

## **Re Méchaka**

**IN THE MATTER OF:**

**THE BY-LAWS OF THE INVESTMENT DEALERS  
ASSOCIATION OF CANADA**

**AND**

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

**AND**

**YVES MÉCHAKA**

2009 IIROC 46

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

Hearing: July 14, 2009  
Decision: October 27, 2009  
(58 pars.)

**Hearing Panel:**

Me Jean Martel, Chair, Mr. Guy L. Jolicoeur, Mr. Yves Julien

**Appearances:**

Me Sylvie Poirier, Enforcement Counsel — IIROC, for the Prosecution

Me John Bracaglia, Sarrazin Nicolo Bracaglia Inc., for the Respondent

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### **REASONS FOR DECISION ON SETTLEMENT AGREEMENT**

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¶ 1 Yves Méchaka, the Respondent in this matter, has not been employed in the securities industry since February 2, 2007.

¶ 2 On or about November 24, 2005, Staff of the Enforcement Department of the Investment Dealers Association of Canada ("**IDA**") launched an investigation into the Respondent's conduct in respect of regulated functions which he performed on behalf of IDA Member firms from March 2001 to February 2007.

¶ 3 Effective June 1, 2008, the IDA retained the Investment Industry Regulatory Organization of Canada ("**IIROC**") to provide the necessary services for the IDA to carry out its regulatory functions.

¶ 4 From March 1, 2001 to April 25, 2001, the Respondent notably acted as group savings plan representative, branch manager, director and president of Norshield Securities Inc. From April 25, 2001 to December 20, 2005, he notably acted as representative, manager, director and president of iForum Securities

Inc. ("iForum"). Finally, from December 20, 2005 to February 2, 2007, he acted as representative with unrestricted practice for Industrial Alliance Securities Inc.

¶ 5 On July 6, 2009, Staff of IIROC and the Respondent reached a settlement agreement ("**Settlement Agreement**"), in accordance with rules 20.35 to 20.40 of the IIROC Dealer Member Rules, and rules 14 and 15 of the Rules of Practice and Procedure.

¶ 6 In this Settlement Agreement, filed as Exhibit E-1 at the hearing of July 14, 2009, and appended to this decision, the Respondent admits to the following misconduct:

- a) From 2002 to 2005, the Respondent failed in many respects to ensure that minimum standards for retail account supervision were adhered to and to ensure that the client accounts and activities of the representatives at iForum Securities Inc. were adequately supervised, contrary to IDA *By-law* 29.27(b) and *Policy No. 2*.
- b) Between 2001 and 2005, the Respondent failed to establish and to maintain a system that would allow adequate supervision and monitoring of iForum's activities and ensure compliance with the securities regulations, contrary to IDA *By-law* 29.27(a) and *Policy No. 2*;
- c) From 2002 to 2005, the Respondent failed to use the required due diligence to ensure that the numerous deficiencies noted during examinations by the IDA Sales Compliance Department were corrected and that regulatory requirements were complied with, thereby engaging in business conduct contrary to IDA *By-law* 29.1.

## **THE FACTS**

¶ 7 The Settlement Agreement, which we have summarized below, details the facts admitted by the parties and the misconduct with which the Respondent is charged.

### **FAILURE TO SUPERVISE AND MAINTAIN ADEQUATE INTERNAL CONTROLS**

¶ 8 Over an extended period, namely from 2002 to 2005, the Respondent failed to respect the minimum standards for retail account supervision, with the result that numerous violations of the regulatory requirements could be committed by the representatives of iForum and the compliance staff under the Respondent's supervision and responsibility.

### **ILLEGAL PROMISSORY NOTES**

¶ 9 In November 2005, about 457 of iForum's clients held promissory notes from MRACS Management Ltd. ("**MRACS**") and Real Vest Investments Ltd. ("**Real Vest**"). These notes had a book value of approximately \$24 million, and approximately \$21 million off book in accounts with B2B Trust, a federally chartered trust company, where said securities were held.

¶ 10 A substantial number of these promissory notes were held off book with B2B Trust, in the client accounts of six registered representatives of iForum. Their investment did not fulfil the requirements of the law, in that:

- a) approximately 44 promissory notes from MRACS and Real Vest, evidencing less than \$50,000, purchased or renewed by iForum clients between April 2004 and October 2005 had no prospectus on file and no exemption from the Autorité des marchés financiers ("**the Autorité**"), contrary to sections 11 and 41(3) of the Quebec *Securities Act* ("**QSA**");
- b) approximately seven (7) promissory notes issued by MRACS and Real Vest, evidencing a sum of more than \$50,000 but less than \$150,000, and renewed by iForum clients between 2003 and 2005, had no prospectus on file and no exemption from the Autorité, contrary to 11 and 41(3) of the QSA.

¶ 11 The total book value of the promissory notes that failed to meet legal requirements was approximately \$2,000,000.

¶ 12 The fact that certain iForum clients, through representatives of the firm, found in their accounts promissory notes from MRACS and Real Vest that did not meet the legal prospectus and exemption requirements, is attributable to the Respondent's failure to exercise adequate supervision and controls, as his approval status required.

### **OFF-BOOK TRANSACTIONS**

¶ 13 In November 2005, 13 registered representatives of iForum were responsible for the accounts of more than 450 clients with B2B Trust, where such clients held in excess of 225 securities other than mutual fund securities, having an approximate book value of \$31,900,000, without such securities being recorded in iForum's books.

### **TRANSACTIONS NOT PERMITTED UNDER THE TERMS**

#### **OF THE APPROVAL GRANTED BY THE IDA TO**

#### **REGISTERED REPRESENTATIVES (MUTUAL FUNDS)**

¶ 14 Between March 2004 and October 2005, a registered representative in the employ of iForum Securities accepted orders for the purchase or renewal of promissory notes issued by Real Vest and MRACS, with a book value totalling several million dollars, whereas the approval as a registered representative (mutual funds) granted him by the IDA did not permit him to effect such transactions.

¶ 15 In November 2005, this representative – whose practice was limited to trading mutual fund securities – was responsible for the accounts of numerous clients whose securities were held in safekeeping with B2B Trust, including many that were not mutual fund securities, and which had an approximate book value of several million dollars, without the relevant information regarding such securities being recorded in iForum's books.

¶ 16 The Respondent failed, in many respects, to ensure adherence to the minimum standards for retail account supervision, as well as adequate supervision of the clients' accounts and the representatives' activities, such that this representative effected trades in securities other than mutual fund securities, and had under his responsibility client accounts whose securities in safekeeping with B2B Trust included securities other than mutual fund securities, whereas the approval granted to such representative by the IDA did not permit this.

¶ 17 According to IIROC, between May 2002 and December 2003, another representative of iForum effected trades in the accounts of eight (8) clients, involving shares in Lucky 1 Enterprises Inc. and LasVegasFromHome.Com Entertainment Inc., for an approximate book value of more than \$2 million dollars, whereas the approval as a registered representative (mutual funds) granted to such representative by the IDA did not permit this.

¶ 18 According to IIROC, between April and May 2003, this representative of iForum also effected trades in the accounts of four (4) clients, for an approximate book value of \$400,000, involving shares in MD Multimedia Inc., whereas the approval granted him by the IDA did not permit this.

¶ 19 According to IIROC, between August 2003 and November 2004, this representative effected, in the accounts of thirteen (13) clients, secondary market trades involving shares in MD Multimedia Inc., whereas the approval as a registered representative (mutual funds) granted him by the IDA did not permit this.

¶ 20 According to IIROC, in November 2005, while limited by his approval to trading mutual fund securities, this representative had under his responsibility the accounts of thirty-eight (38) clients with B2B Trust, where such clients held approximately twenty different securities other than mutual fund securities, with an approximate book value of \$2 million, without any information pertaining to such securities being recorded in the books of iForum Securities.

¶ 21 The Respondent failed, in many respects, to ensure adherence to the minimum standards for retail account supervision, as well as adequate supervision of iForum's client accounts which, according to IIROC, enabled such representative to effect trades in securities other than mutual fund securities, and have under his responsibility client accounts whose securities other than mutual fund securities were held in safekeeping with

B2B Trust, whereas the approval granted to such representative by the IDA did not permit this.

#### **DISTRIBUTION OF CONSOLIDATED PORTFOLIO STATEMENTS THAT DO NOT MEET STANDARDS**

¶ 22 In the matter of the distribution of documentation to clients by iForum representatives, the Respondent did not ensure adequate supervision.

¶ 23 Between March 2004 and October 2005, a registered representative in the employ of iForum prepared and sent to seventeen (17) of his clients, consolidated portfolio statements that did not meet IDA standards, whereas, according to the Respondent, this representative had neglected to request the Respondent's authorization before doing so.

¶ 24 Between October 2003 and September 2005, another registered representative in the employ of iForum prepared and sent to five (5) of his clients consolidated portfolio statements that did not meet IDA standards, whereas, according to the Respondent, this representative had neglected to request the Respondent's authorization before doing so.

¶ 25 The distribution of these statements by iForum representatives could not be detected or prevented because the iForum representatives were not subject to adequate supervision and control.

#### **FAILURE TO RESPECT THE "KNOW-YOUR-CLIENT" RULE**

¶ 26 In the matter of compliance with the 'Know-Your-Client' rule by the iForum representatives, the Respondent failed to ensure that adequate supervision was being exercised and that the firm's compliance department was enforcing this rule.

¶ 27 As a result, a registered representative in iForum's employ was able to recommend trades that were unsuitable given the clients' investment objectives and risk tolerance.

¶ 28 This rule was able to be violated to the clients' detriment because the iForum representatives were not subject to adequate supervision and control.

#### **FAILURE TO DISCLOSE A POTENTIAL CONFLICT OF INTEREST**

¶ 29 On or about February 1, 2003, the Respondent signed an agreement with Mount Real Services on behalf of iForum. The parties agreed at this time that iForum would promote the promissory notes issued by Mount Real Corporation ("MRC") and its subsidiaries (e.g. MRACS and Real Vest) to its clients.

¶ 30 The president of MRC was Joseph Pettinicchio, who was also president of iForum Financial Network Inc., the majority shareholder of iForum Securities, a firm that was itself chaired by the Respondent since October 2002.

¶ 31 What's more, MRACS had an indirect interest in iForum, as a shareholder of 3251497 Canada inc., a shareholder of iForum Financial Network Inc.

¶ 32 The Respondent failed to introduce adequate measures to ensure that all iForum clients interested in investing in the promissory notes of MRACS and Real Vest were informed in writing, before making such an investment, of the existence of a potential conflict of interests, in that both MRC and the majority shareholder of iForum, namely iForum Financial Network Inc., were chaired by the same person.

¶ 33 Many iForum clients who purchased promissory notes from MRACS and Real Vest through iForum representatives have, moreover, confirmed under oath that they were not informed of the existence of such potentially conflicting interests.

### **FAILURE TO USE DUE DILIGENCE WITH RESPECT TO EXAMINATIONS**

¶ 34 In 2002 and 2003, the IDA's Sales Compliance Staff conducted examinations at iForum. These examinations resulted in reports and follow-up letters being transmitted to the Respondent, in his capacity as president and officer responsible for iForum.

¶ 35 These documents identified numerous deficiencies in the application of the securities regulations, which iForum was required to correct. The following deficiencies were among those flagged as priorities in this regard:

- " c. inadequate retail account supervision;
- d. inadequate supervision of off-book mutual fund transactions; and
- e. trades effected by representatives without the required registration and approval."

¶ 36 Yet, in 2005, the identified deficiencies had still not been corrected.

¶ 37 The Respondent therefore failed or neglected to take the necessary action to ensure that the deficiencies observed during the examinations by IDA Sales Compliance Staff were promptly corrected to ensure iForum's compliance with the regulatory requirements.

### **FAILURE TO ESTABLISH AN ADEQUATE SUPERVISORY ENVIRONMENT**

¶ 38 The Respondent failed to establish and to maintain a system that would allow adequate supervision of the activities at iForum and ensure compliance with securities regulations.

¶ 39 Aside from the points raised above, the Respondent transgressed the applicable rules of compliance and supervision in that, notably:

- a) he allowed the transfer *en bloc* of the client accounts of a registered representative from iForum Financial Services Inc. without any verification being made of these accounts by the iForum compliance officers;
- b) there was no verification (audit) of the eight (8) sub-branches of iForum in 2005;
- c) no report on the compliance of iForum was submitted to its Board of Directors in either 2004 or 2005.

### **OTHER PROCEEDINGS AGAINST THE RESPONDENT**

¶ 40 On the hearing date of July 14, 2009, disciplinary proceedings commenced against the Respondent by the syndic of the Chambre de la sécurité financière, by virtue of an *Act respecting the distribution of financial products and services* (Québec), were pending before that organization's disciplinary committee relative to the events invoked in the Settlement Agreement.

¶ 41 The Respondent was also facing criminal proceedings instituted by the Autorité before the Court of Québec relative to his activities at iForum.

¶ 42 Had all of the charges pending against him in these actions been upheld, the Respondent could have been imposed some substantial fines.

### **THE PROCEEDINGS**

¶ 43 On July 14, 2009, the parties appeared before our Hearing Panel in order to present the Settlement Agreement concluded between them, along with a joint settlement recommendation.

¶ 44 In this regard, IIROC Member Rule 20.36 limits the powers of the Hearing Panel over a Settlement Agreement. Indeed, its authority is limited to either accepting the Settlement Agreement or rejecting it, the Hearing Panel may not substitute a penalty that it deems more appropriate. Moreover, upon acceptance by the Hearing Panel, the Settlement Agreement becomes binding upon the parties.

¶ 45 Based on the facts summarized above, the Settlement Agreement concludes that the following penalties should be imposed on the Respondent:

- a) a permanent prohibition against approval by IIROC in any capacity whatsoever with a Dealer Member of IIROC.
- b) payment to IIROC of a portion of the investigation and prosecution costs in the matter, in the order of \$50,000.00, payable within 12 months from the date of approval of the Settlement Agreement, as applicable;

¶ 46 The legal counsel for IIROC, drawing inspiration from her organization's *Dealer Member Disciplinary Sanction Guidelines* (March 2009 version), reviewed the principal aggravating factors and the mitigating circumstances, which the parties to the Settlement Agreement took into account when agreeing on the penalties that have been recommended for our consideration.

¶ 47 Among the aggravating factors, the parties emphasized the following:

- a) the extent and seriousness of the Respondent's misconduct in the matter of the supervision and internal control of iForum's activities;
- b) the extent and the size of the economic loss to the clients or the dealer member;
- c) the vulnerability of the victims;
- d) the systemic breaches and violations in the supervision structures;
- e) the multiple incidents of misconduct over an extended period of time;
- f) the Respondent's failure to cooperate with the investigation.

¶ 48 The following circumstances, moreover, were considered mitigating in the determination of the proposed penalty:

- a) the Respondent had no disciplinary record;
- b) the lack of any intent to defraud on the part of the Respondent;
- c) there is no evidence that the Respondent benefited directly or profited from the laxness of his supervision.

## **DECISION**

¶ 49 In our opinion, the penalties contained in the Settlement Agreement and recommended by the parties for our approval are reasonable.

¶ 50 The permanent ban from the investment industry, the most rigorous penalty possible from a disciplinary standpoint, is first and foremost justified by the fact that the Respondent was grossly negligent in the fulfilment of his obligations as the officer responsible for iForum, which contributed to maintaining the firm's supervision and internal control structures in a systematic state of failure for a period lasting years.

¶ 51 The consequences of this situation are well known:

- a) both iForum and persons connected with this firm or operating on its behalf managed to boldly and unconcernedly evade the client information and protection mechanisms provided by the securities regulations;
- b) several dozen iForum clients, unbeknownst to them, found themselves in a highly vulnerable position; and
- c) they incurred significant financial losses.

¶ 52 We are therefore satisfied that the Respondent will no longer be able to operate in the Canadian securities industry, as he will be subject to a permanent ban on approval in any capacity whatsoever with a dealer member of IIROC.

¶ 53 It also seems appropriate to us — and fair to the members of the Organization who, through their membership fees, indirectly bear the costs of enforcing the rules of the IDA and IIROC — that the Respondent should at least be ordered to pay, in circumstances where recovery of the agreed sum might accordingly be facilitated, a portion of the costs incurred by IIROC in the investigation and prosecution of this matter.

¶ 54 Moreover, the Hearing Panel is quite willing to acknowledge that the Respondent's misconduct was without intent to defraud, or that IIROC has no evidence that would lead one to believe that the Respondent benefited directly from his lack of supervision. However, and we agree with the parties on this point, we do not believe these to be factors that would allow one to conclude that the penalty proposed in the Settlement Agreement is too strict.

¶ 55 As for the fact that the Respondent is facing disciplinary and criminal proceedings that have been instituted against him in addition to those settled by the Settlement Agreement, and which could potentially lead to the imposition of additional fines or penalties, we do not believe this to be a point worthy of consideration here.

¶ 56 Indeed, whether the Respondent might be sentenced and punished in other forums for matters relating to those brought before us on July 14, 2009 was pure speculation, and it was not up to us to consider this possibility in our assessment of the terms of the Settlement Agreement. Furthermore, we are of the opinion that even if such convictions had been pronounced at the time, their relevance for our purposes would have remained to be shown.

¶ 57 Which is why, at the July 14, 2009 hearing, after hearing the parties' representations and deliberating, the Hearing Panel announced, from the bench, its decision to approve the Settlement Agreement.

¶ 58 **NOW THEREFORE, THE HEARING PANEL:**

**CONFIRMS** its acceptance of the Settlement Agreement appended hereto and the effective date of said Agreement on July 14, 2009, pursuant to its terms.

**IMPOSES** the following penalties on the Respondent, effective this date for all legal purposes:

- a) a permanent prohibition against approval by IIROC in any capacity whatsoever with a Dealer Member of IIROC.
- b) payment to IIROC of \$50,000.00 in costs, payable within a period of twelve (12) months from the effective date of this decision.

Montréal, this 27th day of October 2009.

Guy L. Jolicoeur, Panel Member

Yves Julien, Panel Member

Me Jean Martel, Chair

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## **SETTLEMENT AGREEMENT**

### **I. INTRODUCTION**

- i. The Enforcement Department Staff (Staff) of the Investment Dealers Association of Canada (the IDA) have conducted an investigation (the Investigation) into the conduct of Mr. Yves Méchaka (the Respondent).
- ii. On June 1, 2008, the Investment Industry Regulatory Organization of Canada (IIROC) consolidated the regulatory and enforcement functions of the IDA and Market Regulation Services Inc. (RS). Pursuant to the *Administrative and Regulatory Services Agreement* between the IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for the IDA to carry out its regulatory functions.
- iii. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to Part C of Schedule C.1 to Transition Rule 1 of IIROC (the Hearing Panel).

### **II. JOINT SETTLEMENT RECOMMENDATION**

- iv. The Respondent consents to be subject to the jurisdiction of IIROC.
- v. 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.
- vi. The Settlement Agreement is subject to acceptance by the Hearing Panel.
- vii. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
- viii. The Settlement Agreement will be presented for approval to the Hearing Panel at a hearing (the Settlement Hearing). Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.
- ix. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his right under IIROC Rules and any applicable legislation to a disciplinary hearing, review or appeal.
- x. 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.
- xi. The Settlement Agreement will be made available to the public upon its acceptance by the Hearing Panel.
- xii. 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.
- xiii. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

### **III. STATEMENT OF FACTS**

- xiv. 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 on those specific facts and are final.

## **INTRODUCTION**

### **The Respondent**

- xv. The Respondent was registered in the securities industry in the employ of an IDA Member firm from March 2001 to February 2007. From 1988 to 2001, the Respondent was registered as a group savings plan representative in the employ of corporations that were not Members firms of the IDA:

From September 28, 1988 to June 10, 1991	group savings plan representative	Gestion Placement Banque Montréal Ltée
From May 14, 1992 to June 22, 1993	group savings representative branch manager	Fonds Placement Trust Général Ltée
From August 31, 1993 to March 29, 1994	group savings plan representative	Services d'investissement Trustco Desjardins Inc.
From May 11, 1994 to December 15, 1994	group savings plan representative	Total Return Management Inc.
From December 15, 1994 to September 5, 1995	group savings plan representative branch manager	Total Return Management Inc.
From September 6, 1995 to September 13, 1995	group savings plan representative branch manager director vice-president officer responsible for Québec	Norshield Fund Management Ltd.
From September 13, 1995 to October 1, 1999	group savings representative branch manager director vice-president officer responsible for Québec general manager	Norshield Fund Management Ltd.
From March 1, 2001 to April 25, 2001	group savings plan representative branch manager director president chairman of the Board secretary officer responsible for Québec	Norshield Securities Inc.
From April 25, 2001 to June 8, 2001	group savings plan representative branch manager director president chairman of the Board secretary officer responsible for Québec	iForum Securities Inc. (name change)

From June 8, 2001 to June 8, 2005	unrestricted representative branch manager director president chairman of the Board secretary officer responsible for Québec	iForum Securities Inc.
From June 8, 2005 to December 20, 2005	unrestricted representative branch manager director president chairman of the Board secretary officer responsible for Québec chief compliance officer ultimate designated person	iForum Securities Inc.
From December 20, 2005 to February 2, 2007	unrestricted representative	Industrial Alliance Securities Inc.

- xvi. The Respondent has not been registered in the employ of an IDA Member firm in the securities industry since February 2007.

**iForum Securities Inc.**

17. iForum Securities Inc. (iForum Securities) was a full service dealer with its principal place of business in Montreal, Quebec which had been a Member firm of the IDA since March 1, 2001. Prior to March 26, 2001, iForum Securities was known as Norshield Securities Inc.
18. Previously a Type 3 introducing broker, iForum Securities had been a Type 2 introducing broker since June 2005. Its carrying broker was Penson Financial Services Canada Inc. (Penson).
19. In July 2001, iForum had also signed a service agreement with B2B Trust, a trust company with a federal charter.
20. On or about October 28, 2002, iForum Financial Network Inc. acquired 72% of the shares in iForum Securities.
21. The remaining shares were held by two directors of iForum Securities, being the Respondent (25%) and Enrico Bruni.
22. The Respondent was also chairman of the Board, president and secretary of iForum Securities.

**iForum Financial Network Inc.**

23. iForum Financial Network Inc. was a company listed on the TSX Venture Exchange.
24. Joseph Pettinicchio was the president and secretary-treasurer of iForum Financial Network Inc. and also held in excess of 10% of the shares in that company.
25. 3251497 Canada Inc. was also a principal shareholder of iForum Financial Network Inc.
26. The shareholders of 3251497 Canada Inc. were:

- (a) Joseph Pettinicchio, also president of 3251497 Canada Inc.;
  - (b) RFC Consultants Inc., whose president and principal shareholder was Lino Matteo;
  - (c) MRACS Management Ltd. (MRACS); and
  - (d) Michael Maloney.
27. Apart from iForum Securities, iForum Financial Services Inc. (iForum FS) was also one of the subsidiaries of iForum Financial Network Inc., whose president was Joseph Pettinicchio. iForum FS was a company registered as a group savings plan dealer (investment funds), investment contracts dealer and scholarship plan dealer with the *Autorité des marchés financiers*.

### **Mount Real Corporation**

28. Mount Real Corporation (MRC) was incorporated in 1987 under the Alberta *Companies Act* and continued under the *Canada Business Corporations Act* on July 10, 1998.
29. The common shares of MRC were listed on the Toronto Stock Exchange (TSX), where they traded under the symbol “MRF”.
30. The president of MRC was Joseph Pettinicchio.
31. Lino Matteo was the president of the executive committee and CEO of MRC.
32. MRC carried on business through numerous affiliated private companies.
33. Most of the corporations affiliated with MRC were, despite listings to the contrary in official registers, all managed and controlled by the same person, being Lino Matteo.
34. Until September 30, 2002, MRC was the principal shareholder of MRACS, previously known as Mount Real Acceptance Corporation.
35. MRC also held a 29% interest in Real Vest Investments Ltd. (Real Vest), which it sold in 2004.
36. As for Real Vest, it was the majority shareholder in Real Assurance Acceptation Corporation (RAAC).

### **2500 Allard Street, Montreal, Quebec**

37. The majority shareholder of iForum Securities and iForum FS, being iForum Financial Network Inc., along with iForum FS, MRC, MRACS and RAAC, as well as Joseph Pettinicchio, the president of iForum Financial Network Inc. and MRC, all shared a place of business at 2500 Allard Street, in Montreal, Quebec.

### **Promissory Notes**

38. On or about February 1, 2003, the Respondent signed an agreement with Mount Real Services on behalf of iForum Securities, pursuant to which the parties agreed that iForum Securities would be a brokerage firm promoting among its clients promissory notes issued by MRC and its subsidiaries.
39. Through certain representatives of iForum Securities and iForum FS, including the Respondent, promissory notes were issued and/or sold by MRACS, Real Vest and RAAC (the Issuers).

40. Certain promissory notes issued in the name of their clients were registered with two trustees, being B2B Trust and Penson.
41. No audited financial statements on which the representatives might have relied had been prepared for any of the Issuers.
42. “Confidential information forms” regarding the Issuers and prepared by MRACS had been distributed to the investors. They indicated - erroneously - that the promissory notes were being offered under the prospectus exemption provisions of the *Securities Act*, R.S.Q., c. V-1.1 (the QSA).
43. The promissory note holders believed or could have believed that their investments in the Issuers were guaranteed by MRC.
44. Indeed, the confidential information forms stated that “*Mount Real Corporation, the Corporation’s parent company, will provide adequate resources to support the Corporation’s operations*” (emphasis added).
45. However, contrary to the information in the confidential information forms, none of the Issuers were any longer subsidiaries of MRC.
46. Finally, the holders of the Issuers’ promissory notes received correspondence on letterhead bearing the MRC logo, which may have added to the confusion.

### **Investigations and Proceedings**

47. On January 19, 2005, the newspaper *La Presse* reported on MRC’s liquidity problems.
48. On February 21, 2005, the AMF launched an investigation into the investment activities of MRACS, MRC and corporations with business connections to these companies.
49. On June 18, 2005, a new article in *La Presse* reported on MRC’s illegal financing practices.
50. As a result of this report, the price of MRC’s securities tumbled by more than 40% on June 20, 2005 and trading was suspended.
51. On June 22, 2005, the AMF announced that it was conducting an investigation into MRC’s financial operations.
52. On or about October 3, 2005, IDA Sales Compliance Staff apprised the Investigations Staff of the IDA Enforcement Department of irregularities that had been observed during an examination of iForum Securities.
53. On or about October 7, 2005, the Investigations Staff informed iForum Securities that an investigation was being launched into the latter’s compliance.
54. On or about November 2, 2005, Penson decided to rate as “not available” on client statements of account all the Issuers’ promissory notes which Penson held as the carrying broker. Penson took this measure because numerous promissory notes had matured and had not been repaid.
55. On or about November 7, 2005, owing to the irregularities noted during an examination of iForum Securities by IDA Sales Compliance Staff and based on an analysis of the information provided by iForum Securities’ carrying broker, IDA Director Member Regulation advised iForum Securities that it was designated as being in Early Warning Level 2, informed the company of the restrictions that applied as a result thereof pursuant to the provisions of By-law 30, and ordered that additional restrictions be

imposed, in accordance with By-law 20.28.

56. On or about November 9, 2005, the *Bureau de décision et de révision en valeurs mobilières* (the Bureau) issued an order prohibiting MRC, MRACS, Real Vest, RAAC, iForum Securities and iForum FS from disposing of any funds, securities or other assets in their possession.
57. This order also prohibited MRC, MRACS, Real Vest and RAAC from trading in securities, and iForum Securities and iForum FS from carrying out any activity for the purpose of trading in the securities of MRC, MRACS, Real Vest and RAAC.
58. On or about November 10, 2005, at the request of the AMF and as a result of a recommendation by the Bureau, the Quebec Minister of Finance appointed a provisional administrator of the Respondent, to administer iForum Securities' assets or iForum Securities itself in lieu of the Board of Directors.
59. The total value of the issued promissory notes was estimated at \$62 million at the time, including \$45 million at iForum Securities.
60. On or about November 24, 2005, the IDA informed the Respondent that an investigation was being launched into his activities at iForum Securities.
61. iForum Securities' membership in the IDA was suspended on December 1, 2005.
62. On December 9, 2005, Raymond Chabot Inc., the interim receiver appointed by the Superior Court, sold iForum Securities' client accounts to Industrial Alliance Securities Inc.
63. On December 11, 2005, iForum Securities made an assignment of its property.
64. On January 24, 2006, the Minister of Finance appointed a provisional administrator to administer the assets of MRACS, Real Vest and RAAC.
65. In his report of February 23, 2006, the provisional administrator estimated that the promissory notes issued by the Issuers totalled between \$125 million and \$135 million approximately.
66. On March 8, 2006, MRC, MRACS, RAAC and Real Vest filed a declaration of bankruptcy.
67. On May 5, 2006, a hearing panel expelled iForum Securities from the IDA.
68. On March 28, 2007, the Bureau withdrew the rights granted to iForum Securities by its approval as a securities dealer.
69. On November 7, 2007, the trustee of MRC and the Issuers indicated in his progress report that he continued "*to be of the opinion that if there is any dividend for the creditors, it will be marginal, considering the few realizable assets, the recovery costs, and the legal costs related to proceedings commenced or defended by persons or corporations under the influence of the former executives of Mount Real Corporation*" [TRANSLATION].
70. The promissory note holders, including the Respondent, lost their entire investment.

#### **FAILURE TO SUPERVISE AND MAINTAIN ADEQUATE INTERNAL CONTROLS**

71. Over a period of several years, the Respondent failed to adhere to the minimum standards for retail account supervision, with the result that numerous violations of the regulatory requirements could be committed by the representatives in the employ of iForum Securities and the compliance staff under its

supervision and responsibility, without such violations being prevented, detected or sanctioned, as described hereinafter:

### **Illegal Promissory Notes**

72. Clients of seven (7) registered representatives employed at iForum Securities acquired promissory notes issued by MRACS and Real Vest.
73. In November 2005, about 457 clients of iForum Securities held promissory notes of MRACS and Real Vest, with a book value of approximately \$24 million in accounts with Penson, and approximately \$21 million off book in accounts with B2B Trust.
74. In addition to being held off book with B2B Trust in client accounts of six registered representatives of iForum Securities, a substantial number of these promissory notes did not fulfil the legal requirements in that:
  - (a) approximately 44 of the promissory notes issued by MRACS and Real Vest in an amount equal to less than \$50,000, which were purchased or renewed by clients of iForum Securities between April 2004 and October 2005, had not been issued under a prospectus or an exemption, contrary to ss. 11 and 41(3) of the *QSA*; and
  - (b) approximately seven promissory notes issued by MRACS and Real Vest in an amount in excess of \$50,000 but less than \$150,000, which were renewed by clients of iForum Securities between 2003 and 2005, had not been issued under a prospectus or an exemption, contrary to ss. 11 and 41(3) of the *QSA*.
75. The total book value of the promissory notes which failed to meet legal requirements was equal to approximately \$2 million.
76. As a result of the lack of adequate controls, some clients invested through representatives of iForum Securities in promissory notes issued by MRACS and Real Vest which did not meet legal prospectus and exemption requirements, contrary to ss. 11 and 41(3) of the *QSA*.

### **Off-Book Transactions**

77. In November 2005, 13 registered representatives of iForum Securities were responsible for the accounts of more than 450 clients with B2B Trust, a trust company with a federal charter, where such clients held in excess of 225 different securities other than mutual fund securities, having an approximate book value of \$31,900,000, without such securities being recorded in the books of iForum Securities.

### **Transactions not Permitted under the Terms of the Approval Granted by the IDA to Registered Representatives (Mutual Funds)**

78. Between March 2004 and October 2005, a registered representative in the employ of iForum Securities accepted orders for the purchase or renewal of promissory notes of Real Vest and MRACS, with a book value which totalled millions of dollars, although the IDA approval granted to such representative as a registered representative (mutual funds) did not permit him to effect such transactions.
79. In November 2005, such representative, while limited to trading mutual fund securities, was responsible for the accounts of numerous clients with B2B Trust, where such clients held many different securities other than mutual fund securities, with an approximate book value of several million dollars, without such securities being recorded in the books of iForum Securities.

80. The Respondent failed in many respects to ensure that minimum standards for retail account supervision were adhered to and that client accounts and representative activities were adequately supervised, as a result of which such representative effected trades in securities other than mutual fund securities or was responsible for client accounts with B2B Trust, where such clients held securities other than mutual fund securities, contrary to the IDA approval granted to such representative.
81. Between May 2002 and December 2003, another registered representative in the employ of iForum Securities effected trades in the accounts of eight clients, according to the IDA, for an approximate book value in excess of \$2 million dollars involving shares in Lucky 1 Enterprises Inc. and LasVegasFromHome.Com Entertainment Inc., although the IDA approval granted to him as a registered representative (mutual funds) did not permit him to effect such trades.
82. Between April and May 2003, according to the IDA, he also effected trades in the accounts of four clients, for an approximate value of \$400,000 involving shares in MD Multimedia Inc., although the IDA approval granted to him as a registered representative (mutual funds) did not permit him to effect such trades.
83. Between August 2003 and November 2004, according to the IDA, such representative effected secondary market trades involving shares in MD Multimedia Inc. in the accounts of thirteen clients, although the IDA approval granted to him as a registered representative (mutual funds) did not permit him to effect such trades.
84. In November 2005, according to the IDA, while he was limited to trading in mutual fund securities, he was responsible for the accounts of 38 clients with B2B Trust, where such clients held approximately 20 different securities other than mutual fund securities, with an approximate book value of \$2 million, without such securities being recorded in the books of iForum Securities.
85. The Respondent failed in many respects to ensure that minimum standards for retail account supervision were adhered to and that client accounts were adequately supervised, with the result that this representative, according to the IDA, also effected trades in securities other than mutual fund securities and was responsible for the accounts of clients with B2B Trust, where such clients held securities other than mutual fund securities, although the IDA approval granted to him did not permit him to effect such trades.

#### **Distribution of Consolidated Portfolio Statements That Do Not Meet IDA Standards**

86. The Respondent did not ensure that the distribution of documentation to clients by representatives of iForum Securities was adequately supervised.
87. Between March 2004 and October 2005, a registered representative in the employ of iForum Securities prepared and sent to seventeen of his clients consolidated portfolio statements that did not meet IDA standards, without obtaining the Respondent's prior authorization, according to the Respondent.
88. Between October 2003 and September 2005, another registered representative in the employ of iForum Securities prepared and sent to five of his clients consolidated portfolio statements that did not meet IDA standards, without obtaining the Respondent's prior authorization, according to the Respondent.
89. Representatives of iForum Securities were able to distribute such consolidated portfolio statements without being prevented or detected by adequate supervision and controls.

#### **Failure to Comply with the 'Know-Your-Client' Rule**

90. The Respondent failed to ensure compliance with the 'Know-Your-Client' rule by representatives in the employ of iForum Securities and to ensure that the compliance department saw to it that such rule was complied with.
91. Another registered representative in the employ of iForum Securities recommended trades to clients which were not suitable for them, given their investment objectives and risk tolerance.
92. This fundamental rule could be violated to the detriment of clients, without this violation being prevented or detected by adequate supervision and control.

#### **Failure to Disclose a Potential Conflict Of Interest**

93. On or about February 1, 2003, the Respondent entered into an agreement with Mount Real Services on behalf of iForum Securities, under which the parties agreed that iForum Securities would promote promissory notes issued by MRC and its subsidiaries (e.g. MRACS and Real Vest) to its clients.
94. However, the president of MRC was Joseph Pettinicchio who was also president of iForum Financial Network Inc., the majority shareholder of iForum Securities since October 2002. It should be noted that the Respondent was president of iForum Securities.
95. Furthermore, MRACS had an indirect interest in iForum Securities, in that MRACS was a shareholder of 3251497 Canada Inc., which was a shareholder of iForum Financial Network Inc.
96. The Respondent failed to put in place adequate measures to ensure that all clients of iForum Securities who were interested in investing in promissory notes of MRACS and Real Vest would, before making such an investment, receive a letter informing them of the existence of a potential conflict of interest in that both MRC and the majority shareholder of iForum Securities, iForum Financial Network Inc., had the same president.
97. Indeed, many clients of iForum Securities who invested money in the promissory notes of MRACS and Real Vest through representatives of iForum Securities have sworn that they were unaware of the existence of such potential conflict of interest.

#### **Failure to Use Due Diligence with Respect to Examinations**

98. In 2002 and 2003, IDA Sales Compliance Staff conducted examinations of iForum Securities, which were described in reports and follow-up letters sent to the Respondent in his capacity as president of and officer responsible for iForum Securities.
99. The reports and follow-up letters raised numerous deficiencies which iForum Securities was required to correct, including some which had been flagged as priorities:
  - (a) inadequate retail account supervision.
  - (b) inadequate supervision of off-book mutual fund transactions; and
  - (c) trades effected by representatives without the required registration and approval.
100. And yet in 2005 the identified deficiencies had still not been corrected.
101. Thus, the Respondent failed or neglected to take the necessary action to ensure that the deficiencies observed during the examinations by IDA Sales Compliance Staff were promptly corrected and to comply with regulatory requirements.

## **Failure to Establish an Adequate Supervisory Environment**

102. The Respondent failed to establish and maintain an environment for the adequate supervision of business activities at iForum Securities and to ensure compliance with securities legislation.
103. Aside from the points raised above, the Respondent transgressed the rules governing compliance and supervision *inter alia* in that:
- (a) he allowed the block transfer of the client accounts of a registered representative from iForum FS without any verification of these accounts by the iForum Securities compliance officers;
  - (b) the auditing of the eight sub-branches of iForum Securities in 2005 was inadequate; and
  - (c) no report on the compliance of iForum Securities was submitted to its Board of Directors in either 2004 or 2005.

## **IV. CONTRAVENTIONS**

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

### ***Count No. 1***

From 2002 to 2005, the Respondent failed in many respects to ensure that minimum standards for retail account supervision were adhered to and to ensure that the client accounts and activities of the representatives at iForum Securities Inc. were adequately supervised, contrary to IDA By-law 29.27(b) and Policy No. 2.

### ***Count No. 2***

From 2001 to 2005, the Respondent failed to establish and maintain an environment for the adequate supervision and control of the activities at iForum Securities Inc. and to ensure compliance with securities regulations, contrary to IDA By-law 29.27(a) and Policy No. 2; and

### ***Count No. 3***

From 2002 to 2005, the Respondent failed to use the required due diligence to ensure that the numerous deficiencies noted during examinations by the IDA Sales Compliance Department were corrected and that regulatory requirements were complied with, thereby engaging in business conduct contrary to IDA By-law 29.1.

## **V. CONDITION OF SETTLEMENT**

105. As regards Counts 1 to 3 inclusive described in s. 104 above, the Respondent accepts the imposition of the following penalty and agrees to abide thereby:
- a permanent prohibition against approval by IIROC in any capacity whatsoever with a Dealer Member of IIROC.
106. The Respondent shall pay a portion of Staff's Investigation and prosecution costs in the amount of \$50,000.00.
107. All costs imposed against the Respondent are payable within a period of twelve months from the effective date of this Settlement Agreement.

108. Unless otherwise indicated, all suspensions, prohibitions, expulsions or other terms and conditions of this Settlement Agreement shall commence upon the effective date of this Settlement Agreement.

AGREED TO by the Respondent at \_\_\_\_\_  
(city) (province/region) (country)  
on this \_\_\_\_ day of May 2009.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
RESPONDENT

AGREED TO by Staff in Montreal, Province of Quebec, on this \_\_\_\_ day of May 2009.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Sylvie Poirier  
Enforcement Counsel on behalf of the Staff of the Investment Industry  
Regulatory Organization of Canada

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