

## **Re National Bank Direct Brokerage Inc.**

**In the matter of:**

**The Rules of the Investment Industry Regulatory Organization of  
Canada**

**and**

**The By-Laws of the Investment Dealers Association of Canada**

**and**

**National Bank Direct Brokerage Inc.**

2011 IIROC 2

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

Hearing held: October 21, 2010  
Decision rendered: January 11, 2011  
(36 paragraphs)

**Hearing Panel:**

André Valiquette, q.c.; Yves Julien; Jean W. Jeannot

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## **Decision**

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### **I. Introduction**

¶ 1 The Enforcement Department Staff (Staff) of the Investment Industry Regulatory Organization of Canada (IIROC) and the Respondent, National Bank Direct Brokerage Inc. (**NBDB**), consent and agree to the settlement of these matters by way of this settlement agreement (**the Settlement Agreement**).

¶ 2 The IIROC Enforcement Department has conducted an investigation (**the Investigation**) into the conduct of NBDB.

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

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

¶ 5 The Investigation disclosed matters for which the Respondent may be disciplined by a Hearing Panel appointed pursuant to Part C of Schedule C.1 to Transition Rule No. 1 of IIROC (**the Hearing Panel**).

### **II. Joint Settlement Recommendation**

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

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

Contravention 1:

NBDB, an IDA Member firm, failed in its duty to provide supervision and in its duty to establish and maintain adequate internal controls, in that it allowed its representative Thi Sen Chher:

- (a) from November 20, 2002 to March 15, 2006 inclusive, to obtain a proxy for the brokerage accounts of A, a family member, without registering these accounts as Pro accounts or ensuring that they were registered as such;
- (b) to make additions, without supervision or verification, to A's mailing address and investment profile without A's authorization; and
- (c) from February 28, 2006 to May 17, 2007 inclusive, without supervision or verification, to self-approve transfers of funds between his personal accounts and those of A, without A's consent or approval, thereby contravening the provisions of IIROC Dealer Member Rules 17.2A, 29.27, 1300.2, 2500 and 2700 (formerly By-law 17, By-law 29, Regulation 1300, Policy No. 2 and Policy No. 4 of the IDA, respectively);

Contravention 2 :

NBDB, an IDA member firm, failed to keep adequate records, particularly:

- (a) the keeping of physical acknowledgements confirming the receipt, reading and understanding of the May 2005 Compliance Manual by the employees of NBDB, thereby contravening the provisions of IIROC Dealer Member Rules 17.2 , 200 and 2500, Section D (formerly By-law 17, Regulation 200 and Policy No. 2 of the IDA, respectively);

Contravention 3 :

From September 6, 2005 to January 9, 2007 inclusive, NBDB, an IDA Member firm, engaged in conduct unbecoming in that it continued the registration of its Chief Compliance Officer with the regulatory authorities although this person was no longer in the employ of NBDB, thereby contravening the provisions of IDA By-law 38.12 (now Dealer Member Rule 2900), and IDA Policy No. 6 and Policy No. 8 (now Dealer Member Rules 2900 and 3100 respectively);

¶ 8 Staff and the Respondent agree to the following terms of settlement:

- (a) a fine of \$75,000;

¶ 9 The Respondent agrees to pay IIROC costs in the amount of \$25,000.

### III. Hearing

¶ 10 A hearing was held on October 21, 2010, at which each party was represented by counsel. No witnesses were heard.

### IV. Statement of Facts

¶ 11 The facts are set out in Part III of the Settlement Agreement.

### V. Regulations in force on January 1, 2006

¶ 12 A. By-law 17 governed minimum capital, conduct of business and insurance and section 2A stipulated the following:

- 17.2. A. "Every Member shall keep and maintain at all times a proper system of books and records."

¶ 13 Policy No. 3 contained provisions concerning internal control, and section 14 stated the following:

"Internal control consists of the policies and procedures established and maintained by management to assist in achieving its objective of ensuring, as far as practical, the orderly and efficient conduct of the entity's business. The responsibility for ensuring adequate internal control is part of management's overall responsibility for the day-to-day activities of the entity". (Canadian Institute of Chartered Accountants (CICA) Handbook, 5200.03).

¶ 14 B. By-law 29 contained provisions concerning business conduct, and sections 16 and 17 stipulated the following:

"29.1. Members and each partner, director, officer, sales manager, branch manager, assistant or co-branch manager, registered representative, investment representative and employee of a Member (i) shall observe high standards of ethics and conduct in the transaction of their business, (ii) shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest, and (iii) shall be of such character and business repute and have such experience and training as is consistent with the standards described in clauses (i) and (ii) or as may be prescribed by the Board of Directors."

"29.27 (a) Each Member shall establish and maintain a system to supervise the activities of each partner, director, officer, registered representative, employee and agent of the Member that is reasonably designed to achieve compliance with the by-laws, regulations and policies of the Association and all other laws, regulations and policies applicable to the Member's securities and commodity futures business. Such a supervisory system shall provide, at a minimum, the following:

The establishment, maintenance and enforcement of written policies and procedures acceptable to the Association regarding the conduct of the types of business in which it engages and the supervision of each partner, director, officer, registered representative, employee and agent of the Member that are reasonably designed to achieve compliance with the applicable laws, rules, regulations and policies;"

¶ 15 C. By-law 38 contained provisions relative to the responsibilities of the chief compliance officer and ultimate designated person (UDP), and sections 3 and 12 stipulated the following:

"38.3 Every Member shall appoint an Alternate Designated Person (an "ADP"), who shall be so approved, to act as Chief Compliance Officer (the "CCO")."

"38.12 Every Member shall file with the applicable self-regulatory organization a copy of a governance document setting out the organizational structure and reporting relationships, which support the compliance arrangement set out above; and notice of any material changes to the organizational structure and reporting relationships as set out in paragraph (a)."

¶ 16 D. Policy No. 8 contained provisions relative to reporting and recordkeeping requirements, and Part B ("Reporting Requirements to Designated SRO") stipulated the following:

B.1. "1 – Each Member shall report to its designated SRO, in such detail and frequency as prescribed by the SRO:

(a) Whenever there is any change to the information contained in the Uniform Application for Registration/Approval or Form 33-109F4 under By-law 40 or any registrant."

**VI. The IROC disciplinary sanction guidelines, which came into force in March 2009, suggest the following penalties for the dealer member:**

- ¶ 17 For failure to establish and/or maintain adequate internal controls – Dealer Member Rule 17.2 A:
- ¶ 18 A minimum fine of \$25,000, in consideration of the extent and nature of the internal control inadequacy and the attempt by the employee to defraud or misappropriate client funds or securities.
- ¶ 19 For record-keeping violations – Dealer Member Rule 17.2 and Dealer Member Rule 200: a minimum fine of \$25,000, in consideration of the nature and materiality of the inaccurate or missing information, and whether there was an intentional disregard for Association requirements, or if the failure to keep proper records was due to carelessness or inadvertence; and/or suspension until such time as the record-keeping violations have been corrected.
- ¶ 20 For allowing an unregistered person to trade - Dealer Member Rule 29.1: a minimum fine of \$25,000, in consideration of whether the contravention was intentional or inadvertent, whether the noncompliance was complete or only partial, and what, if any, the impact of the non-compliance was on the dealer member's clients; and/or suspension; and/or imposition of conditions on continued approval.

**VII. IDA Bulletin #2866, dated July 19, 2001, concerning By-law 37 and Amendments to Policy 2 and By-law 1.1 – Notice MR-089, dated August 8, 2001, concerning the enforcement of By-law 37.**

- ¶ 21 The first document establishes, among other things, that a distinction must be made between the Ultimate Designated Person (UDP) who reports to the regulatory authorities, and the officers responsible for compliance within the Member firms (CO).
- ¶ 22 The UDP is the senior executive who is accountable to the regulatory authorities for making sure that the Member firm's compliance system is operating effectively.
- ¶ 23 The CO is responsible for making sure that the policies, procedures and management of the compliance function within the Member firm are efficient and meet regulatory standards.
- ¶ 24 The second document, among other things, provides that dealer firms must keep accessible records concerning the appointment of any other persons as designated principals in order to ensure that they comply with specific by-laws and regulations. These records must be kept for seven years.

**VIII. Jurisprudence**

- ¶ 25 Golden Capital Securities Ltd. (2009) 1 D.A.C. no. 5 (Settlement Agreement) (contravention 1).  
In this matter, the representative had used his position to maintain control of the company's books and, with regard to the exchange rate, to play on the exchange rates and misappropriate funds belonging to the dealer firm, which consequently suffered a loss of \$925,000. The representative had manipulated the entries in the dealer member's records to conceal his activities and his manipulations of the exchange rate. The penalty was a fine of \$25,000.
- ¶ 26 Midland Waldwyn Capitals Inc. (2000) I.D.A.C.D. No. 10 (Settlement Agreement) (Contravention 1).
- ¶ 27 In this matter, there was a failure to maintain internal control systems, in addition to a failure to supervise. The penalty was a fine of \$25,000, with costs of \$2000.
- ¶ 28 First Canada Capital Partners Inc. (2009) IROC No. 19 (Settlement Agreement) (Contravention 3).
- ¶ 29 In this matter, the ultimate designated person (UDP) agreed to make sure that a chief compliance officer worked on site daily, as a condition for approval of a change of ownership. Five months later, the chief compliance officer requested to work from home two days a week, and the UDP approved the arrangement.

¶ 30 A month later, Staff of the IDA discovered the new arrangement during a sales compliance examination. There were no allegations of a failure to supervise. The penalty was a fine of \$40,000.

¶ 31 Prodigy Wealth Management Corp. (2009) IIROC No. 51 (Settlement Agreement) (Contravention 3).

¶ 32 In this matter, the respondent admitted to having failed to appoint an approved person to act as the chief compliance officer.

¶ 33 In default of its chief compliance officer, the dealer member failed to replace the chief compliance officer and was unable to maintain the supervision required by the regulations. Consequently, the respondent agreed to the immediate suspension of its membership in IIROC and to cease dealing with the public immediately.

## **IX. Factors Taken into Account by the Hearing Panel in Its Decision**

¶ 34 A- Aggravating factors: from November 20, 2002 to March 15, 2006.

- (a) The time period during which NBDB failed in its duty to provide supervision and in its duty to establish and maintain adequate internal controls;
- (b) The failure to keep physical acknowledgements;
- (c) The time period, namely from September 6, 2005 to January 9, 2007, during which NBDB continued the registration of its CCO although this person was no longer in its employ;
- (d) The fact that the CCO was no longer on site, nor full time;
- (e) The fact that the records did not comply with regulations;
- (f) The fact that the employment relationship with the CCO had been severed since September 6, 2005.

¶ 35 B- Mitigating factors:

- (a) The representative hid his activities from NBDB;
- (b) The failure to keep an acknowledgement is a “technical” violation, and there is no known jurisprudence on the subject;
- (c) In spite of everything, NBDB agreed to a penalty of \$25,000 on this count;
- (d) It was NBDB that launched an internal investigation and reported the situation to IIROC;
- (e) It was NBDB that suspended the representative upon discovering his activities;
- (f) It was NBDB that dismissed the representative and issued a termination notice;
- (g) It was NBDB that sent IIROC the results of its investigation;
- (h) NBDB cooperated with the IIROC investigation;
- (i) NBDB did not profit from the activities.

## **X. Decision**

¶ 36 In view of the factual content of the Settlement Agreement, the wording of the contraventions, the IIROC guidelines, the regulatory provisions, the jurisprudence, the aggravating and mitigating factors, principally NBDB's cooperation, the Hearing Panel considers the Settlement Agreement to be reasonable, and

accordingly accepts said settlement.

AGREED TO by the Hearing Panel, at Montréal this 11th day of January, 2011:

André Valiquette

Yves Julien

Jean Jeannot

**\*\*\*SETTLEMENT AGREEMENT\*\*\***

**I. INTRODUCTION**

1. The Enforcement Department Staff of IIROC and the Respondent, National Bank Direct Brokerage Inc. (NBDB), agree to the settlement of this matter by way of this Settlement Agreement (**Settlement Agreement**).
2. The Enforcement Department Staff of IIROC has conducted an investigation (**the Investigation**) into the conduct of NBDB.
3. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada (IDA) and Market Regulation Services Inc. (RS). Pursuant to the Administrative and Regulatory Services Agreement between the IDA and IIROC, which took effect on June 1, 2008, the IDA has retained IIROC to provide the necessary services to enable the IDA to carry out its regulatory functions
4. The Respondent agrees to be subject to the jurisdiction of IIROC.
5. The Investigation disclosed matters for which the Respondent may be disciplined by a Hearing Panel appointed pursuant to Part C of Schedule C.1 to Transition Rule No. 1 of IIROC (**the Hearing Panel**).

**II. JOINT SETTLEMENT RECOMMENDATION**

6. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.
7. The Respondent admits to the following contraventions of IIROC Rules, Guidance, and IDA By-Laws, Regulations or Policies:

**Contravention 1 :**

NBDB, an IDA Member firm, failed in its duty to provide supervision and in its duty to establish and maintain adequate internal controls in that it allowed its representative Thi Sen Chher:

- a. from November 20, 2002 to March 15, 2006 inclusive, to obtain a proxy for the brokerage accounts of A, a family member, without registering these accounts as Pro accounts or ensuring that they were registered as such;
- b. to make additions, without supervision or verification, to A's mailing address and investment profile without A's authorization; and
- c. from February 28, 2006 to May 17, 2007 inclusive, without supervision or verification, to self-approve transfers of funds between his personal accounts and those of A, without the latter's consent or approval;

thereby contravening the provisions of IIROC Dealer Member Rules 17.2A, 29.27, 1300.2, 2500 and 2700;

**Contravention 2:**

NBDB, an IDA Member firm, failed to keep adequate records, particularly:

- a. the keeping of physical acknowledgements confirming the receipt, reading and understanding of the May 2005 Compliance Manual by the employees of NBDB,

thereby contravening the provisions of IIROC Dealer Member Rules 17.2 , 200 and 2500, Section D;

**Contravention 3:**

From September 6, 2005 to January 9, 2007 inclusive, NBDB, an IDA Member firm, engaged in conduct unbecoming in that it continued the registration of its Chief Compliance Officer with the regulatory authorities, although this person was no longer in the employ of NBDB, thereby contravening the provisions of By-law 38.12, Policy No. 6 and Policy No. 8 of the IDA;

8. Staff and the Respondent agree to the following terms of settlement:
  - a) a fine of \$75,000
9. The Respondent agrees to pay costs of \$25,000 to the Association.

**III. STATEMENT OF FACTS**

*(i) Acknowledgment*

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

*(ii) Factual Background*

11. At all material times, the Respondent, NBDB, has been a duly registered member firm of the IDA, and then of its successor, IIROC;
12. NBDB is a legal entity distinct from National Bank of Canada Inc. (hereinafter, "NBC"); indeed, the latter is not registered with either the IDA or IIROC;
13. Following an internal investigation conducted by NBDB, the latter reported the misconduct of its representative, Thi Sen Chher, to IIROC (the "IDA" at the time);
14. Upon being informed of the misconduct, one of the measures taken by the company to protect the public was to dismiss its representative, Thi Sen Chher, on June 26, 2007;
15. The misappropriation of funds by Thi Sen Chher concerned just one client, in just one account, namely that of A, a member of Thi Sen Chher's family;
16. Furthermore, the scope of the misappropriation of funds was limited to a maximum amount of roughly \$69,000;
17. NBDB has made efforts to communicate with A in order to compensate her. To date, A has refused to speak with the NBDB staff;

**A. FAILURE TO PUT IN PLACE EFFECTIVE SUPERVISION MECHANISMS:**

18. From January 8, 2002 to March 10, 2004 inclusive, Thi Sen Chher was registered with the IDA as a Registered Representative (retail) of NBDB;
19. From March 10, 2004 to June 26, 2007 inclusive, Thi Sen Chher was registered with the IDA as a Registered Representative – Options (retail) at NBDB;
20. While employed with NBDB, Thi Sen Chher was part of the Privilege Service team, which consisted of ten (10) representatives, out of the total 140 employed with NBDB at the time.

**a. Accounts not coded "Pro"**

21. On or about September 24, 2001, Thi Sen Chher was hired as an investment officer by NBDB;
22. Between October 5, 2001 and April 9, 2002, Thi Sen Chher opened several personal cash brokerage and margin accounts with NBDB, under the numbers 661KGEA, 661KGES, 661KGEG and 661KGEH;
23. On or about June 27, 2002, Thi Sen Chher changed his personal address, to take effect July 15, 2002, to 7621 St-Hubert, Montréal, Qc, H2R 2N7 ("**Personal Address**");
24. Effective November 20, 2002, A, a member of Thi Sen Chher's family, opened a series of personal cash brokerage and margin accounts with NBDB, through Thi Sen Chher, under the numbers 663CT7A, 661CHEA, 661CHEB and 663 CHEA;
25. During the same period, A signed a "Trading authorization or power of attorney" (form 13768-701) giving Thi Sen Chher power of attorney:

[TRANSLATION]

“to give NBDB instructions for the purchase (in cash or on margin), the sale (including short sales) and, in general, the trading of securities; to act for the administration of the Account; to withdraw available credit balances and registered securities for and on behalf of the Client; and to effect any trade or account transaction relative to the above-stated account number(s) of the Client.

**Exceptions**

The trading authorization and power of attorney do not authorize the Agent to:

- o Receive any security or available credit balance on his own behalf or that of a third party;
  - o Sign agreements or endorse securities;
  - o Open, close, or change the nature of an account.” (our emphasis)
26. On or about November 20, 2002, Thi Sen Chher remitted this power of attorney to the new accounts department at NBDB pursuant to existing procedure;
  27. NBDB did not code A's accounts as Pro accounts, despite the fact that client A has ties with Thi Sen Chher, that they had the same address, and that the latter had power of attorney to act on the client's accounts;
  28. It was not until March 15, 2006 that A's accounts were coded "Pro";
  29. At all material times, NBDB had no mechanisms that would allow it to manage this type of situation;

**b. Unsupervised changes to the investor's address and profile**

30. On or about August 2, 2005, Thi Sen Chher requested to have his personal address added as A's mailing address, all without A's prior approval or consent;
31. NBDB did not do any verification or control before executing this change in the system;
32. Consequently, as of August 2, 2005, A's monthly statements of account were forwarded directly to Thi Sen Chher's address, and no longer to A;
33. On or about November 11, 2006, Thi Sen Chher modified A's investor profile by replacing the initial Investment Objectives of 50% Income and 50% Equity with a Growth profile, and by increasing A's Knowledge level to Moderate, all without the prior approval or consent of A;
34. According to the statement made by Thi Sen Chher during an internal investigation by NBDB, these changes were never discussed, requested or approved by A, at the material time;
35. NBDB did not have any supervision mechanisms that would allow it to prevent such a situation;

**c. Absence of effective supervision of the "Pro" account statements**

36. Between February 28, 2006 and May 17, 2007 inclusive, Thi Sen Chher misappropriated funds belonging to A on 38 occasions, by transferring amounts from A's accounts directly to his Pro accounts;
37. At all material times, the account managers in the NBDB Privilege section, like Thi Sen Chher, could approve each other for fund transfers between unconnected accounts, as well as directly self-approve transactions without verification or approval by a direct superior;
38. At all material times, Thi Sen Chher's "Pro" account statements showed the fund transfers between his different accounts and that of A, by using the word "transfer" and the account numbers;
39. It was not until May 18, 2007 that NBDB discovered the misappropriations of funds perpetrated by Thi Sen Chher.
40. Following an internal investigation conducted by NBDB, the latter reported its representative Thi Sen Chher's misconduct to IIROC (the "IDA", at the time);
41. Upon being informed of the misconduct, one of the measures undertaken by NBDB to protect the public was to suspend and then dismiss its representative, Thi Sen Chher, on June 26, 2007.

**B. NON-COMPLIANT RECORDS**

**a. Non-compliant Organization Charts.**

42. From January 1, 2005 to July 2005 inclusive, the NBDB organization charts show B as Senior Manager and Chief Compliance Officer of the NBDB Compliance and Legal Affairs Department;
43. From September 15, 2005 to October 3, 2005, the position of Manager, Compliance and Legal Affairs appears as "vacant" on the NBDB organization charts following B's departure;
44. On the organization charts of December 12, 2005 to March 2006, C appears as Interim Manager of the Compliance and Legal Affairs Department at NBDB;
45. B is shown, in dotted lines, as Chief Compliance Officer for this period;
46. As of January 5, 2006, B no longer appears on the NBDB organization chart under the NBDB Compliance and Legal Affairs Department;
47. From March 2006 until November 2006, the NBDB organization charts indicate C as Senior Manager of the NBDB Compliance and Legal Affairs Department;

48. During the same period, the NBDB organization charts make no mention of a Chief Compliance Officer, with the exception of a second organization chart dated April 18, 2006 which was prepared and communicated by NBDB at the specific request of the IDA, and on which B reappears as Chief Compliance Officer;

**b. Absence of signed acknowledgment that the compliance manuals have been read**

49. Rule 2500 states, under the heading "Establishing and maintaining procedures, delegation and education", section D, that:

- (i) "The Member's current sales practices and policies must be made available to all sales and supervisory personnel. Members should obtain and record acknowledgements from all sales and supervisory personnel that they have received, read and understood the policies and procedures relevant to their responsibilities." (our emphasis)

50. The NBDB compliance manuals for May 2005 and November 2006 require that employees sign an acknowledgment confirming that the employees have received, read and understood the compliance manual;

51. NBDB failed to keep a signed copy of the acknowledgments for May 2005. However, NBDB did keep an electronic acknowledgment from its employees who passed an exam on the NBDB policies and practices contained in the compliance manual of May 2005.

**C. ABSENCE OF A VALIDLY REGISTERED CHIEF COMPLIANCE OFFICER.**

52. From April 27, 2004 to January 9, 2007 inclusive, B was registered with the IDA as Chief Compliance Officer at NBDB;

53. During this same period, according to the registration appearing in the National Registration Database (hereinafter, "NRD"), B devoted 37 hours a week to her duties as Chief Compliance Officer at NBDB;

54. On or about September 6, 2005, B left her position as Manager, Compliance at NBDB to join NBC, a non-IDA member, as Senior Manager, Operational Risk and Compliance for NBC's Personal Banking network;

55. The NBDB Compliance Manual of May 2005, in force until November 2006, expressly provides that:

[TRANSLATION]

- (i) NBDB shall appoint an Alternate Designated Person, who shall be approved as such, to act as Chief Compliance Officer. That person shall be the Manager, Compliance and Legal Affairs at NBDB." (our emphasis)

56. Yet, from September 6, 2005 to January 9, 2007, B continued to act as Chief Compliance Officer at NBDB, while assuming the responsibilities described previously at NBC;

57. From about December 12, 2005 to January 2007, C acted as Interim Manager, and then Senior Manager, of the Compliance and Legal Affairs section at NBDB following B's departure, but was not registered with the IDA as the Chief Compliance Officer;

58. It was only on or about January 9, 2007, that NBDB sent IIROC the notice of B's termination as Chief Compliance Officer at NBDB, namely more than 15 months after the latter had left her position as Compliance Manager at NBDB;

**IV. TERMS OF SETTLEMENT**

59. Settlement of these matters was reached in accordance with IIROC Rule 20.35 to 20.40 inclusive, and Rule 15 of the Dealer Members' Rules of Practice and Procedure;

60. The Settlement Agreement is subject to acceptance by the Hearing Panel;
61. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel;
62. 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;
63. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives its right, under IIROC rules and any applicable legislation, to a disciplinary hearing, review or appeal;
64. 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;
65. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel;
66. 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;
67. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately on the effective date of the Settlement Agreement;
68. Unless otherwise stated, suspensions, prohibitions, expulsions, restrictions and other conditions or terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

AGREED TO by the Respondent, at Montréal (Québec), this 10th day of September, 2010.

**« Nicolas Milette »**

**Nicolas Milette, President**

For the Respondent, NBDB

**« Julie – Martine Loranger »**

**Me Julie-Martine Loranger**

**Gowlings**

Counsel for the Respondent

AGREED TO by Staff of IIROC, at the City of Montréal (Québec), this 13th day of September, 2010

**« Witness »**

Witness

**« Sébastien Tisserand »**

**Me Sébastien Tisserand**

Enforcement Counsel

IIROC

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