

# Re Standard Securities Capital Corporation

IN THE MATTER OF:

THE DEALER MEMBER RULES OF THE INVESTMENT INDUSTRY REGULATORY  
ORGANIZATION OF CANADA

AND

STANDARD SECURITIES CAPITAL CORPORATION

2009 IIROC 38

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

Heard: August 11, 2009  
Decision: August 19, 2009  
(8 paras.)

## Hearing Panel:

Patrick T. Galligan, Q.C. (Chair), George Dunn, David Kerr

## Appearances:

Milton Chan, Counsel for Enforcement Staff

James D. Blair, CFO, Standard Securities Capital Corporation

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## REASONS FOR DECISION

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¶ 1 On August 11, 2009, this hearing panel conducted a settlement hearing pursuant to Rules 20.36 to 20.40 of IIROC Dealer Member Rules and Rule 15 of Dealer Member Rules of Practice and Procedure.

¶ 2 The Settlement Agreement entered into between the parties sets out comprehensively the unusual facts of this case, the contraventions admitted by the respondent and the agreed terms of settlement. We think that it is appropriate, therefore, to quote the Settlement Agreement in its entirety:

### 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 Staff of IIROC’s Financial and Operations Compliance Department in relation with purported compliance issues related to Standard Securities Capital Corporation (“the Respondent”).
2. Staff has conducted a review into the purported compliance issues. The review discloses matters for which 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**

3. 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.
4. The Settlement Agreement is subject to acceptance by the Hearing Panel.
5. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
6. 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.
7. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her/its right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
8. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement; or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.
9. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
10. Staff and the Respondent agree that if the Hearing Panel accepts the Settlement Agreement, they, or anyone on their behalf, will not make any public statements inconsistent with the Settlement Agreement.
11. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

## **III. Statement of Facts**

### ***(i) Acknowledgment***

12. 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) Background of the Respondent***

13. The Respondent, with its head office located in Toronto, Ontario, became a member of the Investment Dealers Association of Canada in 1997.

14. The Respondent maintained a type 2 introducing / carrying broker agreement with Penson Financial Services Canada Inc. ("Penson"). The agreement was most recently renewed on October 1, 2007.
  15. On June 1, 2008, the Respondent became a regulated person of IIROC.
- (iii) Resignation of Membership**
16. On November 24, 2008, IIROC was advised that the Respondent and Wolverton Securities ("Wolverton") entered into discussions for a possible purchase of the Respondent's assets by Wolverton.
  17. On February 28, 2009, the Respondent and Wolverton entered into an agreement pursuant to which all of the Respondent's client accounts were transferred to Wolverton. This transfer was accomplished by Wolverton entering into a type 3 introducing / carrying broker agreement with Penson and assuming all of the Respondent's client accounts. All registered employees of Standard would also transfer their employment and registration to Wolverton.
  18. On March 2, 2009, IIROC received confirmation from Penson that there were no client assets / accounts remaining with the Respondent. In addition, on April 23, 2009, IIROC received confirmation from Schwartz Levitsky Feldman LLP, Standard's Panel Auditor, that no client assets / accounts remained with the Respondent.
  19. On March 17, 2009, the Respondent notified IIROC its intention to resign its membership. On March 19, 2009, IIROC announced this notification in notice 09-0080.
  20. There are currently two outstanding legal actions, initiated by former clients, claiming damages against the Respondent.
  21. There are no outstanding enforcement actions or ombudsman client complaints, against the Respondent aside from this proceeding.
  22. The resignation of the Respondent's IIROC membership is currently pending.
- (iv) Resignation of Chief Compliance Officer and Ultimate Designated Person**
23. On July 3, 2009, Mike Bignell, Chief Compliance Officer and Ultimate Designated Person of the Respondent, tendered his resignation effective July 10, 2009.
  24. Due to the Respondent's intent to resign its IIROC membership, it does not plan to name another officer to fill the vacancies of Chief Compliance Officer and Ultimate Designated Person.
- IV. Contraventions**
25. The Respondent admits to the following contraventions of IIROC Rules, Regulations or Policies:

1) As of July 11, 2009, the Respondent failed to designate a Chief Compliance Officer who is responsible for discharging the obligations of the Respondent under Ontario Securities Law, contrary to section 1.3(1) of Ontario Securities Commission Rule 31-505 and IIROC Dealer Member Rules 38.3;

2) As of July 11, 2009, the Respondent failed to designate an Ultimately Responsible Person who is ultimately responsible for discharging the obligations of the Respondent under Ontario Securities Law, contrary to section 1.3(2) of Ontario Securities Commission Rule 31-505 and IIROC Dealer Member Rules 38.1.

## VI. Terms of Settlement

26. The Respondent agrees to the following terms of settlement:

a) an order that the Standard Securities Capital Corporation's membership with IIROC be immediately suspended;

b) an order directing Standard Securities Capital Corporation to immediately cease dealing with the public;

c) Standard Securities Capital Corporation will maintain its \$2.7 million Financial Institution Bond until such time the resignation of its IIROC membership become effective, unless otherwise agreed to by the Vice President Financial and Operation Compliance of IIROC;

d) Standard Securities Capital Corporation will enter into an escrow agreement approved by Vice President Financial and Operation Compliance of IIROC, in which it will deposit its remaining assets, subject to reasonable terms and exceptions acceptable to the Vice President Financial and Operation Compliance of IIROC, until all outstanding legal actions initiated by its former clients are resolved.

27. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

AGREED TO by the Respondent at the City of Toronto in the Province of Ontario this 29th day of July, 2009.

**Original Executed by:**  
(Signature Ineligible)

« James D Blair »

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**James D. Blair**

Chief Financial Officer, on behalf of  
Standard Securities Capital Corporation

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this 30th day of July, 2009.

*Original Executed by:*  
*(Signature Ineligible)*

*“Milton Chan”*

**Witness**

**Milton Chan**

Enforcement Counsel on behalf of Staff of  
the Investment Industry Regulatory  
Organization of Canada

## ENDORSEMENTS

ACCEPTED by a Hearing Panel of the Ontario District Council of the Investment Industry Regulatory Organization of Canada, at the City of Toronto in the Province of Ontario, this eleventh day of August, 2009.

**Investment Industry Regulatory Organization of Canada  
(Ontario District Council)**

*Original Executed by:*

*“Patrick Galligan”*

Hon. Patrick Galligan, Panel Chair

*“George B Dunn”*

Mr. George Dunn, Panel Member

*“David W Kerr”*

Mr. David Kerr, Panel Member

¶ 3 Upon the completion of the representations made on behalf of the parties, the hearing panel retired to consider its decision. After deliberation, the hearing panel decided that it would accept the Settlement Agreement. It resumed the hearing, announced to the parties that it had accepted the Settlement Agreement and that very brief reasons would follow. These are those reasons.

¶ 4 While it is composed of a number of elements, the overriding purpose of IIROC’s disciplinary process is the protection of the investing public. This case is unusual in that the respondent has agreed to an immediate suspension. It is the opinion of this hearing panel that the terms of settlement of this Settlement Agreement provide the utmost protection which can reasonably be provided to the investing public. Therefore, it meets the most fundamental purposes of the disciplinary process. It is not necessary, in such circumstances, to consider other factors which are often considered when determining an appropriate penalty such as the deterrent effect upon others or the chance of rehabilitation of a member who has been guilty of a contravention of its obligations as a member of the Investment Industry Regulatory Organization of Canada. Overall, the settlement is an eminently reasonable one which has led to its acceptance by this hearing panel.

¶ 5 Because of the above comments it is not, strictly speaking, necessary to comment upon the approach which a hearing panel should take to the consideration of a settlement agreement and the approach which was taken by this hearing panel. We think, however, it is useful to say that we agree with comments found in two

previous decisions. While the decisions are now 10 years old, we think that they are as correct and applicable today as they were when they were made.

¶ 6 The first of those decisions is *Re Milewski*, [1999] I.D.A.C.D. No. 17. We refer to page 11 of that decision:

In the District Council's view, settlement agreements do not define the parameters of the penalties available. These are defined in paragraph 20.11 of the By-laws. A penalty under a settlement agreement is likely to be at the low end of the spectrum in view of the fact that a settlement is negotiated, permits the Association staff to avoid the costs of a contested hearing and guarantees them a favourable result.

Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council when making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.

This understanding is reflected in paragraph 20.26 of the By-laws which authorizes the District Council to 'accept', rather than approve, a settlement agreement. In each case a District Council must determine appropriateness, but the standards applicable to its doing so on a settlement hearing differ from those in a contested hearing. Thus, the penalties imposed under settlement agreements, while relevant to a District Council exercising its discretion to penalize, provide only limited assistance in a hearing like this one.

¶ 7 The second decision is *Re Clark*, [1999] I.D.A.C.D. No. 40. We refer to page 3 of that decision:

It was submitted by staff and accepted by the panel that its role under By-law 20.26 is not the same as its role under By-law 20.10 following a hearing. In considering a settlement under By-law 20.26 the panel should not simply substitute its discretion for that of staff who negotiated the settlement. The panel must be cognizant of the importance of the settlement process and should not interfere lightly in a negotiated settlement. In our view, as a result, panels must also be careful in using previous settlements as precedent. The settlement process is one of negotiation and compromise and the penalty imposed following a settlement will often be less onerous than one imposed following a hearing where similar findings are made.

¶ 8 In the result, the Settlement Agreement is accepted.

Dated this 19<sup>th</sup> day of August 2009.

Patrick T. Galligan, Q.C., Chair  
George Dunn, Member  
David Kerr, Member

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