Re Bergh

IN THE MATTER OF:

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

and

The Dealer Member Rules of the Investment Industry Regulatory Organization of Canada

and

Randall Bergh

2011 IIROC 41

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

Heard: May 19, 2011 at Calgary, Alberta
Decision: June 20, 2011
(21 paras.)

Hearing Panel:
Alan V.M. Beattie, Q.C. – Chair, William Welton, Kathleen Jost
Appearance:
David McLellan, Enforcement Counsel, for the Association
Nigel Campbell, for the Respondent

HEARING PANEL REASONS FOR DECISION (SETTLEMENT AGREEMENT)

INTRODUCTION

¶ 1 A Settlement Agreement was entered into dated May 6, 2011 between Randall Bergh ("the Respondent") and the Investment Industry Regulatory Organization of Canada ("IIROC") 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.

¶ 2 In the Settlement Agreement the Respondent admits to contraventions. The Settlement Agreement contains a complete Statement of Facts, a description of the Contraventions and the Terms of Settlement. It is stated that the Settlement Agreement is subject to acceptance by the Hearing Panel and if the Panel accepts the Settlement Agreement, the Respondent waives his right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal. IIROC and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

¶ 3 A Settlement Hearing Book was provided in advance of the Hearing by IIROC to the Respondent, his Counsel and members of the Hearing Panel.

STATEMENT OF FACTS

¶ 4 The Statement of Facts in the Settlement Agreement includes:

(i) Acknowledgment

10. For the purposes of this Settlement Agreement only, 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

Overview

11. Between September, 2004 and October, 2005, the Respondent, a branch manager with Blackmont Capital Inc. failed to adequately perform his supervisory duties when he approved the opening of a number of new client accounts that invested in Arbour Energy Inc. ("Arbour").

12. The Respondent approved a number of the new accounts without adequately questioning whether the risk tolerance and investment objective information on the new client account forms was consistent with the clients' age, net worth, investment experience and knowledge, and whether many of the clients qualified for claimed exemptions.

Respondent

13. Between March, 2003 and September, 2009, the Respondent was the branch manager of the Calgary office of Blackmont Capital Inc. ("Blackmont").

14. In his capacity as branch manager, the Respondent was, among other things, responsible for the approval of new client accounts, the supervision of account activity and the supervision of registered representatives.

15. The Respondent does not have any disciplinary history.

Elizabeth Maureen Morrison

16. As branch manager, the Respondent was responsible for the supervision of Elizabeth Maureen Morrison ("Morrison"). Morrison was a registered representative ("RR") who worked at Blackmont (and its predecessor) in Calgary from approximately January, 2003 to July, 2007.

Arbour Energy Inc.

17. Arbour was an Alberta based corporation described as being engaged in oil and gas exploration. It became a reporting issuer in 2004, and its common shares were listed for trading on the Canadian National Stock Exchange.

18. In the fall of 2005, the Alberta Securities Commission issued a Cease Trade Order with respect to Arbour shares. The shares have not traded since 2005.

Complaints

19. These matters arose out of a March 3, 2010 Comset filing by Blackmont, as well as an April 26, 2010 client complaint made directly to Staff.

New Clients

20. Between approximately September, 2004 and October, 2005, Morrison opened new client accounts with Blackmont for approximately one hundred and seventy nine (179) individuals ("Clients") seeking to purchase Arbour preferred shares pursuant to a non-brokered private placement. All of these new clients were referrals to Morrison from DM, president of Arbour.

21. The total amount invested by the Clients was $10,571,478.60.

22. In order to open a new client account, Morrison would send a new client account form ("NCAF") to the Respondent for his review and approval.

23. The NCAFs of the Clients indicated that for many of them, the investment in Arbour represented a substantial portion of their net worth.

24. The NCAFs of the Clients indicated, among other things, the following:

    a) There were 101 clients in which their Arbour investment represented more than 30% of their liquid assets, including 72 clients in which their Arbour investment represented more than 50% of their liquid assets;

    b) There were 36 clients in which their Arbour investment represented more than 30% of their net worth, including 19 where it exceeded 50% of their net worth, and 3 clients where it exceeded 100% of their net worth;

    c) There were 72 clients in which their Arbour investment exceeded their annual income, including 9 clients where it exceeded 5 times their annual income.

25. The Respondent reviewed the information provided by the Clients on the NCAFs.

26. Among other things, the Respondent became aware that:

    a) The Clients' objectives in all of the client accounts were one hundred percent venture, and one hundred percent high risk;

    b) The majority of the Clients resided in Alberta and Ontario, but the group also included residents of British Columbia, Manitoba and Saskatchewan.

    c) The Clients all wanted to open new accounts with the specific purpose of participating in a non-brokered private placement of Arbour preferred shares;

    d) All of the Clients invested only in Arbour, and did not want to purchase any other security;

    e) All of the clients were transferring funds held in registered retirement accounts.

27. In addition, the Respondent was advised that the majority of the Clients were relying on an offering memorandum exception, or an accredited investor exemption, in order to participate in the private placement. However, many of the Clients did not qualify for these exemptions based on the financial information appearing in the NCAF.

28. The Respondent became concerned about the high degree of risk that the Clients were taking on.

29. The Respondent required that Morrison advise the Clients of the risk. He understood that Morrison had personally spoken with all of the Clients and advised them of the risk. Further, the Respondent understood that Morrison had provided each of the Clients with a letter advising that their portfolio reflected a high degree of risk.

30. Satisfied that each of the Clients had been cautioned about the risk, between September, 2004 and October, 2005, Bergh approved the Clients' applications for client accounts.

31. The Respondent knew that the Clients were investing in Arbour, a high risk security, but did not adequately assess the risk tolerance and investment objective information on a number of NCAFs and whether it was consistent with their age, net worth, investment experience and knowledge.

32. The Respondent had a responsibility to supervise Morrison and to make appropriate review of the relevant NCAFs to ensure that Morrison had properly assessed the Clients' investment objectives and risk tolerance.

33. The Respondent also ought to have questioned whether many of the Clients qualified for any exemption to participate in the private placement as they purported to do.

34. For many of the Clients, the investment in Arbour was not apparently suitable in view of their recorded age, net worth, investment experience and knowledge.

35. In permitting many of these new client accounts to be opened and failing to adequately question the NCAFs, he failed to take the supervisory steps that were reasonably required in the circumstances.

CONTRAVENTIONS

¶ 5 The Settlement Agreement includes:

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

(a) COUNT 1

a) From September, 2004 to October, 2005, while the Branch Manager at Blackmont Capital Inc., he failed to take the supervisory steps that were reasonably required when approving certain client accounts contrary to IDA Regulation 1300.2(a) [now Dealer Member Rule 1300.2(a)], Policy No. 2 [now Dealer Member Rule 2500] and IDA By-law 29.1 [now Dealer Member Rule 29.1]

TERMS OF SETTLEMENT

¶ 6 The Settlement Agreement includes:

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

a) The Respondent agrees to pay a fine to IIROC in the amount of twenty two thousand dollars ($22,000.00);

b) The Respondent shall be prohibited from acting in a supervisory capacity for one year.

9. The Respondent agrees to pay costs to IIROC in the sum of three thousand dollars ($3,000.00).

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

45. 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.

(*The effective date of the Settlement Agreement is the date of Hearing, May 19, 2011.*)

SUBMISSIONS OF IIROC

¶ 7 The foregoing Agreed Statement of Facts, Contraventions and Terms of Settlement were reviewed by Mr. McLellan. He made the following further submissions:

1. Mr. McLellan referred to pertinent parts of the Settlement Hearing Book including Rule 20 ("Corporation Hearing Processes"), IDA By-law 29 ("Business Conduct"), IDA Regulation 1300 ("Supervision of Accounts"), IDA By-law, Policy No. 2 ("Minimum Standards for Retail Account Supervision"), IIROC "Dealer Member Disciplinary Sanction Guidelines: General Principles" and Guideline 4.3: "Failure to Supervise". (*Panel's note: Most of the portions of these documents referred to by Mr. McLellan are set out in the Decision, below.*)

2. In making a judgment call as to the requirement for more supervision, the Respondent erred in ignoring the red flags, in not ensuring that the investments were appropriate for the clients and in not ensuring that they qualified for exemptions.

3. There were a large number of clients and significant losses. The investments were not appropriate for many of the clients having regard to many using retirement funds, their age,

investment knowledge and their not qualifying for exemptions. The Respondent's actions were more negligence than nefarious activity. He made bad judgment calls.

4. Substantial losses were sustained by clients of Ms. Morrison which are being dealt with by the Dealer Member.

5. To his credit, having become concerned about the high degree of risk the clients were taking on, the Respondent required that Ms. Morrison advise the clients of the risk. There was a notation on all the clients' files of a letter to the clients advising of the risk. Furthermore, Compliance in Toronto was involved. The Respondent admits he should have been more attentive. These circumstances warrant somewhat of a lesser penalty than in other, similar cases.

6. Another mitigating factor to be considered is that the investments took place six years ago and there has been no issue involving the Respondent since then.

7. The recommended penalties, including the prohibition from acting as a supervisor for one year, are considered by IIROC to be within the reasonable range of penalties for cases of this nature.

8. The following decisions provide assistance in determining the reasonable range of penalties:

   Milewski (1999) I.D.A.C.D. No. 17; Bulletin No. 2605, August 5, 1999 (Ontario District Council) - is referenced as establishing that a District Council should not alter a penalty that is within a reasonable range.

   Wright (2005) I.D.A.C.D. No. 33; Bulletin No. 3460, September 7, 2005 (Pacific District Council) (Settlement Agreement) - failure to properly supervise the opening of, and the activity in, the joint account of two clients and failure to properly supervise the activity in the accounts of another client; respondent was branch manager; trading was high risk, very inappropriate for the clients - clients lost all or a significant portion of their investment accounts - $25,000 fine, successfully re-write the Partners, Directors and Officers exam, $4,500 costs.

   Corrigan (April 19, 2005) (Pacific District Council) - Branch Manager failed to adequately supervise the activities of an Investment Representative and thereby failed to ensure that the handling of client business was within the bounds of ethical conduct; permitted the Investment Advisor's name to appear as a Registered Representative, which was a misrepresentation; no evidence of any losses; failed to recognize red flags - $25,000 fine, $15,000 costs, prohibited from occupying the position of, or acting as a branch manager, or from occupying the position of or acting as a compliance officer.

   Bacsalmasi (2004) I.D.A.C.D. No. 11; Bulletin No. 3262, March 15, 2004 (Alberta District Council) (Settlement Agreement) - Branch Manager failed to properly supervise a Registered Representative regarding two client accounts and failed to ensure that the acceptance of orders for clients' accounts were within the bounds of good business practice or were appropriate for the clients in keeping with the clients' investment objectives; clients sustained losses and Member Dealer compensated the clients for their losses and forgave indebtedness in their accounts - $25,000 fine, $4,500 costs, successfully re-write the Partners, Directors and Officers exam.

   Graham (2005) I.D.A.C.D. No. 21; Bulletin No. 3434, June 23, 2005 (Saskatchewan) - Co-Branch Manager failed to adequately supervise a Registered Representative to ensure that the RR performed sufficient due diligence with respect to a security and failed to take steps to remain sufficiently informed of the essential facts with respect to the security; led to unsuitable concentrations of the security in four client accounts; continued purchase of the security by RR for his clients as price of the security continued to decline; clients sustained significant losses totalling over $700,000; inappropriate concentration of the one security in the clients' accounts; Graham negligent but not deceitful; no personal gain - $50,000 fine, $15,000 costs, condition of

continued approval as a Branch Manager to successfully re-write the CSC, CPH and PDO examinations.

Van Hee (July 22, 2009) (Alberta District Council) - (six day hearing and written arguments) - DROP in the firm; multiple incidents of failure to reasonably supervise options trading, beyond mere oversight, over an extended period of time; numerous red flags; inappropriate investments for several clients and significant losses for two clients; long period of employment in the industry; no prior disciplinary record; cooperation in the investigation, subsequent efforts by respondent to remedy the deficiencies in the option approval form; no personal gain; no deceit or dishonesty; unlikely to ever offend again - $40,000 fine, successfully re-write the Options Supervisors Course, $15,000 costs, no suspension.

Bouchard (2010) IIROC No. 13 (Quebec District Council) (Settlement Agreement) - failed to properly supervise transactions of a client by a representative under his supervision regarding deposits of share certificates by an insider and execution of sell orders; should have known the circumstances were suspicious; failed to track and keep a proper record of his daily supervision review regarding the client; covered, with his own funds, losses of the client without the knowledge of the firm; dismissed for cause by his employer and paid substantial penalties to the employer; did not benefit personally; cooperated with IIROC - $30,000 fine; pass the Conduct and Practices Handbook exam; prohibition of approval from IIROC in any capacity for a period of six months; permanent ban from approval as a branch manager, assistant or co-branch manager or in any other supervisory capacity; $3,500 costs.

SUBMISSIONS OF THE RESPONDENT

¶ 8 Mr. Campbell, Counsel for the Respondent, agreed with the submissions of Counsel for IIROC. Mr. Campbell referred to the decision in ***Milewski*** (above) and recommended the Panel's acceptance of the Settlement Agreement on the basis that it represented a reasonable compromise. He referred to the fact that the securities were a non-brokered private placement, that they were not solicited accounts and that Compliance in Toronto was involved. He reiterated that the Respondent acknowledges he should have made more inquiry.

DECISION

¶ 9 In the Settlement Agreement the Respondent admits to the contraventions of IIROC Rules, IDA By-Laws, Regulations or Policies set out at p. 5 above. The Hearing Panel accepts that the contraventions have been established.

¶ 10 We accept, and adopt, the submissions of IIROC (para 7 above).

* * * * * *

¶ 11 **IDA By-Law No. 29** (now Dealer Member Rule 29) provides, in part:

BUSINESS CONDUCT

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.

* * * * * *

¶ 12 **IDA Regulation 1300 - Supervision of Accounts** includes:

1300.2.

(a) Each Member shall designate a director, partner or officer or, in the case of a branch office, a branch manager reporting directly to the designated director, partner or officer who shall be responsible for the opening of new accounts and the supervision of account activity. Each such designated person shall be approved by the applicable District Council and, where necessary to ensure continuous supervision, the Member may appoint one or more alternates to such designated person who shall be so approved. The director, partner or officer as the case may be, shall be responsible for establishing and maintaining procedures for account supervision and such persons or, in the case of a branch office, the branch manager shall ensure that the handling of client business is within the bounds of ethical conduct, consistent with just and equitable principles of trade and not detrimental to the interests of the securities industry. As part of this supervision each new account shall be opened pursuant to a new account form which includes, at a minimum, the information required by Form No. 2, and the designated person (other than a branch manager in the case of discretionary accounts) shall prior to or promptly after the completion of any transaction specifically approve the opening of such account….

* * * * * *

¶ 13 **IDA By-laws - Policy No. 2** (now Dealer Member Rule 2500) entitled "Minimum Standards for Retail Account Supervision" includes:

The following principles have been used to develop these minimum standards:

(a) The term "review" in this Policy has been used to mean a preliminary screening to detect items for further investigation or an examination of unusual trading activity or both. It does not mean that every trade meeting the selection process of this Policy must be investigated. The reviewer must use reasonable judgement in selecting the items for further investigation.

(b) It has been assumed that Members have or will provide the necessary resources and qualified supervisors to meet these standards.

(c) The compliance with the know-your-client rule and suitability of investment requirements is primarily the responsibility of the registered representative. The supervisory standards in this Policy relating to know-your-client and suitability are intended to provide supervisors with a check-list against which to monitor the handling of these responsibilities by the Registered representative.

….

(The Policy proceeds to a discussion of "Establishing and Maintaining Procedures, Delegation and Education", which commences with the following):

Introduction

Effective self-regulation begins with the Member establishing and maintaining a supervisory environment which both fosters the business objectives of the Member and maintains the self-regulatory process. To that end a Member must establish and maintain procedures which are supervised by qualified individuals. A major aspect of self-regulation is the ongoing education of staff in all areas of sales compliance.

(There follows a section entitled "Opening New Accounts". That section includes):

Introduction

To comply with the "Know-Your-Client" rule each Member must establish procedures to maintain accurate and complete information on each client. The first step towards compliance with this rule is completing proper documentation when opening new accounts. Accurate completion of the documentation when opening a new account allows both the registered representative and the supervisory staff to conduct the necessary review to ensure that recommendations made for any account

are appropriate for the client and in keeping with his investment objectives. Maintaining accurate and current documentation will allow the registered representative and the supervisory staff to ensure that all recommendations made for any account are appropriate for the client and in keeping with the client's investment objective.

* * * * * *

¶ 14 **The IIROC Dealer Member Disciplinary Sanction Guidelines**, under the heading "General Principles", include the following:

1. Main Concerns When Determining An appropriate Penalty

As set out in *Re Derivative Services Inc.*, [2000] I.D.A.C.D. No. 26, at page 3, a Hearing Panel's main concerns in determining an appropriate penalty are:

1. Protection of the investing public;
2. Protection of the Investment Industry Regulatory Organization's membership;
3. Protection of the integrity of the Investment Industry Regulatory Organization's process;
4. Protection of the integrity of the securities markets, and
5. Prevention of a repetition of conduct of the type under consideration.

The penalty imposed in a specific proceeding should reflect the Hearing Panel's assessment of the measures necessary in the specific case to accomplish these goals, ranging from a reprimand to an absolute bar, and may take into account the seriousness of the respondent's conduct and specific and general deterrence.

2. Disciplinary Sanctions As Deterrence

Registrants and Dealer Member firms have significant responsibilities that they must meet if investors are to be protected and market integrity maintained. Registrants who choose to act in ways that threaten the integrity of the capital markets must have the expectation that they will be held accountable through enforcement action by regulators. Sanctions should be based on the circumstances of the particular misconduct by a respondent with an aim at general deterrence.

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.*

….

3. Key Considerations When Determining Sanctions

The following list of factors should be considered in conjunction with the imposition of sanctions. Individual guidelines may list additional factors. This list is illustrative, not exhaustive, and the Hearing Panel should consider case-specific factors in addition to those listed here and in the guidelines. Since sanctions should be tailored to address the misconduct involved in a particular case, a penalty must be

proportionate to the gravity of the misconduct and the relative degree of responsibility of a respondent. To properly assess the gravity of specific misconduct, the decision-maker should look to a number of factors, including, but not restricted to the following:

[*Hearing Panel note: There are fourteen factors listed. The following are the factors which are pertinent in the present case.*]

3.1 Harm To Clients, Employer and/or the Securities Market

Actual harm can sometimes be quantified by considering the type of transactions, the number of transactions, the number of transactions, the size of the transactions, the number of clients affected by the misconduct, the length of time over which the misconduct took place, and the size of the loss suffered by the client(s) or the Dealer Member firm. Harm can also be measured using less empirical, but more subjective factors, such as the impact of a specific misconduct on a client's life (from an emotional, physical and/or mental perspective), or the impact on the reputation of the Dealer Member firm, or the reputation of the Canadian securities industry as a whole.

3.2 Blameworthiness

In appropriate cases, distinctions should be drawn between conduct that was unintentional or negligent, and conduct that involves manipulative, fraudulent or deceptive conduct. Distinctions should also be drawn between isolated incidents and repeated, pervasive, or systemic contraventions of the Dealer Member Rules.

….

3.3 Degree of Participation

As a general rule, there ought to be a distinction between the sanctions imposed on direct perpetrators and those with a lesser level of complicity.

….

3.4 Extent to which the Respondent was Enriched by the Misconduct

3.5 Prior Disciplinary Record

The fact that a respondent has no prior disciplinary record should, in the absence of evidence to the contrary, lead a panel to a presumption that the respondent was of good moral character prior to the misconduct.

….

3.6 Acceptance Of Responsibilities, Acknowledgement Of Misconduct and Remorse

An admission of wrongdoing by a respondent is usually considered to be a mitigating factor because it implies remorse and an acknowledgement of responsibility. The extent of the mitigating value is affected by timing: the earlier, the better….

3.7 Credit For Cooperation

Since Dealer Member regulation is dependent in large part upon the adherence to internal controls and compliance regimes, full cooperation with the Corporation's investigations by registrants is expected. However, respondents or potential respondents should be given credit for cooperation if they act in a reasonable manner during the course of investigation and disciplinary process by self-reporting and self-correcting the misconduct in question.

….

3.8 Voluntary Rehabilitative Efforts

Remediation efforts prior to (or even subsequent to) detection or intervention by the Corporation should be taken into consideration as mitigating the seriousness of misconduct.

There will no doubt be concerns that subsequent rehabilitative efforts are self-serving, but they warrant credit because they show both recognition of the misconduct and a commitment to remedy it.

….

3.9 Reliance on the Expertise of Others

In general, it is expected that registrants will use proper care and exercise independent professional judgment at all times in the course of their business activities. However, there may be times when an Approved Person's relative culpability may be tempered by his/her reliance on the expertise of others.

….

3.11 Multiple Incidents Of Misconduct Over An Extended Period Of Time

Generally, blameworthiness is compounded as the number of incidents expands. This rationale applies to all types of misconduct: a series of victims indicates a pattern, which compounds the culpability.

3.12 Vulnerability of Victim

The disciplinary process must be seen to provide some degree of protection for the investing public, and in particular, the client with a lower level of sophistication. Consequently, the vulnerability of a victim should be taken into account in determining relative culpability, and hence the relative measure of the sanction imposed….

….

3.14 Significant Economic Loss to the Client and/or Dealer Member Firm

A finding of a significant monetary loss by the respondent's clients or the Dealer Member firm arising out of the respondent's misconduct can be seen as an aggravating factor to the extent that investing has at its core capital preservation and returns. If that core function is significantly eroded by regulatory misconduct, then it should be taken into account when the appropriate penalty is imposed.

4. Use of Sanctions

As set out above, sanctions should be remedial in nature and "fit" the misconduct. Sanctions should effectively address the conduct in question in such a way as to discourage and prevent future misconduct by the respondent, and at the same time, promote general adherence to industry rules and standards.

* * * * * *

¶ 15 The **IIROC Dealer Member Disciplinary Sanction Guidelines** contain the following Guideline:

4.3 Failure to Supervise - Dealer Member Rule 29.27, 1300.2, 2500 and 27000

Each Dealer Member must designate a director, partner or officer who is responsible for the opening of new accounts and the supervision of account activity (Ultimate Designated Person). An Alternate Designated Person may be appointed by the Dealer Member where necessary to ensure continuous supervision.

The Ultimate Designated Person (or Branch Manager appointed by Ultimate Designated Person) is responsible for establishing and maintaining procedures for account supervision and shall ensure that the handling of client business is within the bounds of ethical conduct, consistent with just and equitable

principles of trade and not detrimental to the interests of the securities industry.

The minimum requirements for establishing and maintaining a system to supervise the activities of each partner, director, office, registered representative, employee, and agent are set out in Dealer Member Rule 29.27. The minimum standards for retail account supervision are detailed in Dealer Member Rule 2500 (including branch office and head office account supervision). The minimum standards for institutional account supervision are detailed in Dealer Member Rule 2700.

Considerations in Addition to General Principles:	Recommended Sanctions:
1. Extent of inadequacy in the procedures for supervision or the actual supervision of employee(s)	Designated Person/Supervisor: • Fine: Minimum of $25,000
2. Extent of employee(s) misconduct.	• Re-write of PDO.
3. Amount of losses or compensation for which the Dealer Member is liable as a result of the employee(s) misconduct.	• Period of suspension or permanent bar from director/office/supervisory and or compliance responsibilities.
4. "Red flag" warnings that should have been caught by a proper system of supervision/failure to follow-up or to conduct periodic reviews.	• Permanent bar from approval in all capacities in egregious cases.
5. Corrective measures taken since discovery of problem.	

* * * * * *

¶ 16 In applying the general principles set out above, the protection of the investing public, protection of the integrity of the IIROC process, protection of the integrity of the securities market, prevention of a repetition of conduct of the type under consideration, and general deterrence lead us to the conclusion that the penalties agreed upon between IIROC and the Respondent in the Settlement Agreement are appropriate and should be accepted. We adopt the reasoning of the Hearing Panel in ***Milewski***, at p. 12:

> ....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.

¶ 17 We have taken into consideration the aggravating factors that the same negligent supervision/judgment error occurred over an extended period of time involving a substantial number of clients and significant investment of funds; 19 clients had losses exceeding 50% of their net worth and 3 clients had losses exceeding 100% of their net worth. On the other hand, there are numerous mitigating factors in the Respondent's favour, including the Respondent's cooperation with the investigation and negotiating the Settlement Agreement, and there have been no issues involving the Respondent for six years. Compliance in Toronto was involved and must share responsibility, and the Respondent has no disciplinary history and there have been no subsequent issues.

¶ 18 We are guided by the decisions of District Councils (above), while recognizing the limitations in applying decisions in other cases to varying factual situations. The following passage from ***Van Hee,*** (above para. 7) at p. 7, referring to ***Graham*** is pertinent:

(a) While cases presented during argument may be helpful, they are not decisive. The integrity of the process does however require that any penalty that is imposed should be consistent with prior cases, to the extent that they have been correctly decided, and to the extent that the Hearing Panel believes that the decision is consistent with the other cases;…

¶ 19 The Hearing Panel advised, at the conclusion of the Hearing, that we accepted, and we signed, the Settlement Agreement. We confirm that decision.

¶ 20 The Respondent, in the Settlement Agreement, agreed to the following terms of settlement, which we have accepted as appropriate:

(a) A fine of $22,000;

(b) Respondent shall be prohibited from acting in a supervisory capacity for one year.

¶ 21 The Respondent has agreed to pay costs to IIROC in the sum of $3,000 which we also accept as appropriate. We recognize that the agreed costs reflect the reduced involvement and cost for IIROC resulting from the Respondent's cooperation.

June 20, 2011

Alan V.M. Beattie, Chair

William Welton

Kathleen Jost