

Re Martin

IN THE MATTER OF:

THE DEALER MEMBER RULES OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

AND

THE BY-LAWS OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA

AND

DAVID HARRY MARTIN

2010 IIROC 6

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

Heard: December 18, 2009
Decision: February 17, 2010
(21 paras.)

Hearing Panel:

D. Brian Foster, Q.C. – Chair
Peter McWilliams – Member
Bill Welton – Member

DECISION AND REASONS

¶ 1 BY NOTICE dated December 1, 2009, the Investment Industry Regulatory Organization of Canada (“IIROC”) gave notice to the public and David Harry Martin (the “Respondent”) that a hearing was to be held before a Hearing Panel appointed pursuant to By-law 20 of the Investment Dealers Association (the “IDA”) and the Dealer Member Rules of IIROC for the presentation, review and consideration of a Settlement Agreement entered into November 19, 2009 (the “Settlement Agreement”) between IIROC and the Respondent.

¶ 2 The hearing to consider the Settlement Agreement was held in Calgary, Alberta on December 18, 2009. At the hearing, the Hearing Panel considered the Settlement Agreement, oral submissions of counsel for IIROC and for the Respondent together with other materials provided in a Settlement Hearing Book, including relevant By-laws, a copy of the General Principles and Guidelines to be used as a framework for assessing sanctions and copies of two letters of reprimand issued by the Respondent’s employer, one dated April 16, 2007 and the second dated August 24, 2007. The Hearing Panel was also provided with prior Decisions of Hearing Panels that imposed sanctions or approved settlements.

¶ 3 At the conclusion of the hearing on December 18, 2009, the Hearing Panel adjourned the hearing to consider the submissions and then reconvened on that date to announce its decision to accept the Settlement Agreement. The Hearing Panel also advised the parties that written reasons would follow.

Facts

¶ 4 The Settlement Agreement contains the facts admitted to by the Respondent. The Respondent also admits to the following contraventions of IIROC's Rules, Guidance, IDA By-laws, Regulations and/or Policies:

CONTRAVENTION 1

During January 2007, the Respondent failed to observe high standards of ethics and conduct in the transaction of his business and engaged in conduct unbecoming a registrant and/or detrimental to the public interest by failing to give twenty five (25) of his clients priority when entering trades for himself and his clients in P. Ltd. and M. Corp., contrary to IDA By-law 29.1.

CONTRAVENTION 2

During January 2007, the Respondent failed to observe high standards of ethics and conduct in the transaction of his business and engaged in conduct unbecoming a registrant and/or detrimental to the public interest when, after making an error, the Respondent allocated losses to twenty five (25) of his clients, contrary to IDA By-law 29.1.

CONTRAVENTION 3

Between January 10 and 26, 2007, the Respondent effected four (4) discretionary transactions in the account of S.H., without the prior written authorization of S.H., and without the S.H. account being specifically approved and accepted in writing as a discretionary account, contrary to IDA Regulation 1300.4.

CONTRAVENTION 4

Between January 15 and 31, 2007, the Respondent effected four (4) discretionary transactions in the account of T.P., without the prior written authorization of T.P., and without the T.P. account being specifically approved and accepted in writing as a discretionary account, contrary to IDA Regulation 1300.4.

CONTRAVENTION 5

Between January 10 and February 6, 2007, the Respondent effected seven (7) discretionary transactions in the account of P.S., without the prior written authorization of P.S., and without the P.S. account being specifically approved and accepted in writing as a discretionary account, contrary to IDA Regulation 1300.4.

CONTRAVENTION 6

Between July 29, 2004 and April 13, 2007, the Respondent failed to exercise due diligence to learn and remain informed of the essential facts relative to his client, P.S., contrary to IDA Regulation 1300.1(a).

CONTRAVENTION 7

Between January and February 2007, the Respondent failed to observe high standards of ethics and conduct in the transaction of his business and engaged in conduct unbecoming a registrant and/or detrimental to the public interest by effecting five (5) trades in the account of L.L. on the instructions of a third party without a duly executed trading authorization, contrary to IDA By-law 29.1.

CONTRAVENTION 8

During February and/or March 2006, the Respondent engaged in outside business activity, by providing consulting services to T. Ltd., without disclosing the activity to his Member firm employer, conduct of which is unbecoming a registrant and/or detrimental to the public interest, contrary to IDA By-law 29.1.

¶ 5 With respect to Contravention 1 and Contravention 2, the facts are that the Respondent, in relation to the sale of shares in P. Ltd. and M. Corp., in his own accounts, the accounts of two of his assistants and in client accounts, did not ensure that the client orders were filled in priority to his own. As a result, the Respondent and his assistants received a better price on the sale of the shares, thereby failing to observe the high standards of ethics and conduct required of him pursuant to IDA By-law 29.1. Further, in relation to the same shares, the Respondent misinterpreted a news release issued by P. Ltd. in relation to the conversion of shares to M. Corp. shares and sold M. Corp. shares in 25 client accounts before the clients actually received the M. Corp. shares from the spinout transaction. This created a short position in each client account. The Respondent then traded out of his error by purchasing M. Corp. shares thereby incurring losses of approximately \$86,737.20 (the "client losses"). He then compounded his error, and committed Contravention 2, when he allocated the client losses among the 25 client accounts. Shortly thereafter, his employer reversed the trades and allocated the client losses to the Respondent. The losses were deducted from the Respondent's commissions and wages in 2007.

¶ 6 Contravention 3, Contravention 4 and Contravention 5 all relate to discretionary transactions in the accounts of clients. There were a total of 15 discretionary transactions that involved three client accounts. None of the client accounts were discretionary accounts. Also of note, none of the three clients complained to the IDA or IIROC about the transactions.

¶ 7 Contravention 6 concerns the failure of the Respondent to obtain an accurate home address, work address or employer of one of the above-noted accounts, contrary to IDA Regulation 1300.1(a).

¶ 8 Contravention 7 relates to five trades in the account of L.L. on the instructions of a third party without there being a duly executed trading authorization, contrary to IDA By-law 29.1. The Respondent admits that he had “mistakenly” believed that the L.L. account had a proper trading authorization that would have allowed him to effect trades on the instructions of another party. In fact, the L.L. account did not have an executed trading authorization. L.L. did not make a complaint about the trades. Further, the client later signed a trading authorization to allow trades by the third party.

¶ 9 Finally, Contravention 8 relates to the Respondent engaging in an outside business activity. He was approached by an officer of T. Ltd. to provide investment banking advice related to a T. Ltd. offering of convertible debentures. He provided general consulting services to that company. The Respondent did not advise his employer, CIBC, of the services that he was providing to T. Ltd.. However, T. Ltd. did issue a cheque payable to CIBC in the amount of \$23,000.00 and a note on the cheque states “Consulting Fee”. CIBC received the cheque and then processed a payment of twenty one thousand three hundred and ninety dollars (\$21,390.00) to the Respondent and referred to it as a T. Ltd. “Consultation Fee” on the Respondent’s Commission Report. The balance of \$1,610.00 was identified as GST. CIBC determined that the Respondent had provided consulting services to T. Ltd. without obtaining CIBC’s approval to do so. It appears that there was no intention to hide this fact since the cheque payable to CIBC and CIBC’s payment to the Respondent identified the payment as either a “consulting fee” or a “consultation fee”.

Terms of Settlement and Analysis

¶ 10 The Settlement Agreement contains the following Terms of Settlement:

- (a) For Contraventions 1 to 8 inclusive – A reprimand from the Hearing Panel;
- (b) The Respondent shall pay a portion of Staff’s costs of this proceeding in the amount of five thousand dollars (\$5,000.00).

¶ 11 This Hearing Panel accepts as a correct statement the following portion of the Decision in *Milewski (Re)*, [1999] I.D.A.C.D. No. 17 in which a Panel of the Ontario District Council stated:

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 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 in other way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.

¶ 12 Of significant weight in this case is the fact that the Respondent has to date, as a result of the penalties and the recovery of the client losses imposed on him by his employer, CIBC, incurred significant financial loss. He has also complied with all of the other requirements imposed on him by CIBC, including the successful completion of courses. The sanctions imposed upon him by CIBC were:

- The Respondent paid a thirty thousand dollar (\$30,000.00) fine to CIBC;
- The Respondent completed six (6) months of close supervision with CIBC and Close Supervision Reports were provided to the IDA;
- The Respondent has successfully written the Trader Training Course examination offered by the

Canadian Securities Institute;

- The Respondent has received a formal letter of reprimand, dated August 24, 2007, from CIBC;
- The Respondent has successfully re-written the Conduct and Practices Handbook examination offered by the Canadian Securities Institute;
- The Respondent has returned consulting fees to T. Ltd.; and
- Since approximately December 2006, the Respondent has been prohibited from participating in any future private placements of T. Ltd. or its related companies.

¶ 13 Therefore, to date the financial consequences to the Respondent include:

Payment of fine to CIBC:	\$30,000.00
Return of Consulting Fees:	\$23,000.00
Responsibility Assumed for Client Losses:	<u>\$86,737.20</u>
Total:	\$139,737.20

¶ 14 The Guidelines recommend sanctions for the categories of Contraventions found here. The Guidelines suggest the following fines:

Failure to ensure client orders are given a priority:	\$15,000.00
Failure to know your client:	\$10,000.00
Discretionary trading:	\$ 5,000.00
Unauthorized third party instructions:	\$ 5,000.00
Outside business activities:	\$10,000.00
Total:	\$45,000.00

¶ 15 In relation to the failure to give the client priority, counsel for IIROC acknowledged that this is not the most egregious case. The losses were reversed shortly after they occurred and there is no evidence of insider information being used.

¶ 16 With respect to the failure to have a correct address for the one client, again it was conceded by counsel for IIROC that this is not an egregious case. There were no client losses. There was misinformation on the client form.

¶ 17 With respect to the discretionary trading in the three client accounts, again this is not an egregious case. The trades occurred over a short period of time. There is no issue with respect to suitability of the trades. There were no client complaints.

¶ 18 With respect to the one client account that had trades based on the Respondent's mistaken belief that there was a proper trading authorization in place, there was no deception. We were advised that the client later signed documentations to allow the third party to effect trades in the account.

¶ 19 With respect to the consulting services, there were no clients involved. The activity was not illegal. There were no client complaints.

¶ 20 Counsel for the Respondent advised the Hearing Panel that the Respondent was very embarrassed by these Contraventions and was sorry for his actions. He accepted responsibility for his actions. This has been a costly experience for the Respondent when one considers the fines and the client losses that he has had to pay. He has complied with all of the other sanctions imposed upon him by CIBC. The Respondent has no disciplinary history with the IDA or IIROC. There have been no client complaints with respect to the misconduct. All of these factors are mitigating factors of some significance. It appears that the actions that gave rise to the Contraventions were isolated events that in most cases took place over a short period of time.

The Respondent has cooperated fully with IIROC and his firm. This Hearing Panel views the sanctions that have already been imposed, plus the additional sanctions of a reprimand from this Hearing Panel, and costs of \$5,000.00, to be appropriate and reasonable in the circumstances.

¶ 21 For all of the above reasons, this Hearing Panel accepts the Settlement Agreement. The Settlement Agreement is within a reasonable range of appropriateness and adequately addresses the purpose of disciplinary sanctions having regard to both the aggravating and the mitigating factors.

DATED THE 17TH DAY OF FEBRUARY, 2010.

D. Brian Foster, Q.C. – Chair

Peter McWilliams – Member

Bill Welton – Member

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. The Enforcement Department Staff (“Staff”) of the Investment Industry Regulatory Organization of Canada (“IIROC”) has conducted an investigation (“the Investigation”) into the conduct of David Harry Martin (“the Respondent”).
2. The Investigation was commenced by Enforcement Department Staff (“IDA Staff”) of the Investment Dealers Association of Canada (“IDA”) prior to May 30, 2008. 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.
3. 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

4. The Respondent consents to be subject to the jurisdiction of IIROC.
5. Staff and the Respondent consent and agree to the settlement of these matters by way of this settlement agreement (“the Settlement Agreement”) 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.
6. The Settlement Agreement is subject to acceptance by the Hearing Panel.
7. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
8. 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.
9. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his right under IIROC

rules and any applicable legislation to a disciplinary hearing, review or appeal.

10. 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.
11. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
12. 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.
13. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

III. Statement of Facts

Acknowledgment

14. 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.

Factual Background

(i) General

15. On or about September 5, 2007, the IDA received a COMSET report from CIBC World Markets Inc. (CIBC) indicating that the Respondent contravened the client priority rule and engaged in unauthorized or discretionary trading.
16. According to CIBC's internal investigation report of April 24, 2007, the Respondent misinterpreted a press release concerning the re-organization of P. Ltd. and M. Corp. which resulted in his over-selling M. Corp. in both client and Pro accounts. The Respondent rectified his error by allocating several thousand dollars of losses to client accounts instead of following CIBC's standard protocol for correcting such errors.
17. On February 6, 2007, CIBC corrected the trades and reallocated the losses to the Respondent's error account.
18. According to CIBC's internal investigation report of April 24, 2007, CIBC also found that the Respondent failed to meet client priority obligations by entering his personal orders prior to soliciting client orders; executed orders in client accounts on a discretionary basis; failed to know a client; and, accepted instructions on a client account from a third party without having prior authorization to do so.
19. On or about August 24, 2007, CIBC issued the Respondent a formal reprimand requiring the Respondent to complete the Trader Training Course, put the Respondent on close supervision for 6 months, and fined him thirty thousand dollars (\$30,000.00).
20. In or around late 2006, CIBC disciplined the Respondent for engaging in outside business activity with T. Ltd. According to CIBC's internal investigation report of December 1, 2006, CIBC required that the Respondent re-write the Conduct and Practices Handbook examination, prohibited the Respondent from participating in any future private placement of T. Ltd. or its related companies and the Respondent had to forfeit and return received consulting fees to T. Ltd.

21. The Respondent has complied with and/or completed all internal disciplinary sanctions imposed upon him by CIBC.
22. Staff opened an investigation into the Respondent's conduct on November 15, 2007.

(ii) Background of the Respondent

23. At all material times, the Respondent was registered with the IDA as a Registered Representative.
24. The Respondent has been duly registered and approved as follows:

Registration Issue Date	Registration Termination Date	Employer	Registration Category
1994/04	1998/01	CIBC Securities Inc.	Registered Representative – Mutual Funds
1998/01	Present	CIBC World Markets Inc.	Registered Representative

25. On June 1, 2008, the Respondent became a regulated person of IIROC.

Summary of Events

(i) Client priority

26. In the morning of January 10, 2007, the Respondent bought fifty thousand (50,000) shares of P. Ltd. on behalf of thirteen (13) accounts, four (4) of which were Pro accounts. The Pro accounts belonged to the Respondent and his assistants, E.W. and O.M.
27. In the afternoon of January 10, 2007, the Respondent purchased an additional fifty five thousand and five hundred (55,500) shares in P. Ltd. on behalf of sixteen (16) client accounts.
28. On January 17 and 18th, 2007, the Respondent and his assistants placed sell orders in their Pro accounts in P. Ltd. and M. Corp. The P. Ltd. sell orders were filled at approximately nineteen dollars and twenty nine cents (\$19.29) per share and the M. Corp. sell orders were filled in the range of five dollars and fifty cents and six dollars (\$5.50 - \$6.00) per share.
29. From January 19 to 23, 2007, the Respondent processed twenty eight (28) solicited client trades of P. Ltd. The P. Ltd. sell orders were filled in the range of approximately seventeen dollars and ninety three cents and eighteen dollars and twenty cents (\$17.93 - \$18.20) per share.
30. From January 19 to 23, 2007, the Respondent processed twenty five (25) solicited client trades of M. Corp. The M. Corp. sell orders were filled in the range of five dollars and five dollars and twenty five cents (\$5.00 – 5.25) per share.
31. As a result of selling both P. Ltd. and M. Corp. before his clients, the Respondent and his assistants received a better price.

(ii) Allocation of losses

32. According to a Dec 11, 2006 news release, P. Ltd. announced that an upcoming spinout transaction would result in P. Ltd. shareholders owing one (1) Newco common share and five (5) warrant units for

every twenty five (25) P. Ltd. common shares held.

33. According to a Jan 12, 2007 news release, the spinout transaction was completed and resulted in the creation of M. Corp. A news release of January 23, 2007 reiterated that the spinout transaction resulted in P. Ltd. shareholders owing one (1) M. Corp. common share and five (5) M. Corp. warrant units for every twenty five (25) P. Ltd. shares held.
34. The Respondent misinterpreted the December 11, 2006 and/or the January 23, 2007 news release believing that P. Ltd. shareholders would receive one (1) M. Corp. share for every one (1) P. Ltd. share held.
35. On January 19, 2007, the Respondent sold M. Corp. shares in twenty five (25) client accounts before the clients actually received the M. Corp. shares from the spinout transaction.
36. On January 26, 2007, when the clients received significantly less M. Corp. shares from the spinout transaction than the Respondent had anticipated, a short position occurred in each client account.
37. The Respondent traded out of his error by purchasing M. Corp. shares through CIBC's block desk. This resulted in losses of approximately eighty six thousand, seven hundred and thirty seven dollars and twenty cents (\$86,737.20) (the client losses). The Respondent allocated the client losses amongst the twenty five (25) client accounts.
38. According to CIBC's internal investigation report of April 24, 2007, the Respondent did not seek prior approval of CIBC Branch Management to purchase M. Corp. shares through CIBC's block desk and did not follow CIBC's standard protocol with regards to error corrections.
39. On February 6, 2007, CIBC reversed the trades and allocated the client losses to the Respondent.
40. The client losses were deducted from the Respondent's commissions and/or wages between February and July 2007.

(iii) The S.H. account

41. S.H. opened an individual account with CIBC in 1998 (the S.H. account).
42. In 2007, the Respondent was the investment advisor for the S.H. account.
43. S.H. had sole trading authority for the S.H. account. The S.H. account did not contain a discretionary trading agreement or other documentation that would otherwise establish the S.H. account as a discretionary account, and CIBC had not accepted the S.H. account as a discretionary trading account.
44. Between January 10 and 26, 2007, the Respondent made purchases and sales of securities in the S.H. account for which he exercised discretion with respect to the security, quantity, price and/or timing of the purchase and/or sale of the security. Details of the transactions are as follows:
 - a) On or about January 10, 2007, the Respondent purchased two thousand five hundred (2,500) shares of P. Ltd. at nineteen dollars and ninety four cents (\$19.94) per share in the S.H. account;
 - b) On or about January 19, 2007, the Respondent sold two thousand five hundred (2,500) shares of M. Corp. at five dollars and twenty five cents (\$5.25) per share in the S.H. account;

- c) On or about January 22, 2007, the Respondent sold two thousand five hundred (2,500) shares of M. Corp. at seventeen dollars and ninety three cents (\$17.93) per share in the S.H. account; and
- d) On or about January 26, 2007, the Respondent bought two thousand four hundred (2,400) shares of M. Corp. at six dollars and thirty eight cents (\$6.38) per share in the S.H. account.

45. S.H. did not complain to the IDA or IIROC about the Respondent.

(iv) The T.P. account

46. In 2007, T.P. had an active individual account with CIBC (the T.P. account).

47. In 2007, the Respondent was the investment advisor for the T.P. account.

48. T.P. had sole trading authority for the T.P. account. The T.P. account did not contain a discretionary trading agreement or other documentation that would otherwise establish the T.P. account as a discretionary account, and CIBC had not accepted the T.P. account as a discretionary trading account.

49. Between January 15 and 31, 2007, the Respondent made purchases and sales of securities in the T.P. account for which he exercised discretion with respect to the security, quantity, price and/or timing of the purchase and/or sale of the security. Details of the transactions are as follows:

- a) On or about January 15, 2007, the Respondent purchased five thousand (5,000) shares of P. Ltd. at nineteen dollars and ninety four cents (\$19.94) per share in the T.P. account;
- b) On or about January 24, 2007, the Respondent sold five thousand (5,000) shares of M. Corp. at five dollars and twenty five cents (\$5.25) per share in the T.P. account;
- c) On or about January 26, 2007, the Respondent sold five thousand (5,000) shares of M. Corp. at approximately eighteen dollars and twenty cents (\$18.20) per share in the T.P. account; and
- d) On or about January 31, 2007, the Respondent bought four thousand and eight hundred (4,800) shares of M. Corp. at six dollars and thirty eight cents (\$6.38) per share in the T.P. account.

50. T.P. did not complain to the IDA or IIROC about the Respondent.

(v) The P.S. Account

51. P.S. opened an individual account with CIBC in 1999 (the P.S. account).

52. A “Know Your Client Form” update dated July 29, 2004 and signed by the Respondent discloses the Respondent as the Investment Advisor for the P.S. account.

53. The address listed on the “Know Your Client Form” update was recorded as “c/o B May, 628 Crescent Rd. NW, Calgary, Canada”. P.S. did not reside at this address; the recorded address was P.S.’s friend’s address.

54. On April 13, 2007, the Respondent told CIBC that P.S. was working and residing somewhere in Indonesia. The Respondent did not know the true home address, work address or employer of P.S.

55. P.S. had sole trading authority for the P.S. account. The P.S. account did not contain a discretionary

trading agreement or other documentation that would otherwise establish the P.S. account as a discretionary account, and CIBC had not accepted the P.S. account as a discretionary trading account.

56. Between January 10 and February 6, 2007, the Respondent made purchases and sales of securities in the P.S. account for which he exercised discretion with respect to the security, quantity, price and/or timing of the purchase and/or sale of the security. Details of the transactions are as follows:
- a) On or about January 10, 2007, the Respondent purchased two thousand five hundred (2,500) shares of P. Ltd. at approximately nineteen dollars and ninety four cents (\$19.94) per share in the P.S. account;
 - b) On or about January 19, 2007, the Respondent sold one thousand nine hundred (1,900) shares of P. Ltd. at eighteen dollars (\$18.00) per share, two hundred (200) shares of P. Ltd. at eighteen dollars and one cent (\$18.01) per share, and four hundred (400) shares of P. Ltd. at eighteen dollars and seven cents (\$18.07) per share in the P.S. account;
 - c) On or about January 19, 2007, the Respondent sold two thousand five hundred (2,500) shares of M. Corp. at five dollars and twenty five cents (\$5.25) per share in the P.S. account;
 - d) On or about January 26, 2007, the Respondent bought two thousand four hundred (2,400) shares of M. Corp. at six dollars and thirty eight cents (\$6.38) per share in the P.S. account; and
 - e) On or about February 6, 2007, the Respondent sold one hundred (100) shares of M. Corp. at five dollars and twenty five cents (\$5.25) per share in the P.S. account.
57. P.S. did not complain to the IDA or IIROC about the Respondent.

(vi) The L.L. Account

58. In 2007, L.L. had an active individual account with CIBC (the L.L. account).
59. A.L. is L.L.'s spouse. In 2007, A.L. had an active individual account with CIBC (the A.L. account).
60. In 2007, the Respondent was the investment advisor for both the L.L. and A.L. accounts.
61. Prior to April 2007, L.L. had sole trading authority for the L.L. account; the L.L. account did not have an executed trading authorization or other documentation that would allow a third party to provide instructions for the L.L. account.
62. The Respondent mistakenly believed that the L.L. account contained a proper trading authorization in place that would allow A.L. to provide trading instructions for the L.L. account.
63. During January and February 2007, the Respondent accepted trading instructions from A.L. for the L.L. account. Details of the unauthorized trades are as follows:
- a) On or about January 15, 2007, the Respondent purchased three thousand (3,000) shares of P. Ltd. at nineteen dollars and ninety four cents (\$19.94) per share in the L.L. account on the instructions of A.L.;
 - b) On or about January 24, 2007, the Respondent sold three thousand (3,000) shares of M. Corp. at five dollars and twenty five cents (\$5.25) per share in the L.L. account on the instructions of A.L.;

- c) On or about January 26, 2007, the Respondent sold three thousand (3,000) shares of P. Ltd. at eighteen dollars and twenty cents (\$18.20) per share in the L.L. account on the instructions of A.L.;
- d) On or about January 31, 2007, the Respondent bought two thousand eight hundred and eighty (2,880) shares of M. Corp. at six dollars and thirty eight cents (\$6.38) per share in the L.L. account on the instructions of A.L.; and
- e) On or about February 6, 2007, the Respondent sold one hundred and twenty (120) shares of M. Corp. at five dollars and twenty five cents (\$5.25) per share in the L.L. account on the instructions of A.L.

64. Neither L.L. or A.L. have made a complaint to the IDA or IIROC.

65. L.L. executed documentation on April 30, 2007 that allows A.L., amongst other things, to provide trading instructions to CIBC for the L.L. account.

(vii) Outside business activity

66. On or about January or February 2006, the President of T. Ltd. approached the Respondent for investment banking advice related to T. Ltd.'s offering of convertible debentures.

67. During February and/or March 2006, the Respondent provided general consulting services to T. Ltd.

68. The Respondent did not advise CIBC that he was providing consulting services to T. Ltd.

69. T. Ltd. issued a cheque payable to CIBC dated March 31, 2006, for twenty three thousand dollars (\$23,000.00). The comment on the cheque states "Consulting Fee".

70. On April 13, 2006, CIBC processed a payment of twenty one thousand three hundred and ninety dollars (\$21,390.00) to the Respondent, referring to it as a T. Ltd. "Consultation fee" on the Respondent's commission report. CIBC identified one thousand six hundred and ten dollars (\$1,610.00) as GST.

71. CIBC commenced an internal investigation on July 19, 2006 and determined that the Respondent had provided consulting services to T. Ltd. without having CIBC's approval to do so.

(viii) Important mitigating facts

72. The Respondent has no disciplinary history with the IDA or IIROC.

73. The Respondent has completed and/or complied with all sanctions imposed upon him by CIBC in relation to the above matters. Specifically:

- the Respondent has paid a thirty thousand dollar (\$30,000.00) fine to CIBC;
- the Respondent completed six (6) months of close supervision with CIBC and Close Supervision Reports were provided to the IDA;
- the Respondent has successfully written the Trader Training Course examination offered by the Canadian Securities Institute;
- the Respondent has received a formal letter of reprimand, dated August 24, 2007, from CIBC;
- the Respondent has successfully re-written the Conduct and Practices Handbook examination

offered by the Canadian Securities Institute;

- the Respondent has returned received consulting fees to T. Ltd.; and
- since approximately December 2006, the Respondent has been prohibited from participating in any future private placements of T. Ltd. or its related companies.

74. Neither the IDA or IIROC received complaints from the Respondent's clients regarding the aforementioned misconduct.

IV. Contraventions

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

CONTRAVENTION 1

During January 2007, the Respondent failed to observe high standards of ethics and conduct in the transaction of his business and engaged in conduct unbecoming a registrant and/or detrimental to the public interest by failing to give twenty five (25) of his clients priority when entering trades for himself and his clients in P .Ltd. and M. Corp., contrary to IDA By-law 29.1.

CONTRAVENTION 2

During January 2007, the Respondent failed to observe high standards of ethics and conduct in the transaction of his business and engaged in conduct unbecoming a registrant and/or detrimental to the public interest when, after making an error, the Respondent allocated losses to twenty five (25) of his clients, contrary to IDA By-law 29.1.

CONTRAVENTION 3

Between January 10 and 26, 2007, the Respondent effected four (4) discretionary transactions in the account of S.H., without the prior written authorization of S.H., and without the S.H. account being specifically approved and accepted in writing as a discretionary account, contrary to IDA Regulation 1300.4.

CONTRAVENTION 4

Between January 15 and 31, 2007, the Respondent effected four (4) discretionary transactions in the account of T.P., without the prior written authorization of T.P., and without the T.P. account being specifically approved and accepted in writing as a discretionary account, contrary to IDA Regulation 1300.4.

CONTRAVENTION 5

Between January 10 and February 6, 2007, the Respondent effected seven (7) discretionary transactions in the account of P.S., without the prior written authorization of P.S., and without the P.S. account being specifically approved and accepted in writing as a discretionary account, contrary to IDA Regulation 1300.4.

CONTRAVENTION 6

Between July 29, 2004 and April 13, 2007, the Respondent failed to exercise due diligence to learn and remain informed of the essential facts relative to his client, P.S., contrary to IDA Regulation 1300.1(a).

CONTRAVENTION 7

Between January and February 2007, the Respondent failed to observe high standards of ethics and conduct in the transaction of his business and engaged in conduct unbecoming a registrant and/or detrimental to the public interest by effecting five (5) trades in the account of L.L. on the instructions of

a third party without a duly executed trading authorization, contrary to IDA By-law 29.1.

CONTRAVENTION 8

During February and/or March 2006, the Respondent engaged in outside business activity, by providing consulting services to T. Ltd., without disclosing the activity to his Member firm employer, conduct of which is unbecoming a registrant and/or detrimental to the public interest, contrary to IDA By-law 29.1.

VI. Terms of Settlement

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

- a) For Contraventions 1 to 8 inclusive – A reprimand from the Hearing Panel.
- b) The Respondent shall pay a portion of Staff’s costs of this proceeding in the amount of five thousand dollars (\$5,000.00).

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

78. 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 Calgary in the Province of Alberta, this 12 day of November, 2009.

“Witness signature”
Witness

“David Martin”
Respondent
[DAVID HARRY MARTIN]

AGREED TO by Staff at the City of Calgary in the Province of Alberta, this 19 day of November, 2009.

“Witness signature”
Witness

“Faye Emmanuel”
[Faye Emmanuel]
Enforcement Counsel on behalf of Staff of the
Investment Industry Regulatory Organization of
Canada

ACCEPTED at the City of Calgary in the Province of Alberta, this 18 day of December, 2009, by the following Hearing Panel:

Per: **“Brian Foster”**
Panel Chair

Per: **“Peter McWilliams”**
Panel Member

Per: **“Bill Welton”**
Panel Member