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Discipline

Discipline Penalties Imposed on Young Ho Kim; Violations of Regulations 1300.4 and 1300.5 and By-law 29.1

Person Disciplined A Hearing Panel appointed pursuant to IDA By-law 20 has imposed discipline penalties on Young Ho Kim (Kim), who was a registered representative employed by Members of the IDA.

By-laws, Regulations, Policies Violated Following a settlement hearing held on October 12, 2006, in Vancouver, B.C., a Hearing Panel found that Young Ho Kim violated Regulations 1300.4 and 1300.5 and By-law 29.1.

Pursuant to the Settlement Agreement, Kim admitted that.

- (i) between April 2002 and June 2002, he effected discretionary transactions in the joint account of TY, JY, and KHY, and between December 2003 and June 2004 he effected discretionary transactions in the joint account of TY and KHY, without the prior written authorization of the account holders, and without the accounts having been approved and designated as a discretionary account by his Member firm, contrary to Association Regulations 1300.4 and 1300.5, and Association By-Law 29.1; and
- (ii) in February 2005, he attempted to personally settle the complaint of client JL, without the knowledge or consent of his employer, contrary to Association By-Law 29.1

Penalty Assessed The following penalties were assessed against Kim:

- (i) a \$10,000 fine for discretionary trading;
- (ii) a \$10,000 fine for attempting to settle a client complaint;
- (iii) disgorgement of the \$2,168 that he earned in commissions and fees from the discretionary transactions;
- (iv) payment of \$5,000 in costs;
- (v) a six month suspension from approval in any registered capacity with the Association;
- (vi) a requirement that he re-write and pass the Conduct and Practices Handbook examination, that is administered by the Canadian Securities Institute, prior to being eligible for registration; and
- (vii) a requirement that he be under close supervision for a period of 12 months upon any subsequent registration with the Association.

Summary of Facts **The First Contravention: Discretionary Trading**

On or about March 15, 2002, TY, his wife JY, and their adult son KHY opened a joint investment account at a Vancouver branch office of BMO Nesbitt Burns (the Y Account). At all material times Kim was the registered representative who was responsible for the Y Account.

Activity in the Y Account

In or around March 2002, Kim informed TY that when he felt market conditions were appropriate he would use the funds that were to be deposited into the Y Account to purchase shares of:

- i) Mulvihill Platinum Pro-AMS 100 Plus (CDN\$) Trust Unit (Mulvihill);
- ii) Capital Gains Income Streams Corp. Capital Yield Shares (Capital Gains); and
- iii) Income Streams III Corp. Capital Yield Shares (Income Streams).

TY agreed to this arrangement. None of the account holders knew when Kim would purchase the shares, the quantity that would be purchased, and the purchase prices.

In April 2002 and May 2002, Kim purchased a total of \$250,322 worth of shares of Mulvihill, Capital Gains, and Income Streams for the Y Account.

In or around June 2002, Kim informed one of the account holders that when he felt that market conditions were appropriate, he would

use funds that were held in the Y Account to purchase NASDAQ 100 index units. The account holder agreed to this arrangement.

None of the account holders knew when Kim would purchase the shares, the quantity that would be purchased, and at the purchase price.

In June 2002 Kim purchased the NASDAQ 100 index units for the Y Account.

Kim exercised his discretion with respect to the quantity, price, and timing of the transactions in the Y Account, without the Y Account having been accepted and approved as a discretionary account by BMO Nesbitt Burns.

Opening of the Second Y Account

In September 2002, TY and JY opened another joint investment account at the same Vancouver branch office of BMO Nesbitt Burns (the Second Y Account). At all material times Kim was the registered representative who was responsible for the Second Y Account.

The Y Account was closed and all of its holdings were transferred into the Second Y Account.

Activity in the Second Y Account

From the time the Second Y Account was opened in September 2002 to November 2003 there was no trading in the account.

As of November 30, 2003 the value of the holdings in the Second Y Account had declined by approximately \$84,095 from their original purchase price of approximately \$265,388.

In December 2003, Kim asked TY if he could sell the Capital Gains shares and use his own discretion to trade equities with the proceeds of the sale in order to recoup the unrealized losses in the Second Y account. TY agreed to this arrangement.

In December 2003 Kim sold the Capital Gains shares that were in Second Y Account.

Kim exercised his discretion with respect to the price and timing of the sale of the Capital Gain shares, without the Second Y Account having been accepted and approved as a discretionary account by BMO Nesbitt Burns.

Between December 15, 2003 and June 24, 2004 Kim used the proceeds from the sale of the Capital Gain shares to make the transactions in the Second Y Account (the Second Y Account

Transactions).

Kim exercised his discretion with respect to the type of security, quantity, price, and timing of the Second Y Account Transactions without the Second Y Account having been accepted and approved as a discretionary account by BMO Nesbitt Burns.

The Second Contravention: Attempt To Personally Settle A Client Complaint

On or about March 14, 2005, Kim left the employ of BMO Nesbitt Burns and on or about April 5, 2005, he began working at the Vancouver head office of Canaccord.

On or about September 20, 2005, two brothers, ISL and IKL opened a joint investment account at Canaccord (the L Account), their father JL had trading authorization for the L Account. At all times Kim was the registered representative who was responsible for the L Account.

On February 7, 2006, the L Account, among other things, held:

- i) 500 shares of Petro-Canada; and
- ii) 320 shares of Encana Corporation (collectively, the Petro-Canada and EnCana shares).

On the morning of February 7, 2006, Kim telephoned JL and recommended that he sell the Petro-Canada and EnCana shares. JL instructed Kim to sell the Petro-Canada and EnCana shares. Kim failed to do so.

On the morning of February 14, 2006, JL called Kim in order to discuss purchasing equities with the proceeds of the sale of the Petro-Canada and EnCana shares. However, Kim informed him that he had not executed the sell orders. JL instructed Kim to liquidate all of the holdings in the L Account, including the Petro-Canada and EnCana shares. Kim complied with JL's instructions.

In the afternoon of February 14, 2006, Kim met with JL. Kim apologized to JL and offered to compensate him if he agreed to not report Kim's failure to execute the trades on February 7, 2006. Kim gave JL a personal cheque for \$6,000, the cheque was post-dated February 24, 2006. The \$6,000 represented the approximate difference between the amount that the L Account would have received had the Petro Canada and Encana shares been sold on February 7, 2006 and the proceeds that were realised from the February 14, 2006 sale of these shares.

On February 23, 2006 Kim went to JL's place of business and

replaced the first cheque with another cheque for \$6,000 that was drawn on the bank account of Kim's wife. Later that same day JL deposited the second cheque.

On March 4, 2006, JL received written notification from his financial institution that the cheque was being returned to him due to insufficient funds.

Kim attempted to settle JL's complaint without the knowledge, consent or authorization of Canaccord.

On March 8, 2006, Canaccord terminated Kim for cause. Kim's Notice of Termination states that he "was dismissed for giving his personal cheque to one of his clients to compensate the client for a trading error."

The Hearing Panel's written reasons will be posted on the Association's website when they become available.

Kenneth A. Nason
Association Secretary