there may well be a simple and honest explanation for the way in which the trade was conducted. He indicated that Public, by trading through their account with Collias, was able to hide their participation in the market – something they might have wanted to shield from other market makers. While we agree that there may be an innocent explanation for Public's trading, the external facts with respect to this trade are the same as those in respect of the trading in the Accounts. The trading was "…peculiar, suspicious…" as a result of the rapid rise in share price in the absence of any

news whatsoever. Accordingly, we find that this conduct also contravened Regulation 1300.1(a).

14. We find that despite these "red flags", Collias made no attempt to learn more about Beeston and what might account for the unusual trading patterns in which he participated on behalf of clients. Public information was available to Collias and he chose not to examine it. We find that Collias failed to use due diligence to learn the essential facts relative to the orders he executed to sell and buy Beeston shares for the Accounts and the Public account, in contravention of Regulation 1300.1(a).

15. The trading was brought to the attention of the IDA by the National Association of Securities Dealers, a U.S. based regulatory organization then having responsibility for, among other things, oversight of OTCBB trading. Despite the early inquiries, no allegations of manipulation have been made with respect to the trading in Beeston shares by any regulatory body.

Liability

5. As noted above, liability with respect to Regulation 1300.1(a) has been admitted with respect to the Accounts. It reads as follows:

> "(a) Each 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."

6. While it is not admitted with respect to the Public account, we have found liability there with respect to the Regulation. It is common ground that this Regulation applies to Registered Representatives as well as Members. This Regulation, among others, provides some of the basis of the "know your client" rule as well as the role of the Member and Registered Representative as gatekeeper.

7. Liability is not admitted with respect to By-law 29.1, which holds Members and their employees to the following:

> "… (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."

8. This is what is commonly known as the rule against "conduct unbecoming", and appears to us to be the key point of disagreement between the parties.

9. We asked both counsel their views with respect the test for "conduct unbecoming". Mr. Eyford's view was that in order for the conduct in question to amount to "conduct unbecoming", it must involve an aspect of moral turpitude. Ms. Lohman, on behalf of the Association, indicated that moral turpitude was not required. In our view, neither response is a complete answer although in fairness, that may have more to do with the formulation of our question at the time the matter was raised.

10. Only one case was referred to us (but on a different point) in which this issue is discussed, but in our view it accurately summarizes the law in this area. In Ng (Re) [2007] I.D.A. No. 47, an Ontario District Council panel had occasion to review the basis for liability under the "conduct unbecoming" rule and their analysis of the case law brought them to the conclusion that in order for conduct to achieve the level of "conduct unbecoming", there must be an element of either moral turpitude or gross negligence. We have reviewed other similar cases as well as cases from the professions involving the meaning of "conduct unbecoming" and have come to a similar conclusion: a breach of the rules, in and of itself, cannot amount to "conduct unbecoming", absent an element of moral turpitude or evidence of gross negligence.In the instant matter, we have a circumstance where a Registered Representative breached Regulation 1300.1(a); on that, there is generally agreement. We have found that he did so in relation to the establishment of 2 accounts and in respect of, essentially, 5 trades. Golden received total commissions of approximately $445.

11. This case involves the essential role of gatekeeper played by Registered Representatives. It is clear that Collias' conduct did not fulfill that role. There were red flags that, at a minimum, should have caused him to ask questions or do some research, and he chose not to do so. However, in our view, his conduct – including his lack of questioning and inquiry – did not amount to anything approaching moral turpitude. There is nothing in the evidence to suggest anything other than negligence. The is no question that he should have asked further questions regarding the Accounts and that he should have realized that something was amiss with respect to the trading, but there is no evidence that he was complicit in or willfully blind to any illegal activity (and, indeed, none is alleged), or that he significantly improved his position to the detriment of others, including the public markets in general.

12. Does the Respondent's negligence rise to the level of gross negligence? The burden of proof remains with the Association and although this point was not specifically addressed in argument, we are of the view that the conduct does not rise to that level. The infractions relate to 2 accounts, 5 trades, small volume and relatively low dollar value. In many respects, these infractions were "under the radar". The missing information in the account opening documentation related to relatively minor matters. The trading involved small and relatively isolated trades.

Conclusion

13. We find that the Respondent breached Regulation 1300.1(a), failed to know his client and failed in his role as a gatekeeper. The evidence with respect to Count 1 in the Notice, as it relates to the Regulation is admitted. With respect to Count 2, there were a small number of "red flags" that should have, but apparently did not attract the Respondent's attention.

14. Accordingly we find liability with respect to both counts insofar as it involves breaches of Regulation 1300.1(a) but do not find liability with respect to By-law 29.1.

15. We request that counsel contact the National Hearing Coordinator of IIROC in order to arrange a date to return in front of the panel to make submissions with respect to penalty.

Dated at Vancouver, BC this 26th day of May, 2009.

Wade Nesmith, Chair
Don Teatro
Robert Travers

* * * * *

NOTICE OF HEARING

TAKE NOTICE that pursuant to Part 10 of By-law 20 of the Investment Dealers Association of Canada ("the Association"), a hearing will be held before a hearing panel ("the Hearing Panel") commencing on April 14, 2008 at Reportex Agencies Ltd., 925 West Georgia Street, Suite 1010, Vancouver, BC at 10:00 am, or as soon thereafter as the hearing can be heard.

TAKE FURTHER NOTICE that pursuant to Rule 6.2 of the Association Rules of Practice and Procedure, that the hearing shall be designated on the:

- ☒ The Standard Track
- ☐ The Complex Track

THE PURPOSE OF THE HEARING is to determine whether John Anastasious Collias ("the Respondent") has committed the following contraventions that are alleged by the Association:

COUNT 1

In or about January and February 2005, the Respondent, at all material times a Registered Representative with Golden Capital Securities Ltd., ("Golden") a Member firm, failed to properly perform his role as a gatekeeper to the capital markets and acted contrary to Association By-law 29.1 and/or Association Regulation 1300.1 (a) by failing to make diligent inquiries to ensure that he learned about the essential facts of two clients with respect to the opening of their accounts.

COUNT 2

In or about January and February 2005, the Respondent, at all material times a Registered Representative 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 and/or Association Regulation 1300.1 (a) by facilitating certain transactional activity in three 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.

PARTICULARS

TAKE FURTHER NOTICE that the following is a summary of the facts alleged and to be relied upon by the Association at the hearing:

THE RESPONDENT

1. The Respondent became employed in the securities industry in July 1996 as a Registered Representative ("RR") with CT Securities International Inc. In January 1997 he became an RR with Dominick & Dominick Securities Inc. He transferred to Thomson Kernaghan & Co. Ltd. in May 1999. The Respondent joined Golden in September 2001 as an RR where he remained until February 2007, when Golden ceased business operations. The Respondent is currently employed by Gateway Securities Inc.

2. The Respondent has no previous disciplinary history.

COMPANY X

3. A Registration Statement under the US Securities Act of 1933 filed with the US Securities and Exchange Commission ("SEC") in or about March 2004 with respect to a certain company ("Company X") indicates that Company X was incorporated in or about July 1999 in the State of Nevada and that it was a developmental stage company. Company X's intent was to provide certain medical services to individuals in some Canadian provinces. However, as of March 2004, it had never conducted operations, had no revenues and had few assets.

4. The Company's shares were cleared for trading on the Over the Counter Bulletin Board ("OTCBB") on January 11, 2005. The OTCBB is a regulated quotation service that displays real-time quotes, last-sale prices, and volume information in over-the-counter equity services. An over-the-counter equity security is generally any equity that is not listed or traded on NASDAQ or a national securities exchange.

5. P Corporation, is a US Market Maker company (the "Market Maker") and in particular, the Market Maker was a market maker for Company X.

6. S was the President, CEO and Director of Company X.

CLIENT M

7. On or about January 31, 2005, the Respondent opened an investment account at Golden for M (the "M Account"). M was referred to the Respondent by the Market Maker. A trader at the Market Maker (the "Trader") had M's father, S contact the Respondent to advise that S's two children (M and E) wanted to open accounts at Golden.

8. The New Account Application Form ("NAAF") for the M Account indicated the following:

   - Occupation: Student;
   - Date of Birth: 03/31/84;
   - Income: $18,000;
   - Liquid Assets: $10,000;
   - Fixed Assets: $30,000;
   - Investment Objectives: 100% speculative;
   - Account Risk Factors: 100% high;
   - M was a new client referred by the Market Maker;
   - M's home address was noted to be residential address in Kelowna, BC and the mailing address was noted to be a PO Box in Kelowna, BC;
   - "Deposit of Certificate Aprox $20 K", which amount was not included in M's net worth;
   - M is the son of a potential client; and
   - Investment Knowledge was changed from "limited" to "good".

9. The Respondent's first contact with M was through a conversation with M's father, S. In that conversation, the Respondent did not inquire what S's connection was with either the Trader or the Market Maker, nor did he inquire with the Trader, with whom he had dealt on previous occasions, how he knew S or M. The Respondent was also unaware of S's relationship with Company X at the time the M Account was opened.

10. The Respondent did not complete the NAAF for M and he assumed that M completed the details. The Respondent signed the NAAF in the area for the Investment Advisor's signature. Upon receipt of the completed NAAF, the Respondent did have a conversation with M and reviewed the information thereon. The Respondent "probably" did not ask M about his intentions for the M Account.

11. The Respondent did not ask M about the nature of his relationship, if any, with the Market Maker or the Trader.

12. Golden's Compliance Manual, effective December 17, 2004 ("the Compliance Manual"), Sections 4.3.2 and 4.3.3 state:

    > 4.3.2 Home Address
    >
    > The client's address should be a permanent residence address. If a permanent address is not provided, enquire and enter the reason in the comment sections. Clients using a PO Box or c/o address may be required to complete a Statement of Address Declaration.
    >
    > You may wish to discuss the matter with the Compliance Department to assist in deciding whether to open the account. Unscrupulous individuals often use post office boxes, care of and temporary addresses to circumvent industry rules and good business ethics.
    >
    > 4.3.3 Mailing Address

To be completed if client wishes correspondence sent [sic] other than a home address. The comments made in section 4.3.2 are applicable for the mailing address as well.

13. The Respondent did not ask M why he wanted his correspondence sent to a PO Box rather than the residential address indicated on his NAAF.

14. The Respondent did not ask M about how he earned his $18,000 annual income, nor did he inquire about where he went to school. Further, the Respondent did not ask M anything about the fixed or liquid assets noted on the NAAF.

15. The Respondent acknowledged that he changed the Investment Knowledge on M's NAAF from "limited" to "good". This amendment was made without questioning M in this regard and solely on the basis of the NAAF information, including the fact that M owned stock (which was deposited to the M Account), M planned to trade in high risk securities and M was a student endeavoring to make money.

16. The Respondent did not meet M in person in or about the time that the M Account was opened.

17. The notation on the NAAF regarding the deposit of the share certificate into the M Account was not in the Respondent's handwriting and he could not recall if he asked M about any details regarding the share certificate. He did not ask M why the value of that share certificate (approximately $20,000) was not included in M's net worth.

18. The Respondent failed to learn the essential facts about his client, M, in that:

- He did not participate in the completion of the NAAF;
- He did not ask S what his relationship was to the Market Maker;
- He did not ask M why his father, S, requested that the account be opened;
- The Respondent did not ask M about his relationship with the Market Maker or the Trader;
- He did not inquire about M's background, including where he went to school or where he earned his money;
- He did not ask M about the purpose of the M Account;
- He did not ask about the nature of the stock to be deposited or why this stock was not included in M's net worth;
- He amended M's investment knowledge on the NAAF from "limited" to "good" on the basis that M owned a stock, M planned to trade high risk stock and was a student endeavoring to make money and without asking M any further questions;
- He never met M in person at the time the M Account was opened; and
- He did not ask M why correspondence was to be sent to a PO Box notwithstanding that the Compliance Manual warned about the use of PO Box addresses.

CLIENT E

19. On or about February 8, 2005, the Respondent opened an account at Golden for E (the "E Account"), who is the daughter of S and the sister of M. E was referred to the Respondent in the same manner as M.

20. The NAAF for the E Account indicated the following:

- Date of Birth: 06/28/81;

- Occupation: Student;
- Annual Income: $16,000;
- Liquid Assets: $10,000;
- Fixed Assets: $35,000;
- Investment Objectives: 100% Speculative;
- Account Risk Factors: 100% High;
- New client;
- Referred by: the Market Maker;
- Initial Stock deposit of 50,000 shares;
- Special Comments: Sister of established client; and
- Investment Knowledge changed from "limited" to "good".

21. The Respondent did not complete E's NAAF and he "assumed" that she did.

22. Upon receipt of E's completed NAAF, the Respondent had a conversation with her. However, while he was aware that it was a trading account, he was not aware of what she was going to trade.

23. The Respondent did not ask E about the nature of her relationship with the Market Maker or the Trader.

24. The Respondent did not ask E about how she earned her annual income or where she went to school. Furthermore, he did not ask her about the nature of her fixed and liquid assets.

25. The Respondent changed E's investment knowledge from "limited" to "good" on the NAAF without discussing the issue with her and solely on the basis that the NAAF stated that she had stock that was to be delivered into the E Account, because it was her intent to trade in speculative, high risk securities and because she was a student endeavoring to make money.

26. The Respondent did not ask E about the nature of the stock that was to be delivered into the account.

27. The Respondent failed to learn the essential facts about his client, E, in that:

    - He did not participate in the completion of the NAAF;
    - He did not ask S about his relationship with the Market Maker;
    - He did not ask E why her father requested that the E Account be opened;
    - He did not ask E about her relationship with either the Market Maker or the Trader;
    - He did not ask about E's background including where she went to school or how she earned her money;
    - He did not ask about the nature of the stock that was to be deposited into the E Account; and
    - He amended the investment knowledge on E's NAAF solely on the basis that stock was to be delivered into the E Account, it was her stated intent to trade in speculative, high risk securities and she was endeavoring to make money, without making any further inquiries of E.

COMPANY X TRADING AT GOLDEN

28. The initial entry in each of the M and E Accounts was a cash deposit in the form of a bank draft. On or about January 27, 2005, US $5,000 was received in the M account and on or about February 3, 2005, US $1,000 was received in the E account.

29. On or about January 27, 2005 (Settlement Date), physical certificates totaling 10,000 Company X shares were received into the M Account and on or about February 2, 2005 (Settlement Date) additional physical certificates totaling 40,000 Company X shares were received into the M Account.

30. On or about February 4, 2005 (Settlement Date), physical certificates totaling 50,000 Company X shares were received into the E Account.

31. The Company X shares that were deposited into the M and E Accounts were unrestricted and in the names of the respective account holders.

32. The Respondent did not ask either M or E about how they had acquired the Company X shares or what, if any relationship they had with Company X.

33. On or about February 15, 2005 (Settlement Date), 50,000 Company X shares were sold out of each of the M and E Accounts @ $0.05 per share. This was the first time that Company X shares had been traded since becoming cleared for trading on the OTCBB on January 11, 2005. The Respondent did not ask M or E why they wanted to sell the Company X shares. The Market Maker was the purchaser of those 100,000 Company X shares. On that same day, Company X shares closed at a price of $0.30.

34. All orders for each of the M and E Accounts were unsolicited.

35. Company X shares did not trade again until on or about February 17, 2005 (trade date) when the Respondent received an unsolicited order from the Market Maker to purchase 3,000 Company X shares at the best market price possible. The Respondent placed this order through his NU Inventory account, which he described as an account he used to facilitate trades for US market makers whom he intended to charge a mark-up or a spread fee instead of a commission.

36. The order from the Market Maker was filled by another US market maker firm as follows: 1000 shares @ $3.25, 1000 shares @ $3.75 and 1000 shares @ $4.00. Following these transactions, the Respondent then sold the 3,000 Company X shares to the Market Maker's account at Golden @ $3.69 per share, which was the average purchase price of the shares, including a $70 mark-up.

37. Although the Market Maker could have purchased the Company X shares on its own, the Respondent did not inquire why it made the purchase through him thereby incurring a mark-up fee to do so.

38. Company X shares were thinly traded. On February 18, 2005, the price per share of Company X closed at $4.10.

39. On or about February 25, 2005 (Settlement Date), E and M each purchased 150 Company X shares for the E and M Accounts, respectively @ $6.50 per share and a further 250 Company X shares for each of the E and M Accounts @ $6.25 per share. These orders were unsolicited and the Respondent did not ask either E or M why they wanted to repurchase Company X shares only 10 – 12 days after having sold shares @ $0.05 per share.

40. There was no further activity in either the E or the M Accounts.

41. An SEC Edgar filing *Form SB-2A Registration Statement Under the Securities Act of 1933* for Company X, which was filed in or about March 2004 and publicly available on the SEC website, indicated the following:

- M and E were the son and daughter of S and both M and E were selling shareholders in a prospectus offering of common shares of Company X;
- S was a Director/President/Chief Executive Officer of Company X; and
- At the time of the filing, S owned 425,000 shares or 8.4% of Company X;

42. At the time that the Company X trades occurred in the M and E Accounts, publicly available information indicated that Company X continued to be a developmental stage company with no operations, no revenue, few assets and limited financial backing.

43. The OTCBB website indicates that one of the market makers on Company X stock at the time the trading took place in the M and E Accounts was the Market Maker, who initially referred M and E to the Respondent. Further, in February 2005, the Market Maker was the most active market maker on Company X.

44. The Respondent did not conduct any independent research with respect to Company X.

45. The Respondent, in a March 18, 2005 letter to the Association, advised that "I was not informed by the client [M or E] or any other person of any relationship that may exist between the client's [sic] and [Company X] nor am I aware of such a relationship, if any did or does exist. Other than the clients being shareholders."

46. The Compliance Manual, section 6.14 outlines the Gatekeeper Rule as follows:

> 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 [sic] blindness on the part of the IA may be construed as a failure to meet "Know Your Client" obligations.

47. Golden stated in a letter dated November 23, 2006 that "Under the procedures in place at the time, Golden did not require clients to complete a declaration if the deposit involved a certificate for less than 100,000 un-legended [sic] shares of a reporting issuer that traded on the OTC Bulletin Board market. However, our policy provided that in some cases we would obtain further information from a client about the source of a certificate and the client's interest in it."

48. The commissions earned by the Respondent from trading in Company X shares are as follows:

- M Account: $190.00
- E Account: $185.00
- Market Maker's account: $70.00
- Total: $445.00

49. A reasonably diligent RR would have made inquiries into the Company X share transactions in the E and M Accounts and in the Market Maker's account especially considering the following:

- Within a short time of the accounts being opened, both the E and M Accounts had Company X share certificates deposited therein;
- Although the quantity of Company X shares deposited to the E and M Accounts did not require the clients to complete a declaration, given the circumstances surrounding the opening of the accounts, this would have been a case where further information from the client about the source of the certificates and the client's interest in it should have been obtained;
- Public information available both at the time that the stock certificates were received into the M and E Accounts and when the trading in Company X took place in those accounts revealed that M and E were the children of S, who was the President, CEO and a Director of Company X;
- Public information indicated that, at the time of the Company X share transactions in the E and M Accounts, Company X remained a developmental company with no operations, assets or revenue;
- The nature of the trading of Company X shares in the E and M Accounts was unusual in that all the shares were sold for $0.05 each shortly after they were received only to have some Company X shares repurchased only 10 days later at over $6.00 per share, resulting in Company X's share price increasing over a short period of time;
- There was no news with respect to Company X that would warrant such a price increase at the time of the Company X trading in the E and M Accounts;
- Company X was a very thinly traded stock;
- Other than the Company X transactions, there was no other trading in the E and M Accounts;
- The manner in which the Market Maker purchased the 3,000 Company X shares did not make sense in that they could have purchased the shares directly, as a market maker for Company X, rather than using the Respondent and incurring a fee;
- The Market Maker's purchase of Company X shares established an all-time high price for the stock;
- The Market Maker, who put S in contact with the Respondent thereby referring both the E and M Accounts, was the most active market maker for Company X in February 2005 and further, the Market Maker effected a trade in Company X through the Respondent which it could have effected itself; and
- The trade in Company X by the Market Maker affected through the Respondent created an all-time high share price for Company X.

GENERAL PROCEDURAL MATTERS

TAKE FURTHER NOTICE that the hearing and related proceedings shall be subject to the Association's Rules of Practice and Procedure.

TAKE FURTHER NOTICE that pursuant to Rule 13.1, the Respondent is entitled to attend and be heard, be represented by counsel or an agent, call, examine and cross-examine witnesses, and make submissions to the Hearing Panel at the hearing.

RESPONSE TO NOTICE OF HEARING

TAKE FURTHER NOTICE that the Respondent must serve upon the Association a Response to the Notice of Hearing in accordance with Rule 7 within twenty (20) days (for a Standard Track disciplinary proceeding) or within thirty (30) days (for a Complex Track disciplinary proceeding) from the effective date of service of the Notice of Hearing.

FAILURE TO RESPOND OR ATTEND HEARING

TAKE FURTHER NOTICE that if the Respondent fails to serve a Response or attend the hearing, the Hearing Panel may, pursuant to Rules 7.2 and 13.5:

(a) proceed with the hearing as set out in the Notice of Hearing, without further notice to the Respondent;

(b) accept as proven the facts and contraventions alleged by the Association in the Notice of Hearing; and

(c) order penalties and costs against the Respondent pursuant to By-law 20.33, 20.34 and 20.49.

PENALTIES & COSTS

TAKE FURTHER NOTICE that if the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by the Association in the Notice of Hearing, the Hearing Panel may, pursuant to By-law 20.33 and By-law 20.34, impose any one or more of the following penalties:

Where the Respondent is/was an Approved Person:

(a) a reprimand;
(b) a fine not exceeding the greater of:
  (i) $1,000,000 per contravention; and
  (ii) an amount equal to three times the profit made or loss avoided by such Approved Person by reason of the contravention.
(c) suspension of approval for any period of time and upon any conditions or terms;
(d) terms and conditions of continued approval;
(e) prohibition of approval in any capacity for any period of time;
(f) termination of the rights and privileges of approval;
(g) revocation of approval;
(h) a permanent bar from approval with the Association; or
(i) any other fit remedy or penalty.

Where the Respondent is/was a Member firm:

(a) a reprimand;
(b) a fine not exceeding the greater of:
  (i) $5,000,000 per contravention; and
  (ii) an amount equal to three times the profit made or loss avoided by the Member by reason of the contravention;
(c) suspension of the rights and privileges of the Member (and such suspension may include a direction to the Member to cease dealing with the public) for any period of time and upon any conditions or terms;
(d) terms and conditions of continued Membership;
(e) termination of the rights and privileges of Membership;
(f) expulsion of the Member from membership in the Association; or
(g) any other fit remedy or penalty.

TAKE FURTHER NOTICE that if the Hearing Panel concludes that the Respondent did commit any or all of the contraventions alleged by the Association in the Notice of Hearing, the Hearing Panel may pursuant to By-law 20.49 assess and order any investigation and prosecution costs determined to be appropriate and reasonable in the circumstances.

DATED at Vancouver, this 10th day of December, 2007.

Warren Funt
Vice President, Western Canada
INVESTMENT DEALERS ASSOCIATION OF CANADA

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