

# INVESTMENT DEALERS ASSOCIATION

IN THE MATTER OF:

THE BY-LAWS OF THE INVESTMENT DEALERS  
ASSOCIATION OF CANADA

AND

STANDARD SECURITIES CAPITAL CORPORATION  
AND MARK MARCELLO

## SETTLEMENT AGREEMENT

### I. INTRODUCTION

1. The Enforcement Department Staff (Staff) of the Investment Dealers Association of Canada (the Association) has conducted an investigation (the Investigation) into the conduct of Standard Securities Capital Corporation (Standard) and Mark Marcello (Marcello) (or the Respondents).
2. The Investigation discloses matters for which the Respondents may be disciplined by a hearing panel appointed pursuant to Association By-law 20, Part 10 (the Hearing Panel).

### II. JOINT SETTLEMENT RECOMMENDATION

3. Staff and the Respondents consent and agree to the settlement of these matters by way of this settlement agreement (the Settlement Agreement) in accordance with By-laws 20.35 to 20.40, inclusive and Rule 15 of the Association Rules of Practice and Procedure.
4. The Settlement Agreement is subject to acceptance by the Hearing Panel.
5. The Settlement Agreement shall become effective and binding upon the Respondents and Staff as of the date of its acceptance by the Hearing Panel.
6. 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.

7. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives its/his right under the Association By-laws and any applicable legislation to a disciplinary hearing, review or appeal.
8. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondents may enter into another settlement agreement or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.
9. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
10. Staff and the Respondents 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.
11. Staff and the Respondents jointly recommend that the Hearing Panel accept the Settlement Agreement.

### **III. STATEMENT OF FACTS**

#### **(i) Acknowledgment**

12. Staff and the Respondents 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**

##### **A. REGISTRATION HISTORY OF THE RESPONDENTS**

13. Standard has been a member of the Association since 1997, with its head office located in Toronto, Ontario. Since February 14, 2006, it has also operated a branch in Calgary, Alberta.
14. Marcello is currently the Chief Executive Officer, President and Secretary/Treasurer at Standard. He is registered as Ultimate Designated Person (UDP), Industry Director, Industry Investor and Trading Officer and Registered Representative. Marcello's registration history is as follows:

<b>Dates</b>	<b>Firm/Position</b>
February 1991 to September 1992	Merit Investment Corporation – Registered Representative (RR)
October 1992 to present	Standard Securities Capital Corporation RR
September 1996	Standard - Trading Officer (VP)

September 1996-March 2003	Standard - ADP
September 1996 to present	Standard - Director
September 1996 to January 2000	Standard - Trading Officer (VP, Secretary and Treasurer)
January 2000 to present	Standard - Trading Officer (President, CEO, Secretary and Treasurer)
March 2003 to present	Standard - UDP

**B. SALES COMPLIANCE REVIEWS AT STANDARD**

15. The Association's Sales Compliance Staff (SCS) carried out a sales compliance review (SCR) at Standard in 2004, resulting in an SCR report that was issued to Standard in January 2005.
16. The SCR report is a report by the SCS on the sales compliance activity at Standard. The 2004 SCR report listed a number of findings of deficiencies together with requirements that Standard must meet to address the deficiencies.
17. Repeat deficiencies from previous years (2000 and 2002) were identified in the 2004 SCR report. These repeat deficiencies had also been identified on an unannounced site visit to Standard's offices by Staff of the Association on January 13, 2004.

**(a) Daily/Monthly Supervisory Reviews**

18. The 2004 SCR found that:
  - i. there was minimal evidence of enquiries resulting from reviews of the monthly statements; this was a repeat deficiency;
  - ii. the firm continued to resolve some issues verbally, without documenting the evidence;
  - iii. questionable trades by non-clients occurred, but they were not queried or followed-up;
  - iv. as the member did not indicate when its monthly reviews were conducted, the SCS was unable to establish that these were completed in the timeframe specified by the Minimum Standards for Retail Account Supervision;
  - v. although the Chief Compliance Officer (CCO) signed the monthly statements to evidence his review, the SCS found no evidence that the CCO questioned any of the trading within non-client accounts;
  - vi. one external non-client account traded in an issuer (MagiCorp Entertainment Inc.) during a period in which the issuer was restricted as Standard was in distribution, but the SCS found no evidence that the transactions had been questioned or that any action had been taken.

**(b) OSC Policy 33-601 (Policy 33-601)**

19. Policy 33-601 defines a grey list as a highly confidential list, compiled by a registrant, of issuers about which the registrant has inside information. A restricted list is a list, compiled by a registrant, of issuers about which the registrant may have inside information. The Policy addresses the timing of movement of issuers to and their release from grey and restricted lists.
20. With respect to grey and restricted list issues, the 2004 SCR report found:
  - i. examples of trades that took place during the time when trading should have been restricted, including trading by an insider, with no evidence that these trades were detected during the daily or monthly supervisory reviews;
  - ii. concerns in the timing of the implementation and removal of restrictions for five corporate finance private placements;
  - iii. for one deal reviewed, the member did not restrict the issue;
  - iv. incomplete and, in one case, incorrect information regarding grey and restricted periods for corporate finance transactions conducted by the firm; and
  - v. no evidence of:
    - a) a grey or restricted list for any specific point in time;
    - b) the recipients of either of these lists;
    - c) the prompt distribution of this information to applicable (restricted) employees; and
    - d) the specific time of day these restrictions were implemented.

MagiCorp Entertainment Inc. (MagiCorp)

21. Included among the trades referred to as grey and restricted list issues in the 2004 SCR report were transactions in shares of MagiCorp when MagiCorp was on the firm's restricted list.
22. MagiCorp was placed on the grey list on April 5, 2004, was moved to the restricted list on April 8, 2004 and was released from the restricted list on June 22, 2004.
23. An external non-client account, TCI, purchased 35,000 shares of MagiCorp for settlement on June 3, 2004, sold 15,000 shares on June 7, 2004 and sold a further 10,000 shares on June 8, 2004 in a corporate account with another member firm, when MagiCorp was on the restricted list at Standard.
24. The account opening documents for TCI at the other member firm listed AD, MI and RD as its officers. At the time, AD and MI were also employees in Standard's corporate finance department and investors in Standard, and RD was a non-industry investor in Standard.
25. SCS found no evidence that the transactions had been questioned or that any action had been taken in regard to them.

Fareport Capital Inc. (Fareport)

26. Standard acted as underwriter for Fareport in a special warrant transaction in September 2003.
27. During the period between August 25 and September 3, 2003 a client at Standard, HCL, traded over 500,000 shares of Fareport in more than 15 separate transactions.
28. Fareport was never placed on Standard's grey list and was identified on the restricted list on September 3, 2003. There is no evidence that Standard supervised the trading in Fareport prior to September 3, 2003.

**(c) Inappropriate Business Conduct**

29. The 2004 SCR report contained a finding of a deficiency concerning proper allocation procedures for a best efforts private placement by Vigil Health Solutions Inc. (Vigil) in connection with which Standard acted as underwriter.
30. This private placement included a gypsy swap transaction, facilitated by Standard, in which certain existing shareholders ("Selling Shareholders") of Vigil sold 2 million freely tradable Vigil common shares to certain investors ("Investors") and used the sale proceeds to purchase Vigil units (restricted shares plus warrants) under the private placement. The Selling Shareholders also transferred the warrants included in the units to the Investors for no additional consideration.
31. A review of the final allocations noted that non-clients ("pros") participated in the gypsy swap to the exclusion of some clients who had expressed interest in receiving Vigil's distribution. This excluded group of clients received units (restricted stock and warrants) rather than the freely tradable stock and warrants, which went instead to the pros and certain other clients, who received benefits (freely tradable stock) that the excluded group of clients did not receive.
32. Standard could not provide evidence that the gypsy swap or the private placement was offered to all clients ahead of non-client accounts, in keeping with client priority requirements.

**C. EB ACCOUNT**

33. EB opened an account at Standard on or about May 22, 2002. The New Account Application Form (NAAF) indicated that EB was 58 years old, single with no dependents, and had a net worth of \$800,000 with an annual income of \$120,000. Marcello was the RR responsible for this account.
34. The account objectives were listed on the NAAF as:
  1. 25% short term trading/speculation

2. 50% medium term capital gains; and
  3. 25% long term capital gains.
35. At the time the account was opened, full trading authority was given to AD. AD worked in the corporate finance area at Standard from December 2001 to April 2002 and again from September 2002 to June 2005. The account was not reclassified as a pro account when AD returned to employment with Standard in September 2002, which would have subjected the account to heightened supervision.
36. Had the EB account been properly classified and supervised by Standard between September 2002 and November 2004 the following would have been detected:
- a) the securities held in the account were within the specified investment objectives until approximately April 2003, but after that time the securities held in the account became 100% speculative, contrary to the investment objectives; and
  - b) the account traded in securities that were connected to Standard's corporate finance department.
37. A series of third-party deposits were made to the EB account; Standard did not verify the source of these funds and did not retain the supporting documents for some of the deposits.
38. Large transfers of securities were made into the account without inquiry by Standard as to how they were obtained. Standard was not informed, and was not aware, that in one instance, securities deposited into the account were beneficially owned by AD.
39. Warrants which formed part of units being distributed by Standard were deposited into the account. Although EB's name did not appear on the participant list, this was not queried by Standard.
40. Marcello did not speak to EB at any time while her account was held at Standard, never met her, and did not question AD regarding transactions in the account.
41. A memo to file from Marcello and Standard's CCO dated March 31, 2004 said they were arranging to have the account transferred out of Standard. In April 2004, an updated account opening form that described EB's risk profile in accordance with her account holdings was completed. The last trade in the account occurred on April 20th, 2004. The account was closed and its remaining assets transferred out of Standard in November 2004.

**D. RM and Standard Mercantile Bancorp**

42. Standard Mercantile Bancorp Limited Partnership (SMB) was formed in the early 1990s by RM. RM was the founder and former chairman of Standard and was a RR at Standard during the relevant period.

43. RM managed SMB on behalf of the general partner, Standard Mercantile Bancorp Inc., in which he had an ownership interest.
44. RM also owned a private company which was paid management and performance fees by SMB. RM was not questioned about these fees.
45. SMB opened an account at Standard prior to November 1996. SMB utilized this account as its bank account. RM was the registered representative for the account and the only individual giving trading instructions on the account.
46. Standard did not attempt to ascertain the identity of the limited partners of SMB who held more than 10% of the limited partnership.
47. During the relevant period, large amounts of funds were being deposited and withdrawn from the SMB account at Standard. In some instances, shares were deposited into the account.
48. Third party deposits were also made to the account through a law firm in trust for SMB. Letters of authorization (LOAs) accompanied the deposits and were approved by Standard. RM was not questioned by Standard as to the source or reason for these deposits.
49. Certain withdrawals from the account were also accompanied by an LOA that was approved by Standard and were made payable to the law firm in trust. RM was not questioned by Standard as to the reason for or ultimate recipient of these withdrawals.
50. Loans were made by SMB to registrants at Standard, including Marcello. Although Standard was aware of these loans, Standard did not implement procedures to review loan agreements of SMB to monitor for potential conflicts.

**E. HAZELTON CAPITAL LIMITED PARTNERSHIP (HCLP)**

51. HCLP was a limited partnership created by AD.
52. Hazelton Capital Limited (HCL) was the general partner of HCLP.
53. Standard was informed and believed that HCL was owned by AD, MI and RD.
54. Although Standard was not aware that the ownership structure of HCL was otherwise, it accepts Staff's position that, in fact, the ownership structure of HCL was as follows:
  - i. AD – 25%
  - ii. MI - 25%
  - iii. RD – 25%
  - iv. EB – 25% (EB was a nominee for AD).

55. HCL opened an account at Standard on July 9, 2003. The NAAF for the HCL account was approved by Marcello.
56. On March 30, 2005, at HCL's request, an account was opened in the name of HCLP and the assets in the HCL account were transferred into the HCLP account.
57. As a result of its ownership by Standard employees, the account was marked as a pro account. Heightened supervision was therefore required with respect to this account.
58. At the time the HCLP account was opened, Standard had in its possession a copy of the Limited Partnership Agreement (Agreement), which set out the parameters for the investments of HCLP. The Agreement was reviewed by Marcello and Standard's CCO.
59. Standard was unaware that HCL and AD breached the Agreement but accepts that AD admitted certain breaches to Staff in that:
  - (i) assets of the partnership were held in private corporations outside of the account at Standard;
  - (ii) assets of the partnership were held outside of the Standard account in a single investment that exceeded 10% of the capital of the partnership;
  - (iii) numerous loans were made to business entities and individuals that were not dealing at arm's length with the General Partner.
60. Standard was unaware but accepts Staff's position that:
  - (i) HCLP had limited partners other than the Standard employee owners;
  - (ii) AD was soliciting limited partners and that from October 31, 2003 to April 27, 2004 HCLP accepted funds totaling approximately \$3,820,000, from approximately 44 different limited partners; and
  - (iii) EB had an ownership interest of any nature in HCL.

#### **IV. HISTORY OF PRIOR DISCIPLINE**

61. Since entering the securities industry in 1991 Marcello has not previously been the subject of discipline.
62. In June 2006, Standard entered a settlement with Market Regulation Services Inc. (RS) pursuant to which it agreed to pay a fine of \$80,000 and costs of \$20,000 as a result of its failure to implement adequate trade supervision and compliance systems between April 2002 and April 2004.

#### **V. MITIGATING FACTORS**

##### **A. Sales Compliance Reviews**

**(a) Daily/Monthly Supervisory Reviews**

63. Until early 2004, Standard relied on a non-registrant compliance manager to ensure compliance with its supervisory obligations, including addressing the deficiencies raised by the Association in the 2002 SCR report. On the basis of his information, Standard believed he was doing so satisfactorily. After it discovered this was not the case, the compliance manager was dismissed. The failures that were the subject of the settlement with RS also resulted from these circumstances.
64. After receiving the 2004 SCR report, Standard retained a compliance consultant to assist it in revising its corporate finance and supervisory policies and procedures. Since the 2004 SCR report, Standard has significantly improved its systems, as is reflected in trade desk reviews and SCRs since then.

**(b) Policy 33-601: MagiCorp**

65. Standard was not informed by its employees of TCI's existence or of the opening of an account for it at another member firm. It learned of this account in May 2004 from an assistant of AD's and of the June 8, 2004 trade from a trading report that day. The CCO and Marcello then questioned AD and requested him to have the account closed. They took formal steps in October 2004 to have it closed.

**(c) Inappropriate Business Conduct**

66. Standard made no attempt to conceal the availability of the gypsy swap. It was disclosed in a press release dated August 29, 2003, announcing Vigil's proposed private placement. Its completion was disclosed by Vigil in a press release dated September 17, 2003.

**B. EB Account**

67. When opening the EB account, Marcello and Standard relied on AD, who was then a former registered employee of Standard whom they knew and trusted. Marcello and Standard acknowledge that this failure should not have occurred.
68. Standard's client, EB, did not incur a loss from the trading in this account, but made a profit.

**C. RM and Standard Mercantile Bancorp**

69. RM is Marcello's father, a former vice-chair of The Toronto Stock Exchange and a former director of the Association, in whom Marcello had and continues to have complete trust.

70. The SMB account at Standard was the subject of review by SCS in connection with their 1997 and 2004 SCRs. It and RM's role with respect to it were known to the SCS and the Association since the late 1990s.
71. The SMB account was subject to daily and monthly review during the relevant period. On a few occasions, questions resulting from these reviews were addressed to RM by Standard's CCO.
72. Standard was aware of some loans made by SMB to its registered employees to the extent that Marcello was the recipient or a guarantor of some of them and it did not believe that those loans created a conflict of interest with respect to its employees' responsibilities to it or to its clients. Standard states that it was advised by the law firm representing SMB that the funds deposited to and withdrawn from the SMB account related to loans and the repayment of loans made by SMB in the ordinary course of its business.

#### **D. HCLP**

73. AD and MI were employees of and investors in Standard and were trusted by Standard and Marcello. They did not inform Standard of any breach of HCLP's Agreement. Nor did they inform Standard of their solicitation of additional limited partners or of EB's interest in HCL.

#### **E. General**

74. In 2005 AD and MI left the firm and sold their interests in it. Standard subsequently created a moratorium on its corporate finance activities with the exception of facilitating non-brokered private placements.
75. Standard and Marcello acknowledge that but for these mitigating factors the penalties and costs would have been more onerous.

### **VI. CONTRAVENTIONS**

76. The Respondents admit to the following contraventions of Association By-laws, Regulations, Rulings or Policies:

#### **A. By Standard**

1. In 2004, Standard failed to maintain, oversee and implement an effective sales compliance program in that it:

- (i) failed to develop and/or implement adequate policies and procedures regarding maintaining evidence of daily and monthly supervisory reviews, contrary to Association Policy 2;
- (ii) failed to develop and/or implement adequate policies and procedures to ensure compliance with OSC Policy 33-601, contrary to Association Regulation 1300.2 and Policy No.2; and
- (iii) engaged in inappropriate business conduct in that it failed to maintain evidence that it gave priority to orders for the accounts of customers over all other orders for the same security at the same price, including orders for employee accounts, as required by Association By-law 29.3A.

**B. By Standard and Marcello**

1. Between May 2002 and November 2004, the Respondents failed to adequately supervise a client account, namely, EB, contrary to Regulation 1300.2 and Policy 2.
2. Between March 2003 and March 2006, the Respondents failed to adequately inform themselves and/or adequately supervise RM with respect to his outside business activities, contrary to Association By-law 29.1;
3. Between March 2003 and March 2006, the Respondents failed to adequately supervise the SMB account and failed to learn and remain informed of essential facts relative to SMB, contrary to Association Regulations 1300.1, 1300.2 and Policy 2; and
4. Between July 2003 and February 2007, the Respondents failed to adequately supervise two client accounts, HCL and HCLP, and failed to learn and remain informed of essential facts relative to HCL and HCLP, contrary to Association Regulations 1300.1, 1300.2 and Policy 2.

**C. By Marcello**

1. Between May 2002 and April 2004, as the registered representative for the EB account, failed to use due diligence to learn the essential facts relative to EB and orders accepted on behalf of this client and to ensure that such orders were within the bounds of good business practice contrary to Association Regulation 1300.1(a).

**VII. TERMS OF SETTLEMENT**

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

Penalties

For Standard

- i. Fine of \$162,500
- ii. Standard shall engage a compliance consultant to evaluate its compliance program and make recommendations if necessary with a view to addressing any issues identified in the Sales Compliance Reviews that remain outstanding after the current SCR is completed.

For Marcello

- i. Fine of \$47,500.
- ii. a suspension from acting as UDP for 3 months.

Costs

For Standard           \$62,500

For Marcello           \$10,000

- 78. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
- 79. 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.

Executed on original by:

**AGREED TO** by the Respondent Standard Securities Capital Corporation at the City of Toronto in the Province of Ontario, this 21st day of December, 2007.

“Phil Anisman”

“Mark Marcello”

**WITNESS**

**RESPONDENT**

**AGREED TO** by the Respondent Mark Marcello at the City of Toronto in the Province of Ontario, this 21st day of December, 2007.

“Phil Anisman”

“Mark Marcello”

**WITNESS**

**RESPONDENT**

**AGREED TO** by Staff at the City of Toronto in the Province of Ontario, this 21st day of December, 2007.

“Phil Anisman”

“Ricardo Codina”

**WITNESS**

**Ricardo Codina**  
Enforcement Counsel on behalf of  
Staff of the Investment Dealers  
Association of Canada

**ACCEPTED** this 30th day of January, 2008, by the following Hearing Panel:

Per: “Paul M. Moore”  
Panel Chair

Per: “Norm Fraser”  
Panel Member

Per: “Donald W. Grant”  
Panel Member