Interactive Brokers Canada Inc (Re)

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

INTERACTIVE BROKERS CANADA INC

2009 IIROC 30

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

Heard: May 27, 2009
Decision: June 22, 2009
(75 paras.)

Hearing Panel:
André Valiquette, Q.C. Chair
Danielle Le May, Member
Guy L. Jolicoeur, Member

Appearance:
Sylvie Poirier, IIROC Enforcement Counsel
Michel Marchand, Counsel for Respondent
Jean-François Bernier, Member of the Respondent

REASONS FOR ACCEPTANCE OF SETTLEMENT AGREEMENT

I- ACCEPTANCE

¶ 1 Pursuant to a hearing held on May 27, 2009, the panel accepted and approved as being in the public interest, the settlement agreement between the Respondent and Staff of the Investment Industry Regulatory Organization of Canada.

II - SANCTION

¶ 2 In the settlement agreement the Respondent agreed to a global fine in the amount of $40,000 with respect to Contraventions 1 to 4.

III- COSTS

¶ 3 Respondent agreed to pay a portion of IIROC Staff's costs in the amount of $10,000.

IV – CONTRAVENTIONS

¶ 4 The settlement agreement related to four contraventions by the Respondent of IDA By-law 17.2 (IIROC Rule 17.2 since June 1st, 2008), and IDA Regulation 200 (IIROC Rule 200 since June 1st, 2008), and of IDA By-law 29.1 (IIROC Rule 29.1 since June 1st, 2008), and IDA By-law 16.2 (IIROC Rule 16.2 since June 1st, 2008), and of IDA By-laws 16.2, 17.1, 17.2 and Form 1.

The First Contravention

¶ 5 The first contravention which occurred during the period from 2002 to 2009 pertained to the failure of Respondent to maintain and keep accurate books and records contrary to IDA By-law 17.2 (IIROC Rule 17.2 since June 1st, 2008) and IDA Regulation 200 (IIROC Rule 200 since June 1st, 2008).

¶ 6 Rule 17.2 provides that every Dealer Member shall at all times keep and maintain a proper system of books and records.

¶ 7 Regulation 200 provides that every Dealer Member shall make and keep current books and records necessary to record properly its business transactions and financial charts.

The Second Contravention

¶ 8 The second contravention pertained to the failure of Respondent to obtain proper evidence of its control over securities held on its behalf and to request and obtain monthly account statements showing these securities and their movements in the brokerage account to reconcile with its inventory, thereby failing to obtain proper evidence of its control over these assets, contrary to IDA By-law 29.1 (IIROC Rule 29.1 since June 1st, 2008).

¶ 9 Section 29.1 provides that each Dealer Member shall (i) observe high standards of ethics and conduct in the transaction of their business, (ii) shall not engage in any business conduct or practise 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 maybe prescribed by the Board of Directors.

The Third Contravention

¶ 10 The third contravention occurred over the period of 2002 to March 2009, as the Respondent incorrectly reported its Monthly Financial Reports filed IIROC, its clients free credits as being cash held in trust at an acceptable institution while they were not deposited in an account opened by of for the Respondent or over which he had control, but rather invested in securities held in custody by its affiliate, according to IDA Regulation 1200 (IIROC Rule 1200 since June 1st 2008), thereby failing to accurately report financial information to IDA, contrary to IDA By-law 16.2 (IIROC Rule 16.2 since June 1st 2008).

¶ 11 Rule 16.2 (i) provides that each Dealer Member file monthly with the Corporation a copy of a financial report of the Dealer Member at the end of each fiscal month or as such other date as may be agreed with the Corporation. Such monthly financial reports shall contain or be accompanied by such information as may be prescribed by the Corporation from time to time.

¶ 12 Rule 1200 provides that a Dealer Member's free credits must be deposited in an account opened by or for the Dealer Member or over which he has control.

The Fourth Contravention

¶ 13 The fourth contravention states that during the period of October 2007 to January of 2008, while securities held in custody for the Respondent by its affiliate, a regulated entity, or sold to be replaced in the trust account by cash, the Respondent improperly continued to qualify and report them and its financial reports as being allowable assets and, as a result, failed to adequately calculate and report to the IDA its RAC, thereby failing to report complete and accurate financial information to the IDA, contrary to IDA By-Laws 16.2, 17.1, and 17.2 and Form 1.

¶ 14 By-laws 17.2 and 16.2 have previously already been dealt with respect to contraventions 1 and 3.

¶ 15 By-law 17.1 provides that every Dealer Member shall have and maintain at all times risk adjusted capital greater than zero calculated in accordance with Form 1 and with such requirements as the Board of Directors may from time to time prescribe. If at any time the risk adjusted capital of a Dealer Member is, to the knowledge of such Dealer Member, less than zero, such Dealer Member shall immediately notify the Corporation.

¶ 16 Form 1 is the Joint Regulatory Financial Questionnaire and Report to be filed by each Dealer Member.

VI – RECOMMENDED SANCTIONS

¶ 17 The Panel reviewed the Guidelines Disciplinary Sanctions of Dealer Members and the Recommended Sanctions for failure to establish and/or maintain adequate controls (Rule 17.2A).

¶ 18 One of the considerations in deciding on the sanction is the extent and the nature of internal control in adequacy. The minimum recommended fine is $25,000.

¶ 19 The minimum recommended sanction for Record Keeping Violations contrary to Dealer Member Rule 17.2 and 200 is a minimum fine of $25,000.

¶ 20 One of the considerations in deciding on the sanction is the nature of the inaccurate or missing information.

VII - PRECEDENTS

¶ 21 Counsel for IIROC Enforcement reviewed 11 decisions that were relevant in this case. In every instance, there was a settlement agreement accepted by the Hearing Panel.

Decisions

¶ 22 **1st - MRS Securities Services Inc.**

¶ 23 There was a violation of By-law 17.2A; a flaw existed in the Member's internal controls. The member had taken corrective action and was now depositing its receipts directly into its own account and the Member and the related company now had in place a written custodial agreement.

¶ 24 The sanction was a fine of $35,000 and costs of $4,150.

¶ 25 **2nd - GRS Securities Inc.**

¶ 26 In this case there was a violation of By-law 17.1.

¶ 27 The Respondent had failed to maintain risk adjusted capital in excess of zero.

¶ 28 The fine was $40,000 plus costs of $7,000.

¶ 29 **3rd - HSBC James Capel Inc.**

¶ 30 There were violations of By-laws 17.1 and 17.2.

¶ 31 HSBC Securities (Canada) Inc. failed to maintain risk adjusted capital greater than zero and to maintain a proper system of books and records, contrary to By-law 17.1 and 17.2, respectively.

¶ 32 In this case, no client's funds were put at risk and HSBC Securities (Canada) Inc. allocated numerous resources, recruited experienced staff and put new procedures in place to correct the problems.

¶ 33 The fine was in the amount of $60,000 and costs of $10,710.

¶ 34 **4th - Groome Capital.Com Inc.**

¶ 35 In this case, the Respondent failed to maintain its risk adjusted capital at a level greater than zero, contrary to By-law 17.1 and failed to ensure that its risk adjusted capital was calculated in accordance with the rules prescribed by the Association and consequently provided the Association with incorrect financial information in

its Monthly Financial Reports, thereby failing to keep at all times proper financial books and records contrary to By-law 17.1.

¶ 36 The fine was in the amount of $30,000 and costs of $2,500.

¶ 37 **5th - Valeurs Mobilières Courvie Inc.**

¶ 38 In this case, the Respondent failed to maintain its risk adjusted capital at a level greater than zero and failed to ensure that its risk adjusted capital was calculated in accordance with the rules prescribed by the Association and consequently provided the Association with incorrect financial information and its Monthly Financial Reports thereby failing to keep at all times proper financial books and records.

¶ 39 The fine was $40,000 and costs of $2,175.

¶ 40 **6th - Timber Hill Canada Company**

¶ 41 In this case, there were violations of By-laws 17.1, 17.2 and 29.1.

¶ 42 The fine was $40,000 and costs of $3,500.

¶ 43 **7th - Groupe Jitney Inc.**

¶ 44 In this case, there was a violation of article 1 By-law 1 and also of section 6 of By-law 30.

¶ 45 The fine was $50,000 and the costs were $15,000.

¶ 46 **8th - Rothenberg Capital Management Inc.**

¶ 47 In this case, the Respondent failed to establish and maintain adequate internal controls in accordance with Policy No. 3, thus violating By-law 17.2A, to establish and maintain proper system of books and records, contrary to By-law 17.2 and to ensure that designated persons properly supervise the financial operations of the firm, thus engaging in business conduct or practice unbecoming or detrimental to the public interest, contrary to By-law 29.1.

¶ 48 The fine was $20,000 and the imposition of a condition of continued membership that the respondent does not make any inter-companies transfers unless a duly legal right to set-off as per Chapter 3860 of CICA Handbook expressly permits it.

¶ 49 **9th - Financial Centre Securities Corporation**

¶ 50 In this case, there were violations of By-law 17.2A and 17.1.

¶ 51 The Respondent corrected the capital deficiency and also appointed a new CFO responsible for financial compliance matters.

¶ 52 The fine was in the amount of $25,000 and the costs $3,500.

¶ 53 **10th - MF Global Canada Co.**

¶ 54 In this case, the Respondent violated By-law 17.1 of the IDA by failing to keep its RAC greater than zero.

¶ 55 The fine was in the amount of $25,000 and the costs were $5,000.

¶ 56 11th - Credit Suisse Securities (Canada) Inc.

¶ 57 In this case, there was an infraction to Rule 17.1.

¶ 58 The fine was in the amount of $25,000 and no costs were claimed by Staff.

VIII - REASONS FOR THE DECISION

¶ 59 The Panel took into account two sets of Factors, the 1st being the Aggravating Factors and the 2nd being the Mitigating Factors.

¶ 60 **1 - Aggravating Factors**

¶ 61 Better adequate internal controls would have prevented the infractions or they would have been found sooner.

¶ 62 There was a delay in correcting problems which had been identified in spite of formal warnings given by the regulatory body in the manner of reporting financial information, for instance, in considering a transfer to another corporate entity as an admissible or non-admissible asset.

¶ 63 There were requests made in the inspection report by the compliance staff which took the time to meet and make the appropriate corrections.

¶ 64 **2 - Mitigating Factors**

¶ 65 The Respondent has no past disciplinary record.

¶ 66 The infractions are very technical.

¶ 67 No client's account was put at risk and no client has suffered any prejudice.

¶ 68 There was no prejudice suffered by the securities market.

¶ 69 The Respondent is an affiliate of a parent company which always showed its willingness to inject capital in order to maintain the Respondent's capital.

¶ 70 The infractions were not committed intentionally but instead by an incorrect appreciation of certain technical rules which were difficult to apply taking into account the complexity of operating within a financial group.

¶ 71 The incorrect interpretation of the rules was not due to bad faith; information received by the Member from the compliance staff created confusion and the Respondent thought that the manner in which its clients' assets were treated financially were correct.

¶ 72 When infractions were committed, important information was not known by the present management of the Respondent and the parent entity that had been discussed originally with the compliance staff and past members of management.

¶ 73 Respondent fully cooperated with the Association in searching for and finding solutions to the problems.

¶ 74 The Respondent now has a full-time Chief Financial Officer.

¶ 75 There was never any capital deficiency.

Dated at Montreal this 22 day of June 2009.

André Valiquette, Q.C. Chair
Danielle Le May, Member
Guy L. Jolicoeur, Member

* * * * *

SETTLEMENT AGREEMENT

I. Introduction

1. The Enforcement Department Staff ("Staff") of the Investment Industry Regulatory Organization of Canada ("IIROC") has received a referral from the Financial and Operations Compliance Department Staff of IIROC ("IIROC Compliance Staff") in relation with purported compliance issues ("The Issues") related to Interactive Brokers Canada inc. ("the Respondent").

2. The events under consideration occurred before and after June 1, 2008 and commenced to be monitored by the Financial Compliance Department Staff ("IDA Compliance Staff") of the Investment Dealers Association of Canada ("IDA") prior to June 1, 2008.

3. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada and Market Regulation Services Inc. Pursuant to the *Administrative and Regulatory Services Agreement* between IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions.

4. On June 17, 2008, the Staff opened a prosecution file for the review of the legal and factual background of The Issues and determination of whether such review warranted disciplinary action.

5. The prosecution file discloses matters for which, according to Staff, the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C ("the Hearing Panel").

II. Joint Settlement Recommendation

6. The Respondent consents to be subject to the jurisdiction of IIROC.

7. Staff and the Respondent consent and agree to the settlement of these matters by way of this settlement agreement ("the Settlement Agreement") in accordance with IIROC Dealer Member Rules 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.

8. The Settlement Agreement is subject to acceptance by the Hearing Panel.

9. The Settlement Agreement shall become effective and binding upon the Respondent and Staff subject to and as of the date of its acceptance by the Hearing Panel.

10. The Settlement Agreement will be presented to the Hearing Panel at a hearing ("the Settlement Hearing") for approval. Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.

11. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives its right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.

12. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement; or IIROC may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation. In such case, the negotiations of the Settlement Agreement cannot be used as evidence or referred to in any proceedings, according to IIROC Dealer Member Rule 20.35(4).

13. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.

14. Staff and the Respondent agree that if the Hearing Panel accepts the Settlement Agreement, the Respondent and each of the IDA and IIROC, or anyone on their behalf, will not make any public statements inconsistent with the Settlement Agreement.

15. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

III. Statement of Facts

(i) Acknowledgment

16. Staff and the Respondent agree with the facts set out in this Section III and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts.

(ii) Factual Background

The Respondent

17. The Respondent is a member of the Investment Dealers Association of Canada (IDA) since May 14, 2002.

18. On June 1, 2008, the Respondent became a dealer member of IIROC.

19. The Respondent is an affiliate of Interactive Brokers LLC ("LLC"), a US regulated broker-dealer and part of a group of affiliated companies that operate around the world providing electronic trading platform to its clients that is proprietary and is licensed from an affiliated technology company, IBG LLC (formerly Interactive Brokers Group LLC) ("IBG").

20. LLC is a Regulated Entity (as defined in IIROC Dealers Members Form 1, paragraph (h) of the Definitions) based in Greenwich, Connecticut., United States of America ("USA").

The Respondent membership approval

21. When the Respondent applied to become a Member of the IDA, the latter refused that LLC be approved as a carrying broker for the Respondent.

22. The IDA then obtained the confirmation that the clients' accounts of the Respondent were not to be replicated in LLC's books and records as if there was an introducing-carrying broker relationship.

23. The IDA also ensured that the Respondent was to maintain books and records independent from those of its parent company and was to keep the entire control and responsibility over them. It obtained confirmation that actually, only the Respondent was going to have in its own books the individual client accounts of the Respondent.

24. In addition, in answer to some concerns raised by the IDA during the membership approval process, the Respondent agreed, by letter dated on May 6, 2002, to certain written undertakings, the whole as follow:

> *"In connection with the recommendation to be given by staff of the Investment Dealers Association of Canada ("IDA") for approval of the registration of Interactive Brokers Canada Inc. to the full Board of the IDA at the monthly meeting scheduled for May 13, 2002, Interactive Brokers Group LLC ("IB Group") hereby provides IDA with the following:*
>
> ***A. Undertakings that must be met "pre-production"***
>
> *1. Delivery of a report of the independent auditors of Interactive Brokers Canada Inc. as specified in CICA handbook section 5800, relative to the "margin and*

segregation calculations" generated by the IB Group systems in compliance with IDA rules.

2. Implementation of system program changes that prevent Interactive Brokers LLC ("LLC") personnel, or any non-IBC personnel of another entity, from entering journal entries that alter customer records of IBC, and which configure the IB Group systems so that such entries are only made by authorized IBC personnel.

B. Undertaking that must be met "post-production"

3. IBG will provide annually to IDA, a report by its auditors as to the computer control environment of IBG, as set forth in CICA handbook section 5900, which report will address amongst other matters, the control described in Undertaking A.2. above. IB Group shall make such report available to any user of the system, their auditors and regulators."

The Respondent Business

25. The Respondent operates as an electronic discount broker offering direct market access in reliance upon suitability exemption. Clients use the TWS (Trader Work Station) direct trading system. The TWS allows the client to route the trade to a number of securities and futures exchanges around the world.

26. The Respondent offers equities, equity options, futures contracts / futures contract options, ETFs, foreign currencies and bonds trading facilities mainly to a retail clientele.

Business relationship with the parent company

27. The Respondent uses LLC, its affiliated company, to execute, clear and settle trades.

28. All client orders are routed to LLC, which may execute the orders or route them to another broker for execution. In the case of futures and options contracts listed for trading on the Bourse de Montréal, LLC routes the orders to Timber Hill Canada (a related IIROC Dealer Member; and in the case of securities listed for trading on the Toronto Stock Exchange LLC routes the orders to the Respondent.

29. LLC acts as executing broker and clearing broker for the Respondent and its clients. LLC holds all of the Respondent's client positions in book entry form at DTC, NSCC, OCC or other registered clearinghouses or depositories or with members of registered clearinghouses or depositories.

30. Daily, the Respondent clients' money is transferred to LLC for clearing and deposit purposes.

The issue of clients free credits

The Respondent's clients free credits transferred at LLC

31. The IDA Compliance Staff, as an accommodating solution for the Respondent, given its particular corporate structure and having assessed that there were no actual risks for its clients to do so, allowed the Respondent to consider it's clients free credits, transferred to LLC, as if they were invested in a security held "in custody" for the Respondent at LLC, according to a custodial agreement. This was accepted by the IDA as it was told by the Respondent that:

- The Respondent clients' free credits would be invested in Treasury Bills, a "security" within the meaning of Canadian rules; and
- There would be a custodial agreement signed between the Respondent and LLC, allowing LLC to be custodian of certain securities for the Respondent.

32. A custodial agreement was in place between the Respondent and LLC providing that LLC would act as custodian for the Respondent.

33. The IDA consented that these credits be invested in Treasury Bills held by LLC in its trust account at CitiBank (or any other acceptable institution) and commingled with the free credits of the clients of other LLC' subsidiaries, in an undivided fashion, because it was satisfied that the custodial agreement in place was a satisfactory protection and that in such way there were no actual risks for the clients or the Respondent.

34. Therefore, the IDA accepted that the Respondent's clients free credits, invested in Treasury Bills held by LLC according to the custodian agreement, be accounted as allowable assets for the purpose of the calculation of its Risk Adjusted Capital ("RAC").

35. According to the Respondent, given the US rules that LLC must comply with *(SEC Rule 15C-3.3)*, all LLC clients' free credits would have to be deposited by LLC in a *Special Reserve Trust Account* ("*SRTA*") at an acceptable institution and, inside of this account, could be held in cash or invested in liquid securities such as Treasury Bills.

36. The Respondent's clients are replicated in LLC's records as if they were its own clients, while they were not supposed to be, as discussed during the new member applicant review back in 2002.

37. LLC is not member of the Canadian Investors Protection Fund (CIPF). It has not been approved as an IDA Member or IIROC Broker-Member.

38. LLC is not a carrying broker for the Respondent. The Respondent has no introducing/carrying broker agreement with LLC or with any other broker.

39. Once the trades are cleared by LLC, the free credits of the Respondent' clients are deposited daily by LLC in a SRTA opened under LLC's name first with CitiBank and, since October 2007, with JP Morgan (each an acceptable institution).

40. The Respondent clients' free credits, transferred to LLC and then deposited in this SRTA by LLC, are comingled with those of the clients of LLC and of the other subsidiaries of LLC, without distinction of their source.

41. JP Morgan has no legal or financial relationship with the Respondent and does not know the daily portion of the assets in the SRTA of LLC that belongs to the Respondent, being its own clients' free credits. Such acceptable institution does not know nor acknowledge in any fashion the financial or legal relationship between LLC and the Respondent.

Alternative uses of Clients Free credits

42. The clients' free credits which do not have to be segregated due to the calculation of Statement D of Form 1 (IIROC Rule 1200 / *formerly IDA Regulation 1200*) can be used in the normal conduct of the Dealer Member's operations. As such, the following examples, which are not exhaustive, can represent different ways of using the clients' free credits. They could be:

a. Deposited and held in an account opened in the name of the Respondent with an acceptable institution and thereby considered to be allowable assets for the purpose of the RAC calculation to be reported on line 1 of Statement A of the Monthly Financial Report ("MFR"), but in the present case:

- *LLC was not an "acceptable institution";*
- *JP Morgan is an "acceptable institution" but the trust account at JP Morgan was held to LLC's name only;*
- *There was no direct link between the Respondent and this account at JP Morgan;*
- *LLC considered that it was holding these assets as a whole for all "its" clients.*

b. Invested in securities held in custody for the Respondent at an acceptable securities location (can be another broker that qualifies as a regulated entity) according to a custodial agreement and reflected in the inventory/ stock record of the Respondent in its books and records. They could then be considered to be allowable assets for the purpose of the RAC calculation and have to be reported on line 7 of Statement A of the MFR;

- *A custodial agreement was signed between the Respondent and LLC; but there was no brokerage account opened at LLC for the Respondent and no account statements showing the T-Bills held in custody for the Respondent. The T-Bills were not reflected in the Respondent's inventory;*

c. Transferred in cash to a related company as an intercompany advance, this advance being considered as a non allowable assets for the purpose of the RAC calculation and shall be reported on line 27 of Statement A.

Books and records & financial reporting issues

43. The IDA / IIROC Compliance Staff noticed that the Respondent, in its regulatory financial reports, was qualifying its clients free credits transferred at LLC, as allowable assets for its RAC calculation, but was reporting these assets as being held in trust with acceptable institutions, rather than securities owned by the Respondent.

44. Since 2004, each of the IDA Compliance Staff and of the IIROC Compliance Staff, has repeatedly requested that this qualification of the assets made by the Respondent in its reports, be amended to correctly reflect the fact that the Treasury Bill positions, the investment vehicle through which the Respondent clients' free credits were invested in the SRTA, be presented as an inventory position, classified as an allowable asset.

45. In its Financial Compliance Examination Report as at June 30, 2004, issued on July 26 , 2005, the Compliance Staff of the IDA notified the Respondent of its concern in the following terms:

6. *Cash held in Trust due to Free Credit Ratio Calculation, Line 3 of Statement A*

We noted that the Member incorrectly reported a USD T-Bill valued at $44,283,000CAN on Statement A, Line 3- Cash, held in trust with Acceptable Institutions, due to free credit ratio calculation. As this $44,283,000 pertains to a security position and not cash, it should have been reported on Schedule 2, and hence Statement A – Line 8 – Securities owned and segregated due to free credit ratio calculation. Furthermore, a margin should have been taken on the UDS T-Bill. There was no significant impact on RAC.

Please ensure compliance with the Notes and Instructions of Schedule 2.

46. On September 19, 2005, as a follow-up to its report, the IDA Compliance Staff wrote the following letter to the UDP of the Respondent:

Re: Field Examination Report of Financial Compliance

Dear Mr. Bernier:

Please note that the outstanding point No.6, Cash Held in Trust due to Free Credit Ratio Calculation, Line 3 of Statement A, highlighted in our letter of July 26, 2005, regarding the field examination of the records of Interactive Brokers Canada Inc. as at June 30, 2004 will be addressed during our 2005 field examination.

47. In its Financial Compliance Examination Report as at April 30, 2005, the IDA Compliance Staff reiterated again its concern in the following terms:

2. *Cash held in Trust due to Free Credit Ratio Calculation, Line 3 of Statement A*

We noted that the Member reported a USD T-Bill valued $63,732,000 CAN on Statement A, Line 3- cash, held in trust with Acceptable Institutions, due to free credit ratio calculation. As this $63,732,000 pertains to a security position and not cash, it should have been reported on Schedule 2, and hence Statement A – Line 8 – Securities owned and segregated due to free credit ratio calculation. Furthermore, a margin should have been taken on the USD T-Bill. There was no significant impact on RAC.

Please ensure compliance with the Notes and Instructions of Schedule 2.

Please note that a similar comment was part of our report as at June 30, 2004.

48. The following notice was given at the beginning of this report (April 30, 2005):

> *Please note that items nos. 2 and 5 were addressed in previous reports and were still not corrected as of the date of our field examination. We remind you that it is IBC's responsibility to conform at all times to the By-Laws, Regulations and Policies of the Association. Consequently, we ask that you correct these findings immediately.*

49. On May 8, 2006, in its Reply to the Financial Compliance Examination Report as at April 30, 2005, the Respondent indicated in the following terms, its view that the Treasury Bills shall be recorded as securities on LLC' books, not in the Respondent's ones:

> *"[…] we respectfully disagree that it pertains to securities "owned" by IBC. The Treasury Bills are reported as securities owned and segregated on the books and records of LLC, not IBC. We believe it would be inappropriate and could potentially present a distorted and misleading view of IBC's financial position, to force IBC to also record the Treasury Bills as securities on its books. After cash is received by LLC, IBC records a CAD receivable from LLC. With reference to GAAP, we are of the view that treating this amount as cash held in trust, and thus reporting it on line A-3, represents more accurate accounting of the economic reality at hand."*

50. During its financial compliance examination of the Respondent, as at September 30, 2006, IDA Compliance Staff realized that no brokerage account was yet opened at LLC for the Respondent, to purchase and hold securities in custody, and that no monthly account statements showing the movements in such account were provided by LLC to the Respondent, to reconcile them with its stock record. It also realized that the Respondent was not including these securities in its inventory.

51. In its Financial Compliance Examination Report as at September 30, 2006, issued on July 24, 2007, the IDA Compliance Staff included additional requirements to ensure the adequate presentation of the assets of the Respondent in its books and records. On the same issue, it insisted again, under the title: "**SIGNIFICANT FINDINGS"**, as follow :

> *2. Treasury Bills held at [LLC]*
>
> *All client cash received by IBC is immediately transferred to [LLC], the parent company, as the clearing broker to satisfy settlement and margin requirements. [LLC] invests the excess IBC cash, along with its own excess cash, in US Treasury Bills which are held in a segregated account in their name. IBC has a custodial agreement with [LLC] and on a monthly basis IBC receives an "Investment Statement" stating that the excess funds were invested in US Treasury Bills by [LLC], which are held in the name of [LLC].*
>
> *For the month end under review, [LLC] was holding a total of $ 100 million T-Bill position of which $56 US million was purchased using IBC client excess funds. The following issues were noted with respect to Canadian client excess funds being invested in Treasury Bills by the US parent ([LLC]):*
>
> *[LLC] does not set up a brokerage account for IBC to reflect this T-Bill activity or position held. Instead, the [LLC] stock record simply shows a $ 100 million T-Bill position and does not identify the fact that $56 US million is for the account of IBC;*
>
> - *IBC's stock record does not reflect this T-Bill position held by their affiliate. The "Investment Statement" issued by [LLC] merely states that Treasury Bills were purchased with IBC client excess funds and it does not clearly state that they are holding Treasury Bills on behalf of IBC; and*
> - *For MFR reporting purposes, IBC incorrectly reports the value of Treasury Bills on line A3 "Cash, held in trust with Acceptable Institutions, due to free credit ratio calculation" and reports the T-Bill margin on line B7.*

- *The books and records must be amended to reflect this T-Bill position held by [LLC] on behalf of IBC in accordance with the Notes and Instructions to Schedule A of Form 1. We require that IBC set up a brokerage account with [LLC] for the purpose of purchasing and holding Treasury Bills purchased from IBC's client excess free credits and report these Treasury Bills on line A7 of Form 1. IBC must reconcile the T-Bill position with a statement from [LLC] stating that [LLC] is holding the Treasury Bills on behalf of IBC.*

52. On September 17, 2007, in responding to the point raised in the examination report as at September 30, 2006, as regard to the fact that no brokerage account was opened on Respondent's name with LLC, the Respondent confirmed by letter to the IDA Compliance Staff that a separate account to present the T-Bill in the name of the Respondent had been established.

53. This written statement made to the Compliance Staff of the IDA was inaccurate; such account having then not been opened at LLC and never has been until end of March 2009. Only an "investment statement", not generated from the brokerage system and only indicating that a T-Bill was purchased with the clients free credits, was provided to the Respondent.

54. In October of 2007, due to market conditions and without beforehand informing the IDA, LLC decided to deposit all the clients free credits in cash in the SRTA opened under LLC's name at JP Morgan, rather than investing them in Treasury Bills as previously undertaken, which the IDA became aware of on January 20, 2008 during the review of the Respondent's examination file for the MFR of October 2007.

55. When the Treasury Bills were liquidated to be replaced by cash in the SRTA, the IDA ceased to accept that the clients' free credits be accounted as allowable assets, as such cash no longer constituted, in its opinion, securities held in custody.

56. The Respondent claimed that these free credits were allowable assets because they were deposited at an "*acceptable institution*" for the clients and that the choice of the underlying investment vehicle within the trust account was not relevant (whether held in cash or invested in Treasury Bills in the SRTA).

57. The IDA agreed that if these clients' free credits were held by the Respondent in a separate bank account opened under its own name at an acceptable institution, such cash would have been considered as an allowable asset and would not have negatively impacted the Respondent's RAC calculation. But they were not.

58. Indeed, the clients' free credits were transferred in cash to LLC, which then deposited them in the SRTA to be comingled with other funds, without distinction of the portion belonging to IBC for its clients, in a trust account held in the name of LLC only and over which the Respondent had no control or direct access.

59. There was no direct legal relationship or financial link between the Respondent and JP Morgan and no bank account statement was provided to the Respondent by this acceptable institution.

60. The Respondent explained that this was because LLC had to comply with SEC Rule 15C3-3, which requires the US dealers to maintain their clients' free credits in the form of cash or certain government securities (like Treasury Bills) in a special Reserve Account held in trust for such clients' exclusive benefit.

61. According to the Respondent, as its clients' accounts are replicated in LLC' records, such clients must be considered as LLC's clients and, as a result, their excess cash is subject to such SEC rule.

62. IIROC Compliance Staff then became aware that LLC replicated in its own books and records all the Respondent's clients accounts and was considering these clients as being its own for the purpose of SEC Rule 15C3-3 while, during the approval process of the Respondent's membership, confirmation had been given to the IDA that this was not going to happen.

63. Alternatively, the Respondent also claimed that a "cash deposit" held in a trust account qualifies as a "security" that could be held in custody under the custodial agreement and thereby reported as an allowable asset.

64. IIROC Compliance Staff disagreed with such interpretation. It took the position that the Respondent's cash was held by LLC and as per the notes and definitions of the IIROC Dealers Member Form 1 (JRFQ&R), considered it an inter-companies receivable, a non-allowable asset.

65. Then, IIROC Compliance Staff did recalculate the Respondent's RAC taking into account such non allowable asset and so advised it.

66. On a visit of LLC offices, in November of 2008, IIROC Staff discussed with PB, a Senior Officer and the designated Chief Operations Officer of LLC, the remaining unresolved matters. PB said that the necessary changes to get the Respondent complying with IIROC requirements as regard to the Canadian rules, would be completed soon and before IIROC Financial and Operations Compliance Staff was to perform its next examination of the Respondent in December of 2008.

67. Following this visit, in e-mails exchanges, (i) IIROC Compliance Staff reminded LLC of IIROC' expectation to see the ongoing problems finally fixed (as already formulated in the field examination report of 2006), and (ii) PB stated, without more details, that such problems were addressed in an updating of LLC's systems currently in a testing stage.

68. As planned, in December of 2008, a Finances and Operations Compliance field examination was carried out by IIROC Compliance Staff at Respondent's premises.

69. In early 2009, many email exchanges, discussions, conference calls, telephone conversation and meetings, with the Respondent's UDP, the Respondent's legal counsel, the Respondent's parent company, and involving not only IIROC Compliance Staff but its senior management and legal counsel, were required to get the Respondent obtaining from its parent company that the required changes be made.

70. Finally, on March 20, 2009, following commitments made by LLC's representatives in a conference call held on February 26, 2009 (the "February 2009 Meeting"), documents were provided to IIROC Compliance Staff substantiating changes that were made, at least those related to the opening of a brokerage account by Respondent with LLC and to the proper entries in the Respondent's stock record.

71. On March 27, 2009, upon the request of IIROC Compliance Staff, LLC's Chief Operations Officer provided explanation specifying how the deficiencies, to be resolved as agreed at the February 2009 Meeting, were now corrected.

IV. Contraventions

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

Inadequate books and records

Contravention 1

Over the period of 2002 to March 2009, the Respondent failed to properly record in its inventory / stock record securities held in custody by a registered entity, thereby failing to maintain accurate books and records, contrary to IDA By-law 17.2 (IIROC Rule 17.2 since June 1st, 2008) and IDA Regulation 200 (IIROC Rule 200 since June 1st, 2008).

Contravention 2

During the period from 2002 to March 2009, the Respondent failed to ensure that a brokerage account be opened at the registered entity for the securities held in custody on its behalf, and to request and obtain monthly account statements showing these securities and their movements in the brokerage account to reconcile with its inventory, thereby failing to obtain proper evidence of its control over these assets, contrary to IDA By-law 29.1 (IIROC Rule 29.1 since June 1st, 2008)

Failure to properly report financial information

Contravention 3

Over the period of 2002 to March 2009, the Respondent incorrectly reported, in its Monthly Financial Reports filed IIROC, its clients free credits as being cash held in trust at an acceptable institution while they were not deposited in an account opened by or for the Respondent or over which he had control, but rather invested in securities held in custody by its affiliate, according to IDA Regulation 1200 (IIROC Rule 1200 since June 1st, 2008), thereby failing to accurately report financial information to IDA, in contravention of IDA By-law 16.2 (IIROC Rule 16.2 since June 1st, 2008).

Contravention 4

During the period of October 2007 to January of 2008, while securities held in custody for the Respondent by its affiliate, a Regulated Entity, were sold to be replaced in the trust account by cash, the Respondent improperly continued to qualify and report them in its financial reports as being allowable assets and, as a result, failed to adequately calculate and report to the IDA its RAC, thereby failing to report complete and accurate financial information to the IDA, in contravention of IDA By-laws 16.2, 17.1 and 17.2 and Form 1.

73. The Staff and the IDA and IIROC Compliance Staff hereby acknowledge that The Issues are now settled to their satisfaction.

VI. Terms of Settlement

74. In determining the appropriate penalty in this case, Staff took into account the following mitigating factors:

- As soon as the Respondent was notified by the IDA of the impact of holding some assets in cash rather than in Treasury Bills within a trust account on the allowance of some assets for the

calculation of its RAC, the Respondent promptly took action to rectify the situation and reinvested them immediately in Treasury Bills;

- The Respondent cooperated in good faith with each of the IDA and IIROC Compliance Staff and with the Staff in order to find solutions to resolve some identified issues resulting from its particular corporate structure;

- After having discussed and negotiated on different positions taken by the Respondent and the Staff, as to the interpretation of some compliance requirements, the Respondent put a term to the litigation and accepted to reestablish all of what was required by the IDA and IIROC Compliance Staff since the beginning of the Respondent's membership, and it developed and put in place the appropriate systems to satisfy these requirements.

- Some undertakings made by management of the Respondent in place at the time of its membership approval application, were not known by its new officers until they were informed of them by the Staff of IIROC while negotiating this settlement.

75. For the violations listed in paragraph 72, the Respondent agrees to the following terms of settlement:

- *A global fine in the amount of* $ 40,000.00 with respect to Contraventions 1 to 4;

- A portion of IIROC Staff's costs in the amount of $10, 000.00.

76. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable within five (5) business days after the effective date of the Settlement Agreement.

AGREED TO by the Respondent at the City of Montreal, in the Province of Quebec, this 1st day of May, 2009.

Interactive Brokers Canada inc.
RESPONDENT

"Witness signature"
Witness

"Jean-Francois Bernier"
Jean-François Bernier
MANAGING DIRECTOR AND CHIEF COMPLIANCE OFFICER

AGREED TO by Staff at the City of Montreal in the Province of Quebec, this 1st day of May of 2009.

STAFF OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

"Witness signature"
Witness

"Sylvie Poirier"
Sylvie Poirier
Enforcement Counsel