Re Paziuk

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

TIMOTHY ROY PAZIUK

2009 IIROC 47

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

Heard: October 28, 2009
Decision: October 28, 2009
(19 paras.)

Hearing Panel:
Leon Getz, Q.C., Jim Harkness and Bob Sutherland
Appearances:
Barbara Lohmann, for the Investment Industry Regulatory Organization of Canada
Timothy Roy Paziuk, in person

DECISION

Introduction

¶ 1 We were constituted as a panel to consider, pursuant to Rule 20.36 of the Investment Industry Regulatory Organization of Canada ("IIROC"), whether to accept a settlement agreement that has been negotiated between the IIROC's Enforcement Department and Mr. Paziuk. At the conclusion of the hearing held for this purpose in Vancouver, B.C. on October 28, 2009, and after considering the submissions of counsel for IIROC and of Mr. Paziuk and the terms of the settlement agreement (the "Settlement Agreement"), we accepted the Settlement Agreement.

¶ 2 These are our reasons for accepting the Settlement Agreement. We feel bound to say, however, that we have done so, for reasons that we will explain, with some hesitation.

The Settlement Agreement

¶ 3 The Settlement Agreement is annexed to this Decision. It contains:

(a) a summary of the facts that gave rise to the negotiations that resulted in the Settlement

Agreement;

(b) an acknowledgement by Mr. Paziuk that:

(i) between July 2006 and January 2008, inclusive, he facilitated and participated in the purchase and sale of securities on behalf of clients and received remuneration from clients, which were conducted and received off the books and records and without the knowledge of his employer, yourCFO, a Member firm, thereby engaging in conduct unbecoming or detrimental to the public interest, contrary to Dealer Member Rule 29.1 and/or Dealer Member Rule 18.15;

(ii) between July 2006 and January 2007, inclusive, contrary to section 34 of the *British Columbia Securities Act,* he advised and assisted clients with respect to the purchase and sale of shares when his registration was restricted to the sale of mutual funds, thereby engaging in conduct unbecoming and detrimental to the public interest, contrary to Dealer Member Rule 29.1; and

(iii) he provided a misleading document to his employer, yourCFO, during the course of an investigation conducted in respect of off-book accounts, contrary to Dealer Member Rule 29.1

(c) Mr. Paziuk's agreement:

i. to pay a fine of $20,000;

ii. not to seek re-approval in any capacity for a period of one month;

iii. to successfully complete the Conduct and Practices Handbook examination as a condition of any re-approval;

iv. to be subject to strict supervision for one year as a condition of any re-approval; and

v. to pay $5,000 as a contribution to the costs of IIROC staff in connection with this matter.

¶ 4 Among other things Dealer Member Rule 29.1 requires each employee of a Dealer Member to observe high standards of ethics and conduct in the transaction of their business and to refrain from any business conduct or practice which is unbecoming or detrimental to the public interest.

¶ 5 The principles that govern us, and that we applied in deciding that we should accept the Settlement Agreement, are well established and are succinctly stated in the following passage from the decision in *Re Milewski*:[1]

> 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.

Analysis

¶ 6 We have been influenced by several considerations.

A. THE IIROC DEALER MEMBER DISCIPLINARY SANCTIONS GUIDELINES

General principles – key considerations

¶ 7 The IIROC Dealer Member Disciplinary Sanctions Guidelines (the "Guidelines") identify a number of "key considerations" to be taken into account in determining appropriate disciplinary sanctions. Not all of them are relevant in the present circumstances and those that are must, of course, be considered in the light of the principles set out in *Re Milewski.*

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[1] [1999] I.D.A.C. No. 17, August 5, 1999 at page 11. See also *Re Clark*, [1999] I.D.A.C.D. No. 40, Bulletin No. 2674, December 14, 1999.

¶ 8 The "key considerations" that seem relevant are these:

(a) There is no evidence that any of Mr. Paziuk's client's complained about any of the matters referred to in the Statement of Facts set out in the Settlement Agreement or that any of Mr. Paziuk's clients suffered any harm. On the contrary, paragraphs 21 and 22 of the Settlement Agreement suggest that Mr. Paziuk acted, albeit improperly, with a view to his clients' best interests. See also paragraph 56. There is no evidence that he acted with any corrupt motive by, for example, churning the accounts. Indeed, the financial benefit to Mr. Paziuk from his improper activities seems to have been relatively trivial and in any event, to the extent that his employer was harmed, he has made the employer whole – see paragraphs 43 and 47 to 49 of the Settlement Agreement.

(b) Mr. Paziuk has no prior disciplinary history – see paragraph 17 of the Settlement Agreement.

(c) The Settlement Agreement itself contains, of course, an acknowledgment by Mr. Paziuk of his transgressions and in his oral submission to us he repeated that acknowledgment, indicated that he had never sought to deny any of the matters that gave rise to IIROC's investigation and that he accepted responsibility for what he had done. He said that he had not been motivated by any considerations of personal profit or advantage but had been solely concerned with the best interests of his clients. While in general terms we accept this it does seem a reasonable inference from the very fact that he engaged in off-book transactions and from the facts set out in paragraphs 22 and 25 of the Settlement Agreement, that considerations of personal advantage were not entirely absent from his mind.

(d) Although in his oral submissions to us Mr. Paziuk said that he did not wish to diminish the importance or gravity of his contraventions, he also suggested that in the grand scheme of things they were roughly equivalent to a traffic violation for exceeding the speed limit. We do not agree with this characterization. Mr. Paziuk provided advice to clients about and executed trades including, apparently, discretionary trades – in shares for them while he was not licensed to do so and in the full knowledge that this activity was a breach of a central requirement of the *Securities Act* – see paragraphs 27, 28, 29 and 45 of the Settlement Agreement. His breach was thus deliberate and not merely inadvertent. Moreover, it continued even after he had been dismissed by his employer for precisely these breaches, among other things – see generally paragraphs 38 to 54 of the Settlement Agreement. These are among the considerations that have caused us to hesitate in deciding whether to accept the settlement.

(e) Mr. Paziuk does not dispute that in response to a request from his employer he provided inaccurate and incomplete information about the extent of his off-book activities and in so doing he misled his employer. There does not seem to be much doubt or lack of clarity about what information he was asked to provide. The missing information came to light only after he was asked about it by the staff of IIROC in the course of its investigation; when asked, he was unable to explain his earlier failure to disclose it. See paragraphs 57 to 63 of the Settlement Agreement. This failure, in the absence of any explanation, is also a consideration that has given us some pause.

Specific sanctions guidelines

¶ 9 We have also taken account of certain specific considerations and sanctioning recommendations identified in the Guidelines as relevant to particular forms of proscribed conduct.

(i) Breaches of securities laws

¶ 10 In relation to breaches of the securities laws the Guidelines note several elements that a Panel should consider and identifies several forms of sanction that might be appropriate in a given case. These are set out as follows:

Considerations in Addition to General Principles:

1. Seriousness of legislative breach.

2. Client(s) knowledge/consent.
3. Loss to client(s).
4. Respondent's intent.
5. Whether the Respondent was unjustly enriched and obtained/attempted to obtain a financial benefit.
6. Whether the Respondent concealed/attempted to conceal their conduct from the Dealer Member firm or the Corporation.

Recommended Sanctions:

- Fine: Minimum of $10,000 for Approved Person, minimum of $25,000 for Dealer Member firm.
- Consider suspension for 3 months to 10 years, or possible ban if conduct is egregious.
- Re-write CPH.
- Fine should include the amount of any financial benefit to the Respondent.

(ii) *Outside business activities*

¶ 11 Section 3.10 of the Guidelines deals with this subject. It is as follows:

> Standard C of the Standards of Conduct relates to professionalism and states among other things, that all methods of conducting business must be such as to merit public respect and confidence. Outside business activities that is not known or consented to by the Dealer Member firm, does not merit public confidence or respect. As explained in the related commentary to Standard C of the CPH handbook, "Dealings in securities outside of the normal business of the firm, sometimes referred to as selling away or outside deals may expose clients to unknown risks and expose registrants and firms to civil liability. Such activity done without the knowledge of the firm also prevents effective supervision of the handling of client accounts, which is a requirement placed upon firms by the SROs. Firms may be exposed to liability for the actions of their employees in the effecting such trades, even though the firm is unaware of the activities."
>
> Considerations in Addition to General Principles
>
> 1. Magnitude (in size and value) of outside business activity.
> 2. Number of clients affected.
> 3. Magnitude of client losses.
> 4. Suitability of outside business activity if involving securities.
> 5. Compensation received by registrant.
> 6. Any personal interest of registrant in outside business activity.
> 7. Existence of client complaints.
> 8. Whether registrant had honest but mistaken belief that proper approval obtained.
> 9. Legality of outside activity.
>
> Recommended Sanctions
>
> - Fine: Minimum fine of $10,000.

- Disgorgement of profits received from outside business activity.
- Re-write of CPH.
- Period of strict/close supervision
- Period of suspension (in most egregious cases involving large value high risk off-book distributions).

¶ 12 We have considered the sanctions provided for in the Settlement Agreement in the light of the key considerations described above, of the specific sanctioning recommendations in the Guidelines and of the factors identified in them that are thought to have a bearing on the determination of the appropriate discipline to be applied in a particular case. We do not think that much of value will be achieved by trying to calibrate these matters too finely. We consider the terms provided for in the Settlement Agreement are generally consistent with the considerations referred to, having regard once again to the principles set out in the *Milewski* decision.

B. PRIOR DECISIONS OF HEARING PANELS

¶ 13 Counsel for IIROC referred us to several earlier decisions concerning sanctions in circumstances broadly – and we emphasise this, for each case depends on its particular facts – similar to this. Only one of those cases involved the acceptance of a settlement agreement: *Re Noronha,* [2002] I.D.A.C.D. No. 52, Bulletin No. 3095, December 23, 2002. In that case the settlement agreement provided for a fine of $40,000 and a requirement to re-write the Conduct and Practices Handbook examination. The Hearing Panel considered that there were some mitigating circumstances and reduced the fine to $25,000.

¶ 14 The remaining cases either involved the imposition of discipline following a hearing or – as in *Re Hazen,* [2006] I.D.A.C.D. No. 20, Bulletin No. 4563, July 24, 2006 – an agreement as to certain matters including certain penalties, but no agreement as to other matters, including penalties. In *Re Hazen* the conduct complained of involved soliciting and trading in investments in breach of the *Securities Act* without the knowledge of his employer. The respondent had agreed to a fine of $10,000 but not to IIROC's demand for a suspension. It was agreed to submit the question whether he should be suspended and if so, for how long, to a hearing panel. The panel concluded that a suspension was not appropriate, having regard among other things to the fact that the respondent had, as part of the discipline imposed by his employer, paid a fine of $25,000 and been required to compensate his employer to the extent of $80,000 in respect of clients losses.

¶ 15 In *Re Che,* [2002] I.D.A.C.D. No. 53, Bulletin No. 3094, December 24, 2002 a Hearing Panel found that Ms. Che had participated in a series of off-book transactions and had repurchased certain shares from numerous dissatisfied customers. It imposed a fine of $35,000, a requirement to rewrite the CPH examination and to be subject to strict supervision for one year and pay costs of $10,000.

¶ 16 The facts in *Re Michaels,* [2007] I.D.A.C.D. No. 8, Bulletin No. 3614, March 14, 2007 are in many respects quite similar to those in the present matter. Mr. Michaels was found to have engaged in off book transactions, to have done so when he was not registered to do so, having attempted to conceal information from staff with respect to facts reasonably required for the purposes of its investigation. He was fined $45,000, prohibited from re-applying for approval in any capacity for two months, required to write the CPH examination and, if he became approved, to be subject to 6 months of strict supervision.

¶ 17 Once again, and as in the case of the diverse considerations contemplated by the Guidelines as being possibly relevant to the determination of an appropriate combination of sanctions, we do not think it is particularly helpful to attempt a minute parsing of the similarities and differences among the various decided cases.

¶ 18 Our conclusion, overall, is that taking account of the concerns that we have expressed, and the considerations to which we have referred, the provisions of the Settlement Agreement with respect to sanctions fall "within a reasonable range".

¶ 19 The Settlement Agreement is accordingly accepted.

Leon Getz, Panel Chair

Jim Harkness, Panel Member

Bob Sutherland, Panel Member

As of October 28, 2009

* * * * *

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The Enforcement Department Staff (Staff) of the Investment Industry Regulatory Organization of Canada (IIROC) has conducted an investigation ("the Investigation") into the conduct of Tim Roy Paziuk (the Respondent).

2. The Investigation was commenced by Enforcement Department Staff (IDA Staff) of the Investment Dealers Association of Canada (IDA) prior to May 30, 2008. 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.

3. The Investigation 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

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

5. 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.

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

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

8. 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.

9. 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.

10. 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.

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

12. 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.

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

III. Statement of Facts

(i) Acknowledgment

14. 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

15. Between August 1996 and October 2003, the Respondent was a mutual fund salesperson. At times throughout that period, he also sold accident and sickness insurance and GICs. From October 2003 to October 2005, the Respondent worked for the Berkshire Group as a mutual fund salesperson. The Respondent has been a financial planner since 1980 and commencing in 1993, he operated his financial planning business through his company, TPC Financial Group Ltd. (TPC).

16. On July 17, 2006, the Respondent became approved as a Registered Representative (RR) (Mutual Funds) with yourCFO Advisory Group Inc. ("yourCFO"), a Member firm, in British Columbia and the Yukon Territory. On January 30, 2007, his registration status changed to RR (Retail) with yourCFO. On January 8, 2008 the Respondent resigned "for cause" from yourCFO as a result of the matters described in this Settlement Agreement. He is not currently registered in any capacity in the securities industry.

17. The Respondent does not have any previous disciplinary history.

18. The matters outlined herein came to the attention of Staff when yourCFO reported these matters on July 31, 2007 through the Investment Dealers Association of Canada's (now IIROC's) Complaints and Settlement Reporting System (ComSet) (Reference # B45875). That report indicated the nature of the violation to be "assistance in the furtherance of an off-book transaction".

The Respondent – Financial Manager

19. In an interview with Staff, the Respondent described himself as a financial manager, a title that he created for himself. He described a financial manager to be a person who not only creates a financial plan for his clients, but also helps to facilitate the execution of those financial plans. This includes liaising with his clients' lawyers, accountants, tax advisors, and bankers, as well as assisting his clients (many of whom are physicians and dentists) incorporate businesses.

20. The Respondent provided financial "management" services however he was not compensated for those services. As a result, he decided in 1996 to become mutual funds licensed with Berkshire Group so that he could be compensated for providing mutual fund trading advice.

21. In 2001, a financial management client of the Respondent inherited an equities portfolio. At that time, the Respondent was only mutual funds licensed. That client asked if he should liquidate the account and move the proceeds into mutual funds under the Respondent's management. The Respondent found the holdings in the inherited account to be reasonable and was not sure that the client would do better with mutual funds. Accordingly he advised the client to move his inherited portfolio to an on-line discount

brokerage account. The client wanted the Respondent to have direct access to the on-line account so the Respondent could manage same.

22. Beginning in 2001, the Respondent started to get out of the mutual funds business, opting to help more clients build individual stock portfolios instead and charging a fee for this service through TPC. Many of his clients wanted him to execute trades on their behalf in their on-line discount brokerage accounts so those clients provided the Respondent with their user names and passwords.

23. The Respondent transferred his $40 million mutual funds book of business to another individual in his office.

24. In 2004, the Respondent wrote and published a book entitled "Professional Corporations – The Secret to Success". In his interview with Staff, he described his book as "the first book in Canada that explains how to use professional corporations for physicians and dentists. Everything that's in this book is essentially, this is what we do." His business grew as a result.

25. The individual to whom the Respondent transferred his mutual fund book of business then left the industry, which meant that no one was receiving the benefit of the trailer fees generated by those mutual fund assets. It was at this point that he decided to become licensed with yourCFO so that he could earn the mutual fund trailer fees.

IDA/IIROC Jurisdiction

26. The Respondent came under IDA/IIROC jurisdiction for the first time when he became licensed as an RR (Mutual Funds) with yourCFO on July 17, 2006. As an RR (Mutual Funds), his registration was restricted to mutual fund securities and contracts of life insurance.

27. The Respondent admitted in his interview with Staff that, between July 2006 and January 30, 2007, while not licensed to do so, he advised clients in respect of the purchase of other securities through the direct access that he had to their on-line discount brokerage accounts. None of these on-line discount brokerage accounts were held at yourCFO, nor was yourCFO aware of same.

28. Effecting share transactions on behalf of clients and advising clients in that regard when not licensed to do so, is contrary to Section 34 of the British Columbia *Securities Act.*

29. The Respondent admitted in his interview with Staff that he is aware that advising without being properly licensed to do so is contrary to the *Securities Act.*

30. yourCFO's Policies and Procedures Manual, Section 1.3, Principal/Agent Relationship, provides:

> …Agents must at all times be in compliance with applicable legislation and the By-laws, rulings and policies, rules, regulations, orders and directions of any self-regulatory organization or similar authority to which yourCFO is subject.
>
> It is the Agent's responsibility to represent and warrant to yourCFO that (i) they are registered or licensed in the manner necessary under all Applicable Laws; (ii) they are in compliance with all Applicable Laws.
>
> Agents shall (i) maintain any registrations or licenses in the manner necessary under all Applicable laws; (ii) remain in good standing under all Applicable Laws; and (iii) comply with all Applicable Laws.

31. On January 30, 2007, the Respondent's registration status changed to RR (Retail) with yourCFO.

32. The Respondent then contacted all his clients in order to have them transfer their on-line discount brokerage accounts he helped manage to yourCFO. Approximately half of his clients transferred their accounts to yourCFO.

33. The Respondent continued to provide advice and effect transactions in the on-line discount brokerage accounts of those clients who did not transfer their accounts to yourCFO. He continued to collect fees from these clients for his services.

34. The Respondent did not make yourCFO aware of any of the transactions conducted in these off-book accounts because he knew that these clients were not prepared to transfer their accounts and that yourCFO would not allow him to deal with these clients in this manner.

35. Further, while the Respondent had direct access to these clients' on-line discount brokerage accounts from his clients, he did not request formal trading authority over these accounts.

36. The Respondent charged the same management fee (1% of investable assets excluding mutual fund assets) to clients whether they held their assets in accounts at yourCFO or off-book at an on-line discount brokerage. For those assets held off the books of yourCFO, the percentage fee was calculated annually and charged monthly by TPC. The full amount of the fees was paid to TPC. yourCFO was unaware that the Respondent received these fees.

37. For those client assets held on the books and records of yourCFO, the percentage fee was calculated and paid quarterly to yourCFO. The Respondent's compensation split with yourCFO was 90/10 with yourCFO retaining 10%. In addition, the Respondent was charged overhead expenses incurred by him.

yourCFO's Investigation

38. yourCFO conducted a routine review of investment advisor e-mail messages. During this review, a yourCFO compliance officer discovered three e-mails related to the Respondent that caused concern.

39. The first e-mail was dated June 13, 2007 at 10:26:49 from the Respondent to [EA], which stated: "Hi [E]: I need [J's] "trading" password for her CIBC account. There's $5,179 in cash that I'd like to invest. Thanks TIM."

40. The second e-mail was dated July 25, 2007 at 15:25:49 from [LW] to the Respondent, which stated: Hi Tim, Belated thanks for the Promissory Note. I just wanted to let you know that I deposited $15,000 into my Investors [sic] Edge account. So you can go ahead and work your magic."

41. The third e-mail was also dated July 25, 2007 at 18:24:09 from the Respondent to [LW] which stated: "Hi: I'm moving the rest of the money from your MRS account over to your CIBC account so I'll wait for that to settle."

42. Upon the discovery of the foregoing e-mails, yourCFO commenced an internal investigation into this matter. As part of this internal investigation, in September 2007 the Respondent was asked to produce a list of all on-line brokerage accounts he was working with at the time and how much he had earned from those accounts since commencing his employment with yourCFO.

43. In response, the Respondent prepared a spreadsheet entitled "Investment Management/Financial Planning & Business Advisory – Includes GST" (the "Spreadsheet"). The Spreadsheet contained 24 names identified by the Respondent to have paid fees for investment management of off-book assets for the period January – September 2007. The dollar value of those fees is $3,525.99. Of the 24 names, the Respondent stated that he probably had on-line access to 20 of the clients' accounts.

44. Upon completion of its investigation, yourCFO issued a letter to the Respondent dated August 30, 2007, which outlined the results of the investigation and served as the Respondent's dismissal letter (the "Letter").

45. The Letter contained a Summary of Findings which stated:

> i. That you executed discretionary trades in at least 20 client accounts that were not on the books and records of yourCFO. This was facilitated by clients providing their online discount brokerage account user id and password that you solicited from them.
>
> ii. That you assisted in off-book transactions by providing specific recommendations to clients with the knowledge that the transactions would be executed through a discount brokerage account at another member firm.
>
> iii. That you arranged for on-book assets to be transferred off-book and continued to charge a management fee based on those assets.
>
> iv. That you charged fees for managing securities assets that were on the books and records of another member firm. This was facilitated by clients providing statements of holdings, or from you accessing the client accounts online. Monthly fees were calculated and charged directly to client bank accounts through TPC Financial Group Limited.

46. The Letter also contained a Restrictions and Penalties section. That section stated:

> We accept your proposal to transition your clients to [MP] as soon as possible and your resignation from yourCFO Advisory Group Inc. and require you to relinquish your securities licence [sic] with the Investment Dealers Association following this transition. In light of this and the above-noted findings, yourCFO Advisory Group Inc. will implement the following remedies to address the violations and ensure ongoing compliance while you are an advisor of yourCFO Advisory Group Inc.

47. The Letter imposed 10 restrictions and penalties on the Respondent including strict supervision, a 5% compliance surcharge (on the Respondent's total monthly revenue), $7,000 to be paid towards the costs of the investigation, and a requirement to re-write the CPH course (if the transition was not completed by January 31, 2008).

48. The Respondent paid the $7,000 in costs to yourCFO in two installments, $3,081.97 on September 28, 2007 and $3,918.03 on October 31, 2007.

49. With respect to the 5% compliance surcharge, the Respondent paid the following to yourCFO:

September 2007	$ 4,257.04
October 2007	$ 1,772.16
November 2007	$ 1,198.04
December 2007	$ 4,557.07
Total	$11,784.31

50. The Letter also outlined the transition plan to transition the Respondent's clients to another registrant [MP].

51. The Respondent acknowledged and accepted the Letter and signed same on September 4, 2007. He resigned "for cause" on January 8, 2008, and has not been registered in the securities industry since that time.

52. The Respondent admitted in his interview with Staff that after his departure from yourCFO he continued for some time to provide equities trading advice to those clients who did not transfer their on-line discount brokerage accounts to yourCFO. He has now, however, ceased all such activity.

53. yourCFO's Policies and Procedures Manual, Section 9.1.8, provides:

> Off-Book Transactions
>
> All client securities on which a yourCFO Agent advises upon must be transacted and held in nominee name on-book with one of yourCFO Advisory Group's carriers. Any off-book transactions and client securities where a yourCFO Agent is shown as the advisor are prohibited.
>
> If a client declines to transfer the account on-book, the Agent must resign from the account. For mutual funds, neither the Agent, nor yourCFO may be shown as the agent/dealer of record at the fund company.

54. On July 17, 2006, the Respondent entered into a Principal Agent Commercial Agreement with yourCFO (the "Agreement"). Section 6 of the Agreement provides:

> … the Agent [Respondent] shall not conduct securities-related business with or in respect of any corporation, unless such corporation is one approved by the IDA and the applicable securities commissions, person or entity other than the Principal [yourCFO]. The Agent hereby agrees that all business activities and the resultant revenue derived thereon in respect of which he or she is licensed must flow through the Principal and must first be recorded on the books and records of the Principal.
>
> The Agent will not accept any referral fees or any other income or fee arrangements from any source in respect of the business conducted by the Agent without the Principal's prior written consent.

55. The *Conduct and Practices Handbook Course* materials (2006), in section VIII Personal Financial Dealings provides:

> It is important that IAs deal with clients in a professional manner…To this end, IAs should report all of the following situations to the branch manager before entering into them. In turn, the branch manager must ensure that the firm's policies and procedures are followed:
>
> - Where the IA acts in any capacity in relation to a transaction in any security, whether or not publicly traded, where the transaction is not processed in the usual manner though the firm's books.
> - In any business relationships outside of the member firm.
> - Regarding additional services such as acting as custodian of the client's financial assets, preparation of tax returns, payment of bills, etc., regardless of whether a consideration is paid for services.
> - In any relationship where the IA and the client are linked in the profits or losses of an account. This would include, but is not limited to, joint accounts, investment clubs or corporate accounts.

- When acting in any capacity other than an investment advisor for the client such as Executor or Executrix; Trustee; Officer or Director of a company owned or controlled by the client; etc. and ethical considerations.

Carrying Accounts at Other Firms

Registrants are not permitted to hold (in their own or other names) or to exercise control over accounts at other firms unless they have first obtained the express written permission of their employer. A statement showing all transactions in the account at the other member firms must be provided to the employer by the firm carrying the account at least monthly. All such accounts must also be designated as non-client accounts and as such must be reviewed monthly if they generate a statement, as per the IDA's Policy 2.

56. The Letter's introductory paragraph stated the following:

> We have concluded our investigation regarding the off-book activity that you have been participating in contrary to industry regulations, yourCFO's Policy and Procedures and our Commercial Agreement. We appreciate the full cooperation that you and your team provided during this investigation. We acknowledge that no client complaints or harm have resulted from this activity.

Misleading Document

57. The Respondent acknowledged that he prepared the Spreadsheet pursuant to a direction to do so from yourCFO as part of its internal investigation. In particular, yourCFO wanted the Respondent to list all the discount brokerage accounts that he helped manage and what fees he was charging those clients. As noted in paragraph 43 of this Settlement Agreement, the Spreadsheet contained the names of 24 individuals.

58. The Respondent understood that in asking him to prepare the Spreadsheet, yourCFO wanted to know exactly who he was working with.

59. During the course of its investigation, Staff asked yourCFO if there were any other e-mails of "concern" relating to the Respondent in addition to the three e-mails referenced in paragraphs 39-41 of this Settlement Agreement. yourCFO provided Staff with several such e-mails (the "Additional E-mails").

60. The Additional E-mails disclosed the names of 17 individuals with whom the Respondent appeared to be dealing in the same manner as those identified on the Spreadsheet.

61. Notwithstanding that yourCFO required him to identify **all clients,** when asked by Staff why these names had not been disclosed on the Spreadsheet, the Respondent stated that he did not know how or why they had not been included.

62. However the Respondent later clarified in his interview with Staff that some (approximately 9) of the names that were not listed on the Spreadsheet were related (for example, spouse or corporation) to a name that was contained on the Spreadsheet. However, if Staff had not received the Additional E-mails, neither Staff nor yourCFO would have known that the Respondent had access to these additional discount brokerage accounts.

63. By not providing a complete list of all the discount brokerage accounts that he had access to, provided advice to and received fees for, the Respondent misled both yourCFO and Staff.

IV. Contraventions

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

1) Between July 2006 and January 2008, inclusive, the Respondent facilitated and participated in the purchase and sale of securities on behalf of clients and received remuneration from clients, which were conducted and received off the books and records and without the knowledge of his employer, yourCFO, a Member firm, thereby engaging in conduct unbecoming or detrimental to the public interest, contrary to Dealer Member Rule 29.1 and/or Dealer Member rule 18.15.

2) Between July 2006 and January 2007, inclusive, the Respondent, contrary to Section 34 of the *British Columbia Securities Act*, advised and assisted clients with respect to the purchase and sale of shares when his registration was restricted to the sale of mutual funds, thereby engaging in conduct unbecoming and detrimental to the public interest, contrary to Dealer Member Rule 29.1.

3) The Respondent provided a misleading document to his employer, yourCFO, during the course of an investigation conducted in respect of off-book accounts, contrary to Dealer Member Rule 29.1.

VI. Terms of Settlement

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

a) A fine in the amount of $20,000;

b) A prohibition against re-approval in any capacity for one month;

c) Successful completion of the *Conduct and Practices Handbook* examination as a condition of re-approval; and

d) Strict supervision for one year as a condition of re-approval.

66. The Respondent shall pay a portion of Staff's costs of this proceeding in the amount of $5,000.00.

Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.

67. 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 Vancouver in the Province of British Columbia, this 28th day of October, 2009.

"Witness signature"	"Timothy Paziuk"
	Respondent,
Witness	TIMOTHY ROY PAZIUK

AGREED TO by Staff at the City of Vancouver in the Province of British Columbia, this 28th day of October, 2009.

"Witness signature"
Witness

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

ACCEPTED at the City of Vancouver in the Province of British Columbia, this 28th day of October, 2009 ,by the following Hearing Panel:

Per: "Leon Getz"
Panel Chair

Per: "Jim Harkness"
Panel Member

Per: "Bob Sutherland"
Panel Member