

# Re Lohrisch

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

**DIRK CHRISTIAN LOHRISCH**

2010 IIROC 31

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

Heard: April 20 and May 27, 2010 at Vancouver, BC

Decision: July 26, 2010

(61 paras.)

**Hearing Panel:**

Stephen D. Gill (Chair), Brian Worth, Robert G. (Bob) Sutherland

**Appearance:**

Barbara G. Lohmann, appearing for the Association

Dirk C. Lohrisch, appearing on his own behalf

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## DECISION

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¶ 1 On March 2, 2010 the Investment Industry Regulatory Organization of Canada (“IIROC”) issued a Notice of Hearing in respect of Dirk Christian Lohrisch (the “Respondent”); the Notice of Hearing set April 20, 2010 as the hearing date for a standard track proceeding.

¶ 2 In the Notice of Hearing IIROC staff alleged that the Respondent had committed the following contraventions:

COUNT 1

On or about August 7, 2003, the Respondent, while employed at Canaccord Financial Ltd. (“Canaccord”), a Dealer Member, submitted a Change of Registration Information Form – form 33-109F5 (“F5”) to the Investment Dealers Association (“IDA”), which was misleading with respect to his credentials, contrary to Dealer Member Rule 29.1 (then IDA By-law 29.1).

COUNT 2

On or about April 13, 2009, the Respondent, while employed at Canaccord, submitted or caused to be

submitted a document to IIROC that he forged or caused to be forged with the intent that IIROC act upon that document as the original or a genuine document, contrary to Dealer Member Rule 29.1

### COUNT 3

On or about October 7, 2009, the Respondent acted contrary to Dealer Member Rule 29.1 and/or Rule 19.6 in that he attempted to frustrate and/or obstruct Staff's investigation into his conduct while he was an Approved Person by not responding truthfully or completely to Staff with respect to his actions and other circumstances relating to the allegations in Counts 1 and 2 above.

¶ 3 On April 20, 2010 the matter came on for hearing before the hearing panel with Ms. Lohmann representing IIROC, and Mr. Lohrisch appearing on his own behalf. Mr. Lohrisch acknowledged that he had been duly served with the Notice of Hearing (Exhibit 1) and that he had not worked in the industry since May of 2009.

¶ 4 The Respondent made an application for an adjournment. He said that he wished to retain legal counsel in connection with this matter. He advised that he had a number of communications with counsel for IIROC, since he had received a draft Notice of Hearing, but that due to his financial circumstances, he had not been able to retain counsel. He said he now had arranged to borrow funds, but that he hadn't spoken to or retained counsel. This activity had occurred in the two weeks before the hearing.

¶ 5 The Respondent also acknowledged that he had attended an interview with IIROC staff on October 7, 2009, and made admissions during the interview. The interview is set forth in paragraphs 32 to 34 of the Notice of Hearing.

¶ 6 In respect of the Respondent's adjournment application, the Panel heard submissions from both the Respondent, and counsel for IIROC. The Respondent acknowledged that he had not served a Response in respect of the Notice of Hearing, and that he had hoped to be able to enter into a "settlement" with IIROC. There were discussions, but no settlement. The Respondent acknowledged, during the adjournment application, that he had not really put his mind to this matter until a week or two before the scheduled hearing.

¶ 7 IIROC opposed the adjournment application, and made submissions outlining the activities and contact with the Respondent since the draft was sent to him. Counsel submitted the Respondent had ignored these proceedings until shortly before the scheduled hearing date, and the adjournment was not warranted.

¶ 8 In the process of making his submissions with respect to an adjournment, the Respondent advised the panel that he was not disputing the allegations, and facts, in the Notice of Hearing. He said what he really wanted was an adjournment to retain counsel in order to assist him with the penalty aspects of the hearing.

¶ 9 The panel, after having considered the submissions of counsel and the Respondent, dismissed the application for an adjournment.

¶ 10 Counsel for IIROC then made an application for an order pursuant to Rule 7.2. The relevant provisions of Rule 7 are as follows:

#### **7.1 Service of Response**

For a discipline proceeding designated on the Standard Track, the Respondent shall serve a Response within 20 days from the effective date of service of the Notice of Hearing.

#### **7.2 Failure to Serve Response**

If a Respondent served with a Notice of Hearing fails to serve a Response in accordance with Rule 7.1:

- (a) the Organization may proceed with the hearing of the matter as set out in the Notice of Hearing without further notice to and in the absence of the Respondent; and
- (b) the Hearing Panel may, accept as proven, the facts and violations alleged by the Organization in the Notice of Hearing, and may impose penalties and costs pursuant to

¶ 11 The Respondent did not file a Response. Counsel for IIROC referred the panel to eight authorities dealing with the application of Rule 7 (and other Rules), where an order had been made in similar circumstances. Counsel submitted in all the circumstances in this case that the Hearing Panel should accept as proven the facts and violations alleged in the Notice of Hearing.

¶ 12 The Respondent, in his submissions on IIROC's motion, confirmed again that he did not dispute the facts and violations alleged by IIROC in the Notice of Hearing, but stated that he would like an opportunity to seek advice on the issues in respect of penalty. The Panel adjourned briefly.

¶ 13 The Hearing Panel, having considered the submissions of counsel and the Respondent, granted the motion of IIROC pursuant to Rule 7.2, and accepted as proven the facts and violations alleged by IIROC in the Notice of Hearing. On the evidence, IIROC proved the Respondent had committed the contraventions set forth in Counts 1, 2 and 3 of the Notice of Hearing.

¶ 14 The hearing was adjourned to May 27, 2010 for submissions on penalty, and in order to permit the Respondent to retain counsel.

¶ 15 It is convenient at this point to set out the summary of the facts set forth in the Notice of Hearing, which facts the Hearing Panel has accepted:

### ***THE RESPONDENT***

1. The Respondent first became licensed in the securities industry as a registered representative ("RR") in February 2001 when he became employed with Canaccord. He remained employed with Canaccord until December 22, 2008 when his employment was terminated for cause for matters unrelated to the allegations in this Notice of Hearing. On or about April 2, 2009, the Respondent applied to reactivate his registration and employment with Canaccord. He became re-registered as an RR on April 7, 2009, however his registration was suspended by IIROC and Canaccord dismissed the Respondent for cause on May 12, 2009 as a result of the matters outlined in this Notice of Hearing. The Respondent is not currently employed as a registrant in the securities industry.
2. The Respondent does not have a previous disciplinary history.
3. As part of his initial licensing process, in January 2001 the Respondent submitted a Form 1-U-2000 to the IDA. On that form, the Respondent certified, *inter alia*,

The undersigned hereby certify that the foregoing statements are true and correct to the best of our knowledge, information and belief and hereby undertake to notify the self-regulatory organization in writing of any material change therein as prescribed by any by-law or rule of the respective self-regulatory organization. [emphasis added]

### ***CHANGE OF REGISTRATION INFORMATION FORM***

4. On February 6, 2001, the Respondent's registration as an RR was approved by the IDA. That approval letter stated, *inter alia*, that:

This approval is granted subject to the applicant's successful [emphasis added] completion of the Canadian Securities Institute's sponsored Professional Financial Planning Course no later than **\*August 6, 2003**. Failure of the applicant to complete this course within the prescribed time shall result in the withdrawal of approval, which may only be reinstated at such time as the applicant has successfully [emphasis added] completed the Professional Financial Planning Course ("PFPC").

5. At the material time, IDA By-law 18.4 stated:

Failure to satisfy paragraph A.3(c) of Part I of Policy No. 6 will result in the automatic

suspension of approval. Approval will be reinstated only at such time as the individual has satisfied the applicable course requirement.

6. At the material time, paragraph A.3(c) of Part I of IDA Policy No. 6 stated:  
Proficiency Requirements for:
  3. Registered Representatives and Investment Representatives
    - (c) Successful completion, where the person is a registered representative, other than a registered representative (mutual funds) or registered representative (non-retail), within 30 months of his or her approval as a registered representative
      - i. the Professional Financial Planning Course, or
      - ii. the Investment Management Techniques Course. [emphasis added]
7. At the material time, the PFPC, which is administered by CSI Global Education Inc. (“CSI”) consisted of 2 examinations. A passing grade is 60% per examination.
8. The Respondent wrote exam A of the PFPC on July 23, 2003. He obtained a grade of 57%. The Respondent wrote exam B of the PFPC on July 30, 2003. He obtained a grade of 42%. Accordingly, the Respondent did not pass either of the two PFPC exams.
9. On or about August 7, 2003, Staff contacted Canaccord to inquire whether the Respondent had completed the PFPC. If he had completed the PFPC, he was required to immediately file a Proficiency Information Change Notice. If not, his registration would be suspended effective August 7, 2003.
10. Canaccord staff confirmed on August 7, 2003 that the Respondent had written the two PFPC exams, and that they were currently awaiting the Notice of Course completion from CSI.
11. Later that same date, Staff received a completed F5 which was executed by both the Respondent and Canaccord staff.
12. The F5 indicated that the Respondent had “Completed the CSI administered Professional Financial Planning Course on July 30, 2003.”
13. The F5 contained the following warning:

**WARNING:** It is an offence to submit information that, in a material respect and at the time and in the light of the circumstances in which it is submitted, is misleading or untrue.
14. Also on the F5, above the Respondent’s signature, is the following certification:

I, the undersigned, certify that I have read and that I understand the questions in this notice and the Warning set out above. I also certify that the statements of fact made in the answers to the questions are true.
15. Staff relied on the Respondent’s certification on the F5 that he had completed the PFPC. Staff interpreted the Respondent’s statement on the F5 to mean that he had “successfully” completed the PFPC. Accordingly, Staff believed that he had satisfied the requirements and his registration was not suspended.
16. The fact that the Respondent did not successfully complete the PFPC examinations did not come to Staff’s attention until 2009 as described below in this Notice of Hearing.
17. The Respondent remained employed with Canaccord until December 22, 2008 when he was terminated for cause because of “attendance issues”.
18. The statement of the F5 that the Respondent “completed” the PFPC is true in the sense that he in

fact wrote the two PFPC examinations.

19. However, the statement is also misleading. On August 7, 2003 the Respondent either was aware that he had failed the two examinations, in which case he did not “successfully” complete the PFPC as required by Policy 6 or he was not yet aware of his examination results and was not forthright to Staff about that fact. He then had a positive obligation, as set out in his Form 1-U-2000, to advise Staff of his PFPC examination results immediately upon receipt of same, as this would have constituted a material change in his registration status.

### ***FORGERY OF CSI TRANSCRIPT***

20. On or about April 2, 2009 the Respondent applied to IIROC to reactivate his registration with Canaccord. IIROC approved his application on April 7, 2009.
21. However, a subsequent review of the Respondent’s file by Staff indicated that, other than the F5 which indicated only that he had “completed” the PFPC, there were no documents to indicate that he had passed that course.
22. Staff has the ability to check an applicant’s CSI record directly on the CSI portal. Staff checked the Respondent’s history on the CSI portal and noted that there was no record of him having successfully completed the PFPC.
23. The information on the CSI portal did not correspond with the information the Respondent had provided on his F5. Accordingly, on April 8, 2009, Staff requested Canaccord to provide evidence that the Respondent had passed the PFPC.
24. Canaccord staff then asked the Respondent to provide confirmation that he had passed the PFPC. On April 13, 2009, Canaccord staff provided Staff with a copy of the Respondent’s CSI Web Transcript dated April 9, 2009 which indicated that he had obtained a passing grade of 73% on the PFPC dated July 30, 2003.
25. Staff had concerns about the discrepancy between the April 9, 2009 transcript provided by the Respondent and the information contained on CSI’s portal. As a result, further inquiries were made of CSI.
26. Further, on May 1, 2009, Staff sent an e-mail to Canaccord asking for an explanation regarding the discrepancy and also asked them to provide a copy of the Respondent’s Notice of Course Completion for the PFPC. On May 4, 2009 Staff formally notified Canaccord that it required a copy of the Notice of Course Completion on or before May 6, 2009 and if same was not received, then the Respondent’s registration would be suspended as of August 6, 2003 (which was his original deadline to complete the PFPC).
27. Staff did not receive the required Notice of Course Completion from either Canaccord or the Respondent and accordingly, his registration was suspended effective August 6, 2003. Both Canaccord and the Respondent acknowledged the suspension.
28. CSI conducted a thorough investigation into this matter and confirmed the following in a letter to Staff dated May 8, 2009:
  - There is no record of completion of the PFPC by the Respondent;
  - There were no maintenance or data pulls between April 9, 2009 and April 13, 2009 that could have caused any adjustment in a student record;
  - The Respondent did successfully complete the Canadian Securities Course, the Conduct and Practices Handbook course and the Anti-Money Laundering and Terrorist Financing course for securities professionals;
  - The Respondent enrolled in the PFPC on March 14, 2001 and wrote both examinations in

2003. His marks were 57% and 42% respectively;

- In 2003 the PFPC had a 3 year enrolment period which meant that his course (and opportunity to rewrite) would expire on March 31, 2004. On March 17, 2004, the Respondent purchased an extension on the course which would allow him until March 31, 2005 to complete the course without having to re-enroll in the course and pay the full fee;
  - There is no record of the Respondent completing the PFPC between July 30, 2003 and April 9, 2009;
  - On April 23, 2009 the Respondent enrolled in the PFPC and paid the full fee; and
  - The student login activity report for the Respondent indicates that a transcript was printed on April 9, 2009 by a person accessing the student's file using the student number and that a transcript was requested to be e-mailed to [dirk\\_lohrisch@canaccord.com](mailto:dirk_lohrisch@canaccord.com). There is no other activity reported on the student file between April 9, 2009 and April 13, 2009 on the CSI systems by login or by CSI staff access.
29. The Respondent was interviewed by Staff on October 7, 2009 (the "Interview"). In the Interview, the Respondent admitted that on April 9, 2009 he logged onto the CSI website using his student number and requested his transcript to be e-mailed to his Canaccord e-mail address. The Respondent printed the transcript which did not list the PFPC or any grade and date for that course. He then gave the transcript to his friend (a computer "techie guy" and not a Canaccord employee or anyone in the securities industry) and asked him to alter the transcript to include the PFPC and a passing grade of 73%. The Respondent randomly chose the date of the course and the mark to be inserted on the transcript.
30. The Respondent provided the altered transcript to Canaccord which was subsequently provided to Staff on April 13, 2009.

#### ***ATTEMPTED FRUSTRATION OR OBSTRUCTION OF STAFF'S INVESTIGATION***

31. Pursuant to Dealer Member Rule 20.7(1), IIROC retains jurisdiction over Approved Persons for a period of five (5) years from the date on which the Approved Person ceased to be an Approved Person, in this case, May 12, 2009.
32. During the Interview, the Respondent proffered an explanation for the reason that he falsified or caused the transcript that was submitted to Staff to be falsified. His explanation was that he had failed the two PFPC exams on his first attempt but that he re-wrote those exams shortly thereafter and passed them both. He simply could not find the evidence of his passing PFPC grades that he was required to submit to Staff. Since he was under time pressure to provide evidence of his successful completion of the PFPC to Staff, he panicked and had his transcript falsified to represent the true state of affairs and to facilitate the registration process.
33. It was only after Staff presented the Respondent with all evidence, including the evidence from CSI that there was no record of him re-writing the PFPC exams, let alone receiving passing grades that he admitted that he wrote the PFPC exams, failed and because he was under time pressure, he simply advised Staff that he had "completed" the course. Upon receipt of confirmation that he had in fact failed the PFPC examinations, he allowed both Canaccord and Staff to believe that he had actually passed the PFPC and did nothing to advise those parties of the true state of affairs.
34. He admitted further that, when he submitted the forged transcript to Staff, he knew that he had never passed the PFPC.

¶ 16 On May 27, 2010, the Panel reconvened and the hearing was held as to appropriate sanctions against the

Respondent. Ms. Lohmann appeared for IIROC, and the Respondent appeared in person, without counsel. The Respondent advised the panel that he had not retained counsel.

¶ 17 Counsel for IIROC submitted a comprehensive outline of her submissions, and reviewed the penalty guidelines, facts, authorities, etc. IIROC submitted the appropriate sanctions against the Respondent were:

- (a) a permanent ban from approval in all capacities;
- (b) a fine of \$40,000;
- (c) an order that the Respondent pay costs of \$7,000.

¶ 18 The Respondent made submissions in respect of penalty. He stated that he had lost his job and lost his livelihood; that as a result of the publication of the proceedings he was very embarrassed by the whole situation. He explained some of his activities while at Canaccord, and the circumstances under which he left the business in December, 2008. He stated that back in 2003, when he wrote the exams, it was at the end of the deadline period, and he was having problems in his personal life.

¶ 19 He again stated, in his submissions, that when he had received the draft Notice of Hearing from counsel for IIROC he had wanted to effect a settlement, but they could not reach agreement on penalty.

¶ 20 He stated further that he felt he couldn't work in the brokerage industry in any capacity, given the current proceedings, and the fact that he had never passed the PFPC course. He indicated he did not have any funds with which to pay a penalty.

¶ 21 The Panel adjourned to consider the submissions that had been made. The Panel then returned and rendered its decision.

## **DECISION**

¶ 22 The Panel, having carefully considered the submissions of counsel, and the submissions of the Respondent in this matter made the following order in respect of the Respondent, Dirk Christian Lohrisch:

- i. A permanent ban from approval in any capacity;
- ii. A fine of \$40,000; and
- iii. Costs payable in the amount of \$27,000.

¶ 23 The Panel stated (these) reasons would follow.

## **ANALYSIS**

¶ 24 IIROC was formed in 2008 to combine the operations of the Investment Dealers Association of Canada, which was formed in 1916, and Market Regulation Services Inc. IIROC's purpose is, amongst other things, to regulate the operations, standards of practice, and business conduct of its members and their representatives in the securities industry, with a mandate to serve the public interest in protecting investors and market integrity. Members and Approved Persons of IIROC bind themselves contractually to comply with, amongst other things, IIROC's by-laws, regulations and rules. Members and Approved Persons of IIROC agree to submit to IIROC's governance and disciplinary jurisdiction.

¶ 25 IIROC (and before it, the IDA) also sets standards of qualifications for, and for the discipline of, persons engaged in the industry. Membership is voluntary. It is based on the contractual commitment of members to abide by the constitution, regulations, rules and by-laws of the Association.

¶ 26 It is not disputed by the Respondent that in applying for registration, he confirmed he understood and was conversant with the by-laws, rules, rulings and regulations, and agreed to be bound by, observe and comply with the Rules, and submit to the jurisdiction of IIROC (and the IDA).

¶ 27 Obtaining the status of an Approved Person or a Registered Representative is not a right, but a privilege. It is a privilege that is earned by obtaining the appropriate qualifications. One of the fundamental principles

governing the relationship between IIROC and its membership, is full, true and plain disclosure. It is clear from the facts of this case, and by the conduct of the Respondent, that he does not appear to have fully comprehended the significance of this, or his obligations to meet the requirements and become duly qualified to be registered.

¶ 28 The Respondent first became licensed as a Registered Representative in February 2001, and as part of that initial process, he had until August 6, 2003 to complete the Canadian Securities Institute sponsored Professional Financial Planning Course (“PFPC”). There is no question that he knew that his failure to complete this course, within the prescribed time, would result in the immediate withdrawal of approval.

¶ 29 The Respondent apparently did not apply himself to the requirements he had to meet. He did not write Exam A of the PFPC until July 23, 2003 and he wrote Exam B of the PFPC on July 30, 2003. He was informed of his failing grades, and there is no question he knew that he did not successfully pass either of the PFPC exams. Notwithstanding that he could have rewritten those exams, he signed and submitted a form to the Association, which misrepresented that he had successfully passed the PFPC Courses.

¶ 30 Unfortunately, due to a failure of the systems within the Association, the Respondent’s certification on the F5 form that he had completed the PFPC was accepted, and remained in place until it came to staff’s attention in 2009. It is clear that for a period of approximately 6 years the Respondent knew he had misrepresented the facts, namely that he had successfully passed the PFPC exams.

¶ 31 We have no doubt that the Respondent was fully aware of his failure to pass, and that he had misled Association staff, when at all times he had a positive obligation to advise them of the material change in his status; i.e. his failure to pass.

¶ 32 When staff finally did discover the true state of affairs, the Respondent compounded matters by causing a forged transcript to be created, which he then submitted to IIROC. He knew that the transcript would be relied upon by staff because staff had requested that he provide verification that he had successfully completed the PFPC.

¶ 33 The Respondent printed off his transcript; caused it to be forged; and then submitted it to staff as a genuine document. This is deliberate conduct designed to deceive IIROC staff, and perpetuate his 2003 misrepresentation.

¶ 34 The Respondent was interviewed by staff on April 9, 2009. During that interview, he admitted the transcript he had submitted was falsified, but he explained, although he failed the first attempt at the PFPC exams, he re-wrote those exams shortly thereafter and passed them both. He told staff he couldn’t find the evidence of his passing PFPC grades, and thus he panicked and had his transcript falsified to represent the “alleged” true state of affairs, and submitted it.

¶ 35 As the interview continued, and staff presented the Respondent with all of the evidence, including the fact there was no evidence of him re-writing the exams let alone receiving passing grades, he admitted he hadn’t in fact re-written the PFPC exams. He admitted that he knew that he had failed the PFPC exams, but he had submitted the appropriate forms and allowed both his member firm and staff to believe that he had passed. He did nothing to advise those parties of the true state of affairs.

¶ 36 Once again, in the interview on April 9, 2009, the Respondent’s behaviour was egregious. He embarked upon a deliberate course of deception which did not stand up under scrutiny.

¶ 37 At no time during these proceedings has the Respondent expressed any remorse for his transgressions and his conduct since 2003.

¶ 38 This case demonstrates that staff should independently verify exam results, or any other procedures that are required to be completed in order for an Approved Person to be properly registered.

¶ 39 The Disciplinary Sanction Guidelines set out “General Principles” to provide a framework for assessing the gravity of particular breaches of dealer rules and to help determine which sanctions are reasonable in the circumstances. The main concerns when determining an appropriate penalty are:

- i. Protection of the investing public;
- ii. Protection of IIROC's membership;
- iii. Protection of the integrity of IIROC's process;
- iv. Protection of the integrity of the securities market; and
- v. Prevention of a repetition of conduct of the type under consideration.

¶ 40 It goes on to say:

General deterrence will follow from an appropriate decision and deter others from engaging in similar misconduct and improve overall business standards in the securities industry. This can be achieved if a sanction strikes an appropriate balance by addressing a registrant's specific misconduct, but also being in line with industry expectations. As was observed by the Hearing Panel in *Re Mills*, [2001] I.D.A.C.D. No. 7, April 17, 2001, at p. 3:

Industry expectations and understandings are particularly relevant to general deterrence. If a penalty is less than industry understandings would lead its Members to expect for the conduct under consideration, it may undermine the goals of the Association's disciplinary process; similarly, excessive penalties may reduce respect for the process and concomitantly diminish its deterrent effect. Thus the responsibility of the District Council in a penalty hearing is to determine a penalty appropriate to the conduct and respondent before it, reflecting that its primary purpose is prevention rather than punishment.

¶ 41 The General Principles further set out Key Considerations when determining sanctions, and while 14 items are referenced, the list is not exhaustive. They include:

- Harm to Clients, Employer and/or the Securities Market
- Blameworthiness
- Degree of Participation
- Extent to which the Respondent was Enriched by the Misconduct
- Prior Disciplinary Record
- Acceptance of Responsibilities, Acknowledgment of Misconduct and Remorse
- Credit for Cooperation
- Voluntary Rehabilitative Efforts
- Reliance on the Expertise of Others
- Planning and Organization
- Multiple incidents of Misconduct over an Extended Period of Time
- Vulnerability of Victim
- Failure to Cooperate with the Investigation
- Significant Economic Loss to the Client and/or Dealer Member Firm

¶ 42 Turning to the specific disciplinary sanction guidelines, the first of the Respondent's contraventions are in reference to misrepresenting his credentials. He submitted a form which clearly was misleading with respect to his credentials, and he knew that form had been accepted as indicative of his passing and obtaining the

appropriate qualification. When the registrant has misrepresented his credentials, this amounts to conduct unbecoming contrary to Dealer Member Rule 29.1. In this case, it was an intentional misrepresentation, and the specific penalty guidelines indicate it should be treated severely. The penalty may include a substantial fine, and a permanent bar from approval. The minimum fine in the guideline is \$5,000.

¶ 43 In our view the critical factor in considering the Respondent's misrepresentation of his credentials is the fact that it was intentional, and the Respondent made no attempts to correct the misrepresentation.

¶ 44 The second of the Respondent's contraventions was that he caused a forged document to be submitted to IIROC with the intent that IIROC act upon that document as the genuine document. The penalty guideline for forgery states:

Forgery is always a serious regulatory matter because it shows that the Respondent lacks the honesty required of a professional in the securities industry. The trust and confidence between the registrant and the client is very often destroyed by the deceptive conduct on the part of the registrant. Forgery harms the Dealer Member firm as well. As a result, forgery often attracts severe sanctions. ...

¶ 45 The sanctions recommended by the forgery guidelines are a minimum fine of \$25,000, and in the absence of mitigating circumstances, a permanent ban.

¶ 46 The forgery perpetrated by the Respondent in this case is egregious and again indicates the complete failure of the Respondent to understand or practice the principles required of a professional in the securities industry. There are no short cuts to registration. The Respondent had a positive duty to advise Staff of his failure to pass, and to remedy it immediately. In our view, it must be clear to IIROC members that this type of conduct is completely unacceptable and will be dealt with severely.

¶ 47 When the investigation finally brought matters to light, the Respondent attempted to obstruct Staff's investigation into his conduct by further fabrications. This contravention falls under the failure to cooperate guideline. That guideline states:

Consequently, failure to cooperate/impeding a Corporation investigation, whether by a Dealer Member firm or a registered representative, is serious misconduct because it subverts the corporation's ability to perform its regulatory function.

¶ 48 The recommended sanction set out in the guideline is a minimum fine of \$10,000, and may also mandate a permanent ban.

¶ 49 In this case, once again the conduct of the Respondent was an intentional attempt to deceive, and hide the real state of affairs. Fortunately, Staff had facts available to it to totally refute the fabrication by the Respondent. This again emphasizes the Respondent's complete lack of understanding of the appropriate principles. Once again, the Respondent did not express to Staff, or the Panel, any remorse for his conduct.

¶ 50 Counsel for IIROC submitted a very comprehensive brief of authorities including the appropriate Dealer Member Rules, excerpts from Disciplinary Sanction Guidelines and some 12 cases. We have reviewed the authorities, and to a certain extent all depend upon their particular facts. In the *Djordjevic* case [2007] I.D.A.C.D. No. 46, October 19, 2007, the hearing panel found that the signature on a guarantee was forged by the respondent RR. In dealing with penalty the panel stated:

46 The respondent's behaviour was egregious. He deliberately forged the signature of a client on a guarantee of another client's account. His activity was not negligent, but deliberate and deceptive.

47 When the client discovered the forgery, the respondent first asked the client to lie to the respondent's employer and, in effect, to assist the respondent in covering up the forgery. After the client refused to co-operate, and advised respondent's employer of the forgery, the respondent maintained right through to

the end of the hearing on the merits that there had been no forgery and that the client was lying to avoid liability for the guarantee.

48 The respondent's conduct in trying to cover up the forgery, in trying to mislead his employer, and in maintaining that the client was liable on the guarantee makes this situation an egregious one.

49 The relationship of a registered representative and his or her employer requires a bond of trust between them. So does the relationship of a registered representative and his or her client. The respondent's conduct in this case violated these bonds of trust.

50 Forgeries of this nature cause harm to the employer and harm to the securities markets. They sap the confidence of market participants that the system operates fairly and honestly.

51 The respondent demonstrated a clear disregard for his client's interest.

¶ 51 In that case the panel ordered a permanent ban, a fine of \$50,000, and payment of costs of \$15,000.

¶ 52 Considering the contraventions that are set out in the three counts in the Notice of Hearing, and the Particulars, a number of matters are significant:

- i. Lohrisch's actions were not the result of inadvertence or carelessness, but were purposeful and deliberate;
- ii. Lohrisch did not make any attempt to correct the misrepresentation of his examination results;
- iii. Because of the failure of the system, Lohrisch was able to succeed in his misrepresentation of his qualifications and remain registered for approximately 6 years;
- iv. Misrepresentation of credentials to the regulator is inconsistent with the just and equitable principles of trade in that it is a fundamental tenant of securities regulations in Canada that registrants be educated to an established standard;
- v. Forgery is always a serious regulatory matter because it shows that the respondent lacks the honesty required of a professional in the securities industry;
- vi. The forgery by Lohrisch in this case is egregious. If IIROC had merely accepted the document and made no further inquiries, he would have again been successful in a misrepresentation. This was not a forgery of convenience, or forgery to protect a client. At all material times Lohrisch knew that he wrote the exams, failed them, and he never attempted to re-write;
- vii. The failure of Lohrisch to cooperate, and his lies to Staff to impede the investigation, is serious regulatory misconduct; it subverts the corporation's ability to perform its regulatory function;
- viii. Lohrisch has expressed no remorse for his misrepresentations, forgery, or lies; conduct which spans a number of years;
- ix. The only mitigating factors, in our view, are that Lohrisch has no previous disciplinary history, and there were no client losses or complaints.

¶ 53 With respect to costs, counsel for IIROC submitted a Bill of Costs (Exhibit 2) which set out investigative costs of approximately \$10,500; counsel costs of approximately \$14,400, and hearing costs of approximately \$2,200, for a total of \$27,153.00. Costs are in the discretion of the hearing panel; IIROC suggested an appropriate amount for costs would be \$7,000, but was not able to give the Panel a rationale or justification for the reduction.

¶ 54 In our view, the Respondent's conduct, commencing in 2003, and continuing once matters were under investigation, was a direct cause of IIROC incurring significant costs in this case. Had Lohrisch admitted his

initial misrepresentation, we believe matters could have been resolved in a very timely manner, and without incurring substantial costs. Instead, the Respondent's conduct compounded matters and increased the costs incurred by IIROC.

¶ 55 We note in the *Dass* decision [2009] IIROC No. 22, April 20, 2009, a Bill of Costs was submitted of \$83,184.00, and that the panel in that case ordered the respondent to pay IIROC's full costs.

¶ 56 In summary, we have concluded that a lifetime ban is appropriate and necessary in this case to protect the securities industry.

¶ 57 We conclude that a fine, for the infractions set forth in Counts 1, 2 and 3, in the amount of \$40,000 is an appropriate fine in view of the egregious nature and period of time involved in the Respondent's conduct.

¶ 58 We have reviewed the Bill of Costs submitted by IIROC, and we are satisfied that the \$27,000 in costs were appropriately incurred and were a direct result of the ongoing conduct of the Respondent.

¶ 59 Given the need for general deterrence, it is our view that the penalty ordered here will protect the integrity of IIROC's processes and prevent a repetition of conduct of the type set forth here, and support the goals of IIROC's disciplinary processes.

## **ORDER**

¶ 60 We confirm the order made on May 27, 2010 namely that the Respondent Dirk Christian Lohrisch:

- i. Be permanently banned from approval in all capacities;
- ii. Pay a fine of \$40,000; and
- iii. Pay costs in the amount of \$27,000.

¶ 61 These reasons may be signed in counterpart.

Dated this 26<sup>th</sup> day of July, 2010.

Stephen D. Gill

Brian Worth

Robert G. (Bob) Sutherland

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