

# Re Rada

IN THE MATTER OF:

**The Dealer Member Rules of the Investment Industry Regulatory  
Organization of Canada (IIROC)**

**and**

**The By-Laws of the Investment Dealers Association of Canada (IDA)**

**and**

**Marcel Anil Rada**

2011 IIROC 27

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

Heard: April 18, 2011 in Vancouver, BC

Decision: April 29, 2011

(14 paras.)

**Hearing Panel:**

Catharine Esson, Chair, Dave Pearson and Mike Johnson

**Appearance:**

Barbara Lohmann, Enforcement Counsel

The Respondent was not present and did not appear by counsel

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## DECISION

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¶ 1 Pursuant to Association Bylaw 20.36, we conducted a hearing on April 18, 2011 to consider whether to accept a settlement agreement entered into between IIROC's Enforcement Staff and Mr. Rada on April 14, 2011 (the "Settlement Agreement"). At the conclusion of the hearing and after considering the submissions of Enforcement Council, we accepted the Settlement Agreement. These are our reasons for doing so.

¶ 2 The Settlement Agreement is attached to these reasons. Enforcement Counsel advised us that Mr. Rada was represented throughout the settlement process.

¶ 3 In the Settlement Agreement, Mr. Rada has admitted that:

- a. From January 2007 to March 2007, he solicited and obtained monies for the stated purposes of investments in Ialta Industries Ltd. ("Ialta"), which investments were off-book transactions conducted without the knowledge or consent of his employer, when in fact he was the primary beneficiary of the monies raised, contrary to Dealer Member Rule 29.1 (then IDA By-law 29.1).
- b. On or about June 1, 2007, he solicited and obtained monies from JB for the stated purpose of an investment in Montrose Explorations Ltd. ("Montrose"), which investment was off-book and

without the knowledge or consent of his employer, when in fact he was the primary beneficiary of the money raised, and once he became the President of Montrose in November 2007, he failed to cause Montrose to issue the shares to JB pursuant to that investment, contrary to Dealer Member Rule 29.1 (then IDA By-law 29.1).

- c. On or about August 24, 2007, he facilitated the participation in an off-book transaction on behalf of Montrose without the knowledge or consent of his employer, contrary to Dealer Member Rule 29.1 (then IDA By-law 29.1).
- d. On or about November 5, 2007, he issued a personal cheque for \$30,000 to JB in re-payment of a loan to Montrose on a bank account that he knew or ought to have known had been closed two months earlier, contrary to Dealer Member Rule 29.1 (then IDA By-law 29.1).
- e. From November 14, 2008 to August 25, 2010, he failed to co-operate with Staff's investigation into the matters outlined in Counts 1, 2, 3 and 4 herein, contrary to Dealer Member Rule 19.5 in that he refused to produce banking records when asked by Staff to do so and he failed to attend an interview with Staff scheduled for August 25, 2010.

¶ 4 In the Settlement Agreement, Staff and Mr. Rada agreed on the following terms of settlement:

- a. a permanent prohibition against Mr. Rada's reapproval in all capacities; and
- b. a fine in the amount of \$75,000

¶ 5 Mr. Rada also agreed to pay costs to IIROC in the amount of \$10,000.

*The principles applicable to the decision to accept or reject a settlement agreement.*

¶ 6 Pursuant to s. 20.36(1) of IIROC's Dealer Member Rules, we must accept or reject the Settlement Agreement as presented to us. This requires that we consider:

- a. whether the facts agreed upon support the admissions of contraventions made by Mr. Rada in paragraph 7 of the Settlement Agreement; and
- b. whether the agreed upon penalty is within the reasonable range for the misconduct which is admitted.

¶ 7 In *R. v. Milewski* [1999] IDAC No. 17, the District Council described the difference between determining whether the agreed upon penalty is within a reasonable range and the task which faces a panel following a contested hearing, as follows:

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

¶ 8 This is consistent with the description of the obligation on tribunals considering settlements and joint submissions in other contexts, as described in *Rault v. Law Society of Saskatchewan* 2009 SKCA 81.

*Do the facts agreed upon in the Settlement Agreement support the admissions of contraventions?*

¶ 9 We have concluded that the facts agreed upon support the admissions of contraventions in paragraph 7 of the Settlement Agreement.

*Is the agreed upon penalty within the reasonable range for the misconduct which is admitted?*

¶ 10 Mr. Rada's admitted misconduct falls into four categories:

- a. Soliciting and obtaining funds from individuals for the stated purpose of investment in two issuers, when in fact a significant portion of the money raised was then paid to Mr. Rada by the issuers, without the knowledge and consent of the individuals who provided the funds, contrary to Dealer Member 29.1.

The total funds raised by Mr. Rada to which this admission relates is approximately \$205,000. Of this, Mr. Rada admits to being the beneficiary of more than \$175,000. Mr. Rada has paid \$17,000 to the individuals from whom he raised this money.

- b. Facilitating participation in off book transactions without the knowledge and consent of his employer, contrary to Dealer – Member 29.1;
- c. Issuing a personal cheque to an individual in repayment of a loan made to an issuer that Mr. Rada guaranteed on a personal bank account that Mr. Rada knew or ought to have known had been closed two months earlier, contrary to Dealer Member Rule 29.1; and
- d. Failing to cooperate with Staff's investigation, contrary to Dealer Member Rule 19.5. Mr. Rada refused to produce banking records when asked by Staff to do so and failed to attend an interview with Staff scheduled for August 25, 2010 although he attended two other interviews.

¶ 11 Staff submitted before us that the conduct described in paragraph 10(a) above was akin to misappropriation of funds. We agree that the basic dishonesty of the conduct is comparable to misappropriation and that it is appropriate to look for guidance to authorities which consider misappropriation. We accept that a permanent ban and a substantial fine are within the reasonable range of penalty for this conduct, given its scope and dishonesty.

¶ 12 The remaining misconduct is also serious. It warrants an increase in the amount of the fine. Given that our task is to determine whether the agreed upon penalty is within the reasonable range, rather than to determine the correct penalty, little is to be gained by trying to quantify precisely how this remaining misconduct should affect the amount of the fine.

¶ 13 We are satisfied that the agreed upon penalty is within the reasonable range for the misconduct admitted, having regard for the settlement process and the fact the parties have agreed. In reaching this conclusion we have considered both IIROC's Guidelines and the penalties imposed in previous decisions referred to us by Staff. These authorities reinforce our conclusion.

#### *Conclusion*

¶ 14 For these reasons set out above, we accept the Settlement Agreement as presented.

Dated at Vancouver, BC this 29<sup>th</sup> day of April, 2011.

Catharine Esson, Chair

Dave Pearson

Mike Johnson

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

## **I. INTRODUCTION**

1. IIROC Enforcement Staff and the Respondent, Marcel Anil Rada (Respondent) consent and agree to the settlement of this matter by way of this settlement agreement (“the Settlement Agreement”).
2. The Enforcement Department of IIROC has conducted an investigation (“the Investigation”) into the conduct of Marcel Anil Rada.
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 IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions.
4. The Respondent consents to be subject to the jurisdiction of IIROC.
5. 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**

6. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
7. The Respondent admits to the following contraventions of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:
  - a) From January 2007 to March 2007, the Respondent solicited and obtained monies for the stated purposes of investments in Ialta Industries Ltd. (“Ialta”), which investments were off-book transactions conducted without the knowledge or consent of his employer, when in fact he was the primary beneficiary of the money raised, contrary to Dealer Member Rule 29.1 (then IDA By-law 29.1).
  - b) On or about June 1, 2007, the Respondent solicited and obtained monies from JB for the stated purpose of an investment in Montrose Exploration Ltd. (“Montrose”), which investment was off-book and without the knowledge or consent of his employer, when in fact he was the primary beneficiary of the money raised, and once he became the President of Montrose in November 2007, he failed to cause Montrose to issue the shares to JB pursuant to that investment, contrary to Dealer Member Rule 29.1 (then IDA By-law 29.1).
  - c) On or about August 24, 2007, the Respondent facilitated the participation in an off-book transaction on behalf of Montrose without the knowledge or consent of his employer, contrary to Dealer Member Rule 29.1 (then IDA By-law 29.1).
  - d) On or about November 5, 2007, the Respondent issued a personal cheque for \$30,000 to JB in repayment of a loan to Montrose on a bank account that the Respondent knew or ought to have known had been closed two months earlier, contrary to Dealer Member Rule 29.1 (then IDA By-law 29.1).
  - e) From November 14, 2008 to August 25, 2010, the Respondent failed to co-operate with Staff’s investigation into the matters outlined in Counts 1, 2, 3 and 4 herein, contrary to Dealer Member Rule 19.5 in that he refused to produce banking records when asked by Staff to do so and he failed to attend an interview with Staff scheduled for August 25, 2010.
8. Staff and the Respondent agrees to the following terms of settlement:  
**Where the Respondent is/was an Approved Person:**
  - a) a permanent prohibition against re-approval in all capacities; and
  - b) a fine in the amount of \$75,000
9. The Respondent agrees to pay costs to IIROC in the amount of \$10,000.

### III. STATEMENT OF FACTS

#### (i) Acknowledgment

10. 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**

11. The Respondent commenced his employment in the securities industry in 1992. He worked at various Member firms before joining Jennings Capital Inc. (“Jennings”) in November 2004 where he was employed until October 11, 2006. The Respondent was then employed by Wolverton Securities Ltd. (“Wolverton”) from October 19, 2006 to March 28, 2007. He was subsequently employed by Global Securities Corporation (“Global”) from April 3, 2007 to December 21, 2007 when he voluntarily resigned. The Respondent is not currently employed in a registered capacity in the securities industry.
12. The Respondent does not have a previous disciplinary history.
13. These matters came to IIROC’s attention as the result of complaints filed about the Respondent with both Wolverton and Global.

##### **IALTA**

14. Ialta’s shares were listed on the CNQ Exchange. On January 9, 2007, the British Columbia Securities Commission (“BCSC”) issued a cease trade order against Ialta for failing to file comparative financial statements for the financial year ended August 31, 2006 and a Form 51-102F1 Management’s Discussion and Analysis for the period ended August 31, 2006. Ialta could not resume trading until it filed all the required records in accordance with the *Securities Act*.
15. The Respondent became involved in raising monies for Ialta for the stated purpose of paying for a financial audit, purchasing a property and paying legal fees in order to become re-listed on the CNQ Exchange.
16. Ialta’s share never became relisted.

##### **JB**

17. JB was the Respondent’s former client at a previous firm. He was not his client while at Wolverton.
18. In January 2007, the Respondent approached JB about investing in Ialta after which JB invested the following amounts in Ialta (collectively, the “JB Ialta Investment”):
- \$ 50,000 on February 6, 2007;
  - \$ 75,000 on February 9, 2007; and
  - \$ 25,000 on March 6, 2007.

TOTAL:       \$150,000

19. The JB Ialta Investment was in the form of bridge loans and was evidenced by promissory notes issued by Ialta. Interest was at a rate of 3% per month. The third promissory note included a “50% stock bonus payable at maturity.” The maturity date was stated on each promissory note as: “On the date that is seven business days after the Company’s common shares resume trading on the CNQ”. These transactions were all conducted through the Respondent.

20. JB sent a letter to Wolverton dated August 14, 2007 (the "Letter") in respect of, *inter alia*, the JB Ialta Investment which stated that he had been trying to contact the Respondent for five weeks but his calls were not returned. He wanted to know what was happening to his investments and "Marcel Rada is the person who sold me these investments".
21. On September 3, 2008, JB's lawyer issued a demand letter to Ialta, its directors and the Respondent for repayment of the JB Ialta Investment plus accumulated interest. The demand letter stated that JB was induced to make the JB Ialta Investment based upon the representations of the Respondent.
22. JB has not received repayment of his investment in Ialta.

*MM*

23. MM was the Respondent's client at Wolverton. In January 2007, the Respondent attended at MM's office and asked MM to invest in Ialta. The Respondent advised MM that it would be a "good investment". The Respondent further advised MM that Ialta's shares would be listed "within a month". At this meeting, MM gave the Respondent a cheque for \$5,000 payable to Ialta.
24. MM sent a letter dated November 16, 2007 to Wolverton in which he described his investment in Ialta. He was concerned that this investment never appeared on his Wolverton statements. He stated further that he had asked the Respondent for the paperwork in respect of the Ialta investment and while the Respondent's promised to provide same, he never did so. MM asked Wolverton if it was aware of this investment and if it had copies of the related paperwork.
25. MM has not had his Ialta investment returned back to him.

*EC*

26. In January 2007, EC, who was a former client of the Respondent, "ran into" the Respondent. At that time, the Respondent advised EC that he was employed by Wolverton and was working on a number of investment opportunities.
27. Shortly after this meeting, the Respondent contacted EC and arranged a subsequent meeting. At that subsequent meeting, EC agreed to open an account at Wolverton and signed the account opening documents. At that time, the Respondent recommended an investment in Ialta which was essentially a short-term loan to fund the recapitalization of the company that had been de-listed and would be shortly be re-listed as a mining company.
28. On January 31, 2007 EC provided the Respondent with a cheque for \$5,000 payable to Wolverton and another cheque for \$25,000 payable to Ialta. The Respondent provided EC with a promissory note from Ialta which stated that the investment was payable within seven days of Ialta being re-listed.
29. Approximately one month later, EC received a call from the Respondent who indicated that he had decided to move to Global. He stated that the re-listing of Ialta was proceeding as planned.
30. EC and the Respondent exchanged subsequent telephone calls in which the Respondent provided detailed updates in respect of Ialta, including the fact that things were proceeding much slower than anticipated.
31. Upon EC's return from an extended vacation in August 2007, he received notice from Wolverton that his account had been cancelled. EC immediately contacted the Respondent who assured EC that his investment in Ialta was secure. At that time, the Respondent discussed another investment opportunity which EC declined to participate in.
32. EC wrote a complaint letter dated February 5, 2008 to Wolverton in which he outlined the history of his Ialta investment. EC asked Wolverton about the status of this investment as his attempts to contact the Respondent had been fruitless.
33. On or about June 23, 2008, EC advised Staff in a telephone conversation that the Respondent had made one payment to him of approximately \$12,000.

### *Ialta Cash Flow*

34. Between January and March 2007, \$256,000 was deposited into Ialta's bank account at the Bank of Montreal. During that same period, \$156,650 (or 61% of the deposits) was disbursed from Ialta's bank account to the Respondent by cheque or bank draft.
35. The total collected by the Respondent from JB, MM and EC for Ialta was \$180,000. Many of the disbursements from Ialta to the Respondent were made on the same day or the day after monies were deposited (including deposits from JB, MM and EC) into Ialta's bank account.
36. MK, the president of Ialta in early 2007, confirmed that it was the Respondent who was "driving" the fundraising for Ialta. The Respondent was, in effect, the sole person involved in raising monies for the company. MK also advised Staff that the Respondent was to receive a 20% commission on any monies raised for Ialta, although there are no documents to confirm this.
37. MK also stated that any time the Respondent brought in money to Ialta, he demanded immediate payment of his fees.
38. The Respondent advised Staff that he did not receive any fees from Ialta during his employment at Wolverton for the investments by JB, MM and EC. He claimed that the \$156,650 disbursed to him from Ialta was for work that he performed for Ialta during a brief 7 day unlicensed period prior to joining Wolverton. The Respondent stated that he invoiced Ialta for this work but did not provide Staff with copies of same.

### *Wolverton's Knowledge of Ialta*

39. Wolverton's Policy and Procedures Manual, dated November 2006, states the following regarding Outside Business & Directorships:

All outside business activity and directorships must be disclosed to Senior Management and where applicable, on the registrants' application to the IDA. It is prohibited for any registrant to conduct securities related business outside Wolverton except in the case of insurance business.

All outside directorships must be reported to Senior Management for review and approval. All outside directorships must be registered with the IDA. Please see the Research Department's policy of dealing with this in **Section 12**.
40. On or about October 20, 2006, the Respondent executed a Wolverton Annual Employee Survey in which he declared that his only outside business activity was in respect of his "inactive" personal holding company, Bengal Capital Corp.
41. On or about February 26, 2007 Wolverton's Chief Compliance Officer ("CCO") spoke with an individual who made certain accusations against the Respondent and in particular, in respect of the Respondent's relationship with Ialta.
42. Shortly following that conversation, Wolverton's CCO and the Senior Vice-President of Sales ("SVP") met with the Respondent who advised that he had no outside business interests or dealings that had not previously been declared to Wolverton and in particular, he had no business dealings with Ialta.
43. The Respondent further advised Wolverton that he had previously done work for Ialta in 2005 when he was employed at Jennings. He had assisted with Ialta's reorganization and introducing Ialta to people. He received a fee for his work which Jennings had approved.
44. The CCO at Jennings advised Staff that Jennings had no record of the Respondent being involved in any on-book financing activity in relation to Ialta and further, that the Respondent was not authorized for any outside business activities while the Respondent was employed by Jennings.

45. The Respondent further advised Wolverton's CCO and SVP that he was not brokering any deals outside of Wolverton, which was an assurance that the Respondent had provided on subsequent occasions prior to his departure from Wolverton.
46. In the latter part of February 2007, the Respondent contacted Wolverton's Corporate Finance Manager ("CFM") to ask if she would draft a finder's fee agreement in respect of certain work that the Respondent had done for Ialta prior to his employment with Wolverton. While the CFM completed an initial draft, it was never finalized or executed.
47. Wolverton confirmed that the Respondent was not approved for any outside business activities other than what was noted on his October 2006 Annual Employee Survey.
48. In a November 23, 2007 letter to JB, Wolverton stated that JB was not a client of Wolverton and his JB Ialta Investment was not under the auspices of Wolverton.
49. In a January 4, 2008 letter to MM, Wolverton advised that it was not aware that the Respondent sold the Ialta investment to MM.
50. In a June 3, 2008 letter to EC, Wolverton stated that it was in no way involved with his Ialta investment, nor was it approved or endorsed by Wolverton.

### ***Montrose***

51. In May 2007 while employed at Global, the Respondent contacted a lawyer and provided instructions for the incorporation of Montrose. Montrose was incorporated pursuant to the *Business Corporations Act (British Columbia)* on May 9, 2007. The Respondent required copies of the incorporation documents immediately in order to open bank accounts for Montrose. At the time of incorporation, the Respondent was not an officer or director of Montrose.
52. On or about June 1, 2007, while the Respondent was employed at Global, the Respondent solicited an investment from JB in Montrose. JB was not a Global client. JB provided the Respondent a cheque for \$25,000 payable to Montrose. At that time, JB also executed a Private Issuer Subscription Agreement for 500,000 shares of Montrose at \$0.05 per share. On that Agreement, JB checked off that he was an accredited investor. This investment was for the purpose of Montrose acquiring a mining company.
53. On May 31, 2007, the balance in the Montrose corporate bank account at CIBC was \$234.18. On June 1, 2007, JB's \$25,000 cheque (for the private placement shares) was deposited into the corporate account. On June 1, 2007, two cheques were issued from that account to the Respondent in the amounts of \$17,000 and \$3,100 respectively. The two cheques to the Respondent were deposited into his personal bank account at the National Bank.
54. The Respondent stated that he did not receive any commission or fees for introducing JB to Montrose. His explanation was that he had previously loaned the principal of Montrose monies and the payments from the Montrose account were repayments of that personal loan.
55. On or about August 24, 2007, pursuant to another solicitation from the Respondent, JB provided the Respondent a bank draft for \$25,000 as a short term loan to Montrose. The bonus for lending these monies was 250,000 shares of Montrose and \$2,500. The Respondent personally guaranteed this loan. This loan was evidenced by a Term Sheet dated August 24, 2007. The loan was due on August 31, 2007 and repayable by bank draft or certified cheque. JB's bank draft was deposited to the Montrose corporate bank account at CIBC.
56. The Letter that JB sent to Wolverton also included JB's complaint about the Respondent in respect of his investment in Montrose. JB was concerned because he had been trying unsuccessfully for five weeks to contact the Respondent. Wolverton forwarded the Letter to Global.
57. Global responded to JB and stated that the Respondent believed that JB's investment in Montrose occurred prior to May 31, 2007. Global took no further action as it was unable to determine what was at issue.

58. On or about September 13, 2007, Montrose issued a cheque for \$30,000 payable to JB. That cheque was returned for non-sufficient funds. On or about November 5, 2007, the Respondent issued a personal cheque to JB from an account at the National Bank of Canada for \$30,000 to JB. That cheque was also returned for non-sufficient funds. JB learned that the account on which the second cheque was written had been closed two months earlier.
59. The Respondent became the president of Montrose in November 2007.
60. JB received partial repayment of his short-term loan to Montrose. On November 8, 2007, the Respondent gave JB a bank draft for \$4,000. The source of the \$4,000 was the Respondent's personal bank account at CIBC.
61. On or about November 21, 2007, the Respondent contacted Montrose's lawyer and instructed him to prepare subscriptions and share certificates for 15 new shareholders of Montrose. Based on those instructions, the lawyer prepared a Director's Resolution for Montrose which allotted shares to 15 named subscribers. JB was not on that list. However, the Respondent knew that pursuant to JB's initial \$25,000 investment in Montrose, that JB was entitled to 500,000 shares plus an additional 250,000 bonus shares for participating in the short-term loan described in paragraph 45 herein.
62. On or about February 13, 2008, JB sent the Respondent an e-mail which confirmed that he had not yet received his shares, nor had he had his money returned. He demanded a full accounting and the return of his money and shares in Montrose.
63. On June 28, 2008, the Respondent deposited \$1,000 directly to JB's bank account.
64. On or about September 15, 2008, JB commenced a law suit in British Columbia Supreme Court against Montrose and the Respondent in respect of the matters described herein.
65. From May 17, 2007 to November 26, 2007, \$538,460 was deposited to Montrose's CIBC corporate bank account, including the \$50,000 from JB. During the same period, \$242,605 (45.1%) was disbursed from that same account to the Respondent.

#### *Global's Knowledge of Montrose*

66. Global was unaware of and did not provide authority for the Respondent to engage in outside business activities, and in particular, not with Montrose. Further, Global did not receive any remuneration from Montrose as a result of services provided by the Respondent.
67. Global's Policies and Procedures Manual states the following with respect to Full-Time Requirement:

An IA must at all times be actively engaged in the securities business and the major portion of the IA's time must be devoted to Global's business. An IA may continue in another gainful occupation only if the IA is in a remote area and all securities commissions having jurisdiction have consented to the IA working less than full time with Global. In these circumstances, Global will be required to supervise the IA to ensure that continuous service to Global's clients is maintained and that no potential conflicts of interest arise. Apart from these circumstances, no IA may continue in another gainful occupation unless otherwise consented to by Global's UDP and unless it is fully disclosed to, and approved by, the IDA and applicable Securities Commissions.

#### ***FAILURE TO COOPERATE***

68. 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, December 21, 2007.
69. On or about June 24, 2008, Staff advised the Respondent by letter that he was under investigation in relation to the matters outlined in this Notice of Hearing.

70. On or about November 14, 2008, during the course of its investigation into these matters, Staff wrote to the Respondent and requested that he provide banking information and documentation in respect of bank accounts in the Respondent's name at three different financial institutions. The Respondent was required to provide this information by no later than November 28, 2008.
71. The Respondent did not provide any of the requested information or documentation by the deadline, so on December 4, 2008, Staff once again wrote to the Respondent, requesting that the information be provided by no later than December 8, 2008. Staff warned the Respondent that failure to comply with this request may result in disciplinary proceedings being initiated against him.
72. On December 4, 2008 the Respondent telephoned Staff and advised that he had ordered the requested information from the financial institutions and that he would provide same to Staff by December 31, 2008.
73. The Respondent did not provide the information and documentation to Staff by December 31, 2008, nor did he contact Staff to explain why he had not done so.
74. On January 14, 2009, Staff attempted to telephone the Respondent but the message indicated that the voice mail box was full.
75. On January 15, 2009, Staff sent an e-mail to the Respondent outlining the history of Staff's request. Staff advised the Respondent that if it did not hear from the Respondent on or before January 30, 2009, Staff would conclude that the Respondent was avoiding contact with IROC and it would, without further notification, commence disciplinary proceedings against him for failure to cooperate with the investigation.
76. Staff followed up the January 15, 2009 e-mail to the Respondent with a letter dated January 16, 2009 which contained the same information.
77. On January 29, 2009, the Respondent telephoned Staff and advised that he was not in a position to provide his banking records to Staff because he had not made a concerted effort to request or obtain same from the financial institutions and that he was not willing to provide these documents to Staff as he considers them to be private. Staff confirmed the Respondent's position in a letter to him dated February 2, 2009.
78. Because the Respondent did not comply with Staff's requests to provide his banking records, on January 29, 2009 Staff requested the assistance of the BCSC in obtaining the Respondent's banking records. In accordance with Staff's request, the BCSC sent Section 144 *Securities Act* Demands for Production to the National Bank of Canada, HSBC, CIBC, BMO and Vancouver City Savings Credit Union. These financial institutions complied with the Demands for Production and provided the requested documents to Staff in the normal course.
79. On February 4, 2009, the Respondent e-mailed staff and asked Staff to contact his lawyer in order to discuss this matter. The Respondent provided his lawyer's name, law firm and telephone number.
80. On February 11, 2009, Staff had a telephone conversation with the lawyer named in the Respondent's February 4, 2009 e-mail. The lawyer advised Staff that he would check with the Respondent and would contact Staff to advise if the Respondent would provide the requested information.
81. By March 10, 2009, Staff had not heard from the lawyer, so Staff wrote to the lawyer to get an update on the information and documents request. On March 19, 2009, the lawyer responded to Staff by letter which stated that, to date, he had not been retained by the Respondent and he did not yet have instructions from him.
82. The Respondent attended interviews with Staff on October 28, 2008 and July 9, 2009.
83. The Respondent was asked to provide further documents to Staff and Staff also required the Respondent to attend a further interview on August 25, 2010 at 10:00 am. The Respondent did not attend that interview nor did he make any contact with Staff to explain why he could not attend or to re-schedule the interview.

#### IV. TERMS OF SETTLEMENT

84. This settlement is agreed upon 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.
85. The Settlement Agreement is subject to acceptance by the Hearing Panel.
86. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
87. 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.
88. 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.
89. 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.
90. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
91. 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.
92. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
93. 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 14th day of April, 2011.

**Christopher Robillard**  
Witness

**Marcel Rada**  
Respondent

AGREED TO by Staff at the City of Vancouver in the Province of British Columbia, this 14th day of April, 2011.

**Wietzke Gerber**  
Witness

**Barbara Lohmann**  
**Barbara lohmann**  
Senior 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 18<sup>th</sup> day of April, 2011, by the following Hearing Panel:

Per: **Catharine Esson**  
Panel Chair  
Per: **Mike Johnson**  
Panel Member  
Per: **Dave Pearson**  
Panel Member