Re IPC Securities Corporation

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

IPC SECURITIES CORPORATION

2010 IIROC 24

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

Hearing: May 13, 2010, in Toronto Ontario
Decision: May 24, 2010
(17 paras.)

Hearing Panel:
Mr. Terrance Sweeney
Mr. Dusty Graham
Mr. Robert Guilday

Appearances:
Mr. Charles Corlett, Enforcement Counsel
Mr. Peter Greene, Respondent's Counsel
Also present: Mr. J. Novachis, President of IPC

REASONS FOR DECISION

Background – Submissions:

¶ 1 We were constituted as a Hearing Panel of the Ontario District Council of the Investment Industry Regulatory Organization of Canada ("IIROC") to consider, pursuant to Dealer Member Rules 20.35 to 20.40, a Settlement Agreement, attached as Schedule "A", jointly recommended by Enforcement Department Staff ("Staff") of IIROC and IPC Securities Corporation ("IPC" or "Respondent") and signed by the respective parties on April 27 and April 30, 2010.

¶ 2 At the opening of the hearing, Mr. Guilday said that he had been a member of the Hearing Panel in *Irwin Igra*, [2009] IIROC No.29. Mr. Igra had been employed as a registered representative by IPC. Mr. Igra had failed to ensure that clients qualified as accredited investors before facilitating the purchase of securities offered pursuant to prospectus exemptions. This led, in part, to the problems IPC experienced with IIROC here.

¶ 3 Mr. Guilday offered to recuse himself. Counsel for the parties, however, indicated their consent to him

continuing as a member of the Hearing Panel. He participated, therefore, in our deliberations and decision.

¶ 4 Counsel for IIROC addressed the Hearing Panel on the merits of the Settlement Agreement. He pointed to the facts that IPC had cooperated with Staff in its investigation and had taken the necessary remediation measures.

¶ 5 Counsel also stressed that there have been no client complaints against the Respondent relating to the purchases in question and no losses have been claimed.

¶ 6 Counsel then urged the Hearing Panel to accept that the agreed penalty was within the range of reasonableness. He referred us to other cases which dealt with inadequate policies and procedures of Member firms in regard to the accredited investor rules on acquiring securities offered pursuant to prospectus exemptions. He said that the penalties in those cases were higher than that which is proposed here. IPC, however, should be given credit for its cooperation. Moreover, IPC did some self identification and took the responsibility of negotiating the Settlement Agreement. This, of course, saves IIROC considerable expense. Finally, he said that the actions of the Members in the other cases were far more egregious than those of IPC.

¶ 7 Counsel submitted that the penalty proposed was significant enough to deter others and not too punitive to IPC which had cooperated with Staff.

¶ 8 Mr. Greene, counsel for the Respondent, also addressed the Hearing Panel. He made many of the same points that counsel for IIROC had made but drew the attention of the Hearing Panel to paragraphs 31 to 34 of the Settlement Agreement. He submitted that IPC had policies and procedures in place, and had a compliance officer. He said that this case was one of a narrow breakdown in compliance solely in regard to the accredited investor exemption and does not represent a wider failure by IPC in respect to IIROC rules.

¶ 9 Mr. Guilday, for the Hearing Panel, asked counsel for IIROC whether it had verified the corrective measures taken by IPC in June 2008 referred to in paragraphs 35 and 36 of the Settlement Agreement. After some little time, we were informed that Staff had recently conducted a complete review of IPC policies and procedures and was satisfied that it was compliant.

Reasons, Decision and Order:

Reasons:

¶ 10 The powers of the Hearing Panel are limited by Dealer Member Rule 20.36. We may accept or reject the Settlement Agreement.

¶ 11 The Hearing Panel is well aware of the proper tests to use in evaluating a Settlement Agreement. The Hearing Panel respects the settlement process and will not lightly interfere with a negotiated settlement.

¶ 12 Winkler J. (now Chief Justice of Ontario), in another context, set out the principles to be applied in considering a negotiated settlement. In *Gilbert v. Canadian Imperial Bank of Commerce*, [2004] O.J. 4260, he said:

> There is a presumption of fairness when a proposed class settlement negotiated at arms length … is presented to the court for approval. A court will only reject a proposed settlement when it finds that the settlement does not fall within a range of reasonableness.
>
> The test to be applied is whether the settlement is fair and reasonable…. This allows for a range of possible results and there is no perfect settlement. Settlement is a product of compromise, which by definition, necessitates give and take. …

¶ 13 Similar phraseology was used in *Re Milewski*, [1999] I.D.A.C.D. No. 17 (decided on July 28, 1999), at page 9:

> … 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.

Decision:

¶ 14 The Hearing Panel has carefully considered the case law, IIROC Dealer Member Disciplinary Sanction Guidelines and the submissions of counsel.

¶ 15 The following facts weighed heavily in our deliberations:

1. The Respondent cooperated with Staff and took corrective action.
2. There were no client complaints or losses.
3. The breach of Dealer Member rules was relatively narrow.

¶ 16 Accordingly, and by the power conferred on us under Dealer Member Rule 20.36, we find that the Settlement Agreement is reasonable and in the public interest.

Order:

¶ 17 The Hearing Panel orders that the Settlement Agreement be and it is hereby accepted.

Dated at Toronto, Ontario, this 24th day of May 2010.

Mr. Terrance Sweeney, Chair

Mr. Robert Guilday, Member

Mr. Dusty Graham, 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 IPC Securities Corporation ("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

(i) 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.

(ii) Factual Background

A. The Respondent

15. Effective December 31, 2004, the Respondent, IPC Securities Corporation ("IPC Securities"), became a Member of the IDA. The Respondent's head office is located in Toronto, Ontario.

16. On June 1, 2008, the Respondent became a Dealer Member of IIROC.

B. Investigative History

17. Between January 2005 and December 2006, Irwin Igra, a Registered Representative employed at IPC Securities, failed to ensure that clients qualified as accredited investors before facilitating the purchase of securities offered pursuant to prospectus exemptions.

18. As a result, fourteen of Mr. Igra's clients completed documentation and purchased securities relying on the accredited investor exemption when their New Client Application Forms ("NCAF") and account statements clearly indicated that they did not qualify under any of the provisions of the accredited investor definition.

19. In June 2009, a settlement agreement with Mr. Igra was approved by an IIROC Hearing Panel. Mr. Igra agreed to pay a fine of $10,000, costs of $2,500, and successfully complete the Conduct and Practices Handbook Examination.

20. The investigation into the conduct of Mr. Igra revealed that between January 2005 and June 2008, the Respondent did not have any policies or procedures relating to ensuring that clients qualified as accredited investors and had inadequate training, policies and procedures in place to effectively supervise and provide guidance relating to the purchase of securities offered pursuant to prospectus exemptions.

21. As a result of the investigation by IIROC Staff, the Respondent has established more efficient policies and procedures to remedy the above-noted failings.

22. The Respondent has cooperated with IIROC Staff throughout the investigation of this matter.

B. Purchases by Non-Accredited Investors

23. The clients who made purchases referred to herein did so by relying on the accredited investor exemption as set out in National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106).[1]

24. The majority of the Respondent's clients relied on the definitions set out in section 1.1 (j) and (k):

> "accredited investor" means:
>
> > (j) an individual who, either alone or with a spouse, beneficially owns, directly or indirectly, financial assets having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds $1 000 000,
> >
> > (k) an individual whose net income before taxes exceeded $200 000 in each of the 2 most recent calendar years or whose net income before taxes combined with that of a spouse exceeded $300 000 in each of the 2 most recent calendar years and who, in either case, reasonably expects to exceed that net income level in the current calendar year
>
> "financial assets" means
>
> > (a) cash,
> >
> > (b) securities, or
> >
> > (c) a contract of insurance, a deposit or an evidence of a deposit that is not a security for the purposes of securities legislation;

25. Seven securities purchased by the Respondent's clients pursuant to prospectus exemptions were reviewed for the period January 2005 to December 2006.

26. Between January 2005 and December 2006, in addition to Mr. Igra's fourteen clients, referred to in paragraph 18, twelve clients made thirteen purchases of the securities in question pursuant to the accredited investor exemption when their NCAFs and account statements clearly indicated that they did not qualify under any of the provisions of the accredited investor definition.

27. The thirteen purchases had an approximate value of $295,000.

28. The Respondent undertook to audit purchases made by the firm's clients pursuant to the accredited investor exemption between January 2007 and June 2008. The Respondent reviewed 134 transactions, concluding that fourteen clients made fourteen purchases of securities relying on the accredited investor exemption when their NCAFs and account statements indicated that they did not qualify under any of the provisions of the accredited investor definition.

29. The fourteen purchases had an approximate value of $244,000.

30. There have been no client complaints against the Respondent relating to these purchases and no losses have been claimed.

C. Lack of Policies and Procedures

31. During the relevant period, the Respondent did not have adequate policies and procedures to address the purchase of exempt market securities or private placements by retail clients or address the verification of the accredited investor status of clients.

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[1] NI 45-106 came into force on September 14, 2005. Prior to that date the accredited investor definition was set out in OSC Rule 45-501. The accredited investor provisions relevant to this matter were not amended by NI 45-106.

32. The Respondent did not have effective policies or procedures to ensure that the Compliance Department was informed about which securities were being offered pursuant to prospectus exemptions.

33. As a result, no effective pre-trade or post-trade supervision of trading by retail clients in exempt market securities took place during the relevant period.

34. In addition, the Respondent did not provide adequate training or guidance to its Compliance Department or Registered Representatives regarding the sale of prospectus exempt products.

Policies and Procedures implemented in June 2008

35. In late June 2008, the Respondent put into place comprehensive policies and procedures relating to the purchase of exempt market products.

36. The Respondent instituted, among other things, the following policies and procedures applicable to the facts described herein:

i. clients purchasing exempt market products must review and acknowledge their understanding of the investment risk associated with the products;

ii. an updated NCAF must be dated within 30 days previous to the date of purchase;

iii. branch manager must approve and sign-off prior to the purchase;

iv. all relevant documentation must be sent to Compliance Department the day the trade is place;

v. with respect to accredited investors, the investment advisor, branch manager and compliance must ensure that the NCAF supports reliance on accredited investor exemption; and

vi. the investment advisor must collect evidence that proves that a client's reliance on the accredited investor exemption is valid.

Failure to comply with Regulatory Requirements

37. IDA By-law 29.27, Regulation 1300.2 and Policy No. 2 (now IIROC Dealer Member Rule 38.1, Rule 1300.2 and Rule 2500) require Members (now Dealer Members) to establish and maintain policies and procedures to effectively supervise trading in client accounts.

38. In order to effectively supervise trading in client accounts and to carry out its duties as an industry gatekeeper, a Dealer Member must establish and maintain policies and procedures and provide training and guidance to ensure compliance with applicable regulatory requirements.

39. From January 2005 until June 2008, the Respondent was not able to effectively supervise trading of prospectus exempt products by retail clients because of its inadequate policies and procedures.

IV. Contraventions

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

(i) Between January 2005 and June 2008, the Respondent failed to establish and maintain adequate polices and procedures to ensure that clients qualified as accredited investors in accordance with the provisions of the Ontario *Securities Act*, R.S.O. 1990, c. S. 5 (as amended) before facilitating the purchase of securities offered pursuant to prospectus exemptions, contrary to IDA By-law 29.27, Regulation 1300.2 and Policy 2.

V. Terms of Settlement

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

- A fine in the amount of $65,000.

42. The Respondent shall pay a portion of Staff's costs of this proceeding in the amount of $10,000.

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

AGREED TO by the Respondent IPC Securities Corporation at the City of Toronto in the Province of Ontario, this 27th day of April, 2010.

"Witness signature"	**"IPC Securities Corporation"**
Witness	**For IPC Securities Corporation**

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this ___ day of April, 2010.

"Witness signature"	**"Charles Corlett"**
Witness	**Charles corlett**
	Enforcement Counsel on behalf of Staff of the Investment Industry Regulatory Organization of Canada

ACCEPTED at the City of Toronto in the Province of Ontario, this 13th day of May, 2010, by the following Hearing Panel:

Per: "Terrance Sweeney"

Panel Chair

Per: "Robert Guilday"

Panel Member

Per: "Dusty Graham"

Panel Member