Court File No.: CV-12-9606-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST

IN THE MATTER OF THE ONTARIO SECURITIES COMMISSION AND THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

- and -

IN THE MATTER OF A DECLARATION CONCERNING THE INTERPRETATION OF THE ORDER OF JUNE 5, 2008 MADE BY THE HONOURABLE C. CAMPBELL J. APPROVING A PLAN OF COMPROMISE AND ARRANGEMENT INVOLVING METCALFE & MANSFIELD ALTERNATIVE INVESTMENTS II CORP. *ET AL.* PURSUANT TO THE COMPANIES CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED

BY: Ontario Securities Commission and
Investment Industry Regulatory Organization of Canada
Applicants

AFFIDAVIT

I, Jeffrey Kehoe, of the City of Toronto, in the Province of Ontario, AFFIRM AND SAY:

1. I have served as Vice-President of Enforcement of the Investment Industry Regulatory Organization of Canada ("IIROC") since March, 2010, initially in an acting capacity, and prior to that, served as IIROC's Director, Enforcement Litigation from February, 2001 to March, 2010. As such, I have personal knowledge of the facts set out in this Affidavit, except where indicated otherwise, in which case I have identified the source of the information and believe the information to be true.

ABCP Settlements

Following August 13, 2007, when the market for non-bank sponsored ABCP ("third-party ABCP") in Canada froze, IIROC, in cooperation with the Ontario Securities Commission (the "Commission") and the Autorité des marchés financiers ("AMF"), conducted a joint investigation into the ABCP market freeze and securities regulatory issues arising from it.

On June 5, 2008, The Honourable C. Campbell J. made an order (the "ABCP Order") under the *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, that approved a plan of arrangement and released all "ABCP Dealers" and other "Released Parties" as defined in the ABCP Order from, and enjoined, all claims and proceedings relating to their participation in the third-party ABCP market. The ABCP Order excepted from this release and injunction regulatory and self-regulatory proceedings and investigations by bodies like the Commission and IIROC and the exercise by such bodies of their powers and remedies, provided that they not make "any order or award to compensate or make restitution to an aggrieved person or company or to pay general or punitive damages to any other person or company" (ABCP Order, paras. 17-19). A copy of the ABCP Order is attached as Exhibit "A" to the Affidavit of Kathryn Daniels, affirmed on February 15, 2012.

As a result of its investigation, and as permitted by the ABCP order, enforcement staff of IIROC ("Enforcement Staff") determined to initiate proceedings against an ABCP

Dealer, Scotia Capital Inc. ("Scotia"), which were settled in accordance with the terms of a settlement agreement with Scotia dated December 17, 2009.

5. In the settlement agreement with Scotia, Scotia admitted that between July 25 and August 10, 2007, after it received a July 24, 2007 email from Coventree Inc. ("Coventree") containing information about the U.S. subprime exposure in Coventree's third-party ABCP, it "failed to adequately respond to emerging issues in the Coventree ABCP market insofar as it continued to sell Coventree ABCP without engaging Compliance and other appropriate processes for the assessment of such emerging issues," contrary to rules of the Investment Dealers Association of Canada ("IDA"), (hereinafter referred to as "IIROC rules").

6. In this settlement agreement, Scotia also agreed to pay a fine of $28,950,000 pursuant to IIROC rules, upon acceptance of the settlement agreement by an IIROC hearing panel.

7. On December 21, 2009, an IIROC Hearing Panel accepted the settlement agreement with Scotia. A copy of the IIROC Hearing Panel's Decision and the settlement agreement with Scotia is attached to this Affidavit as Exhibit "A".

8. Enforcement Staff also determined to initiate proceedings against ABCP Dealer, Canaccord Financial Ltd. ("Canaccord"), which were settled in accordance with the terms of a settlement agreement with Canaccord dated December 17, 2009.

9. In the settlement agreement with Canaccord, Canaccord admitted that in 2006 and 2007, it "did not take steps to adequately ensure its sales staff understood the complexities of the third-party ABCP product it offered for sale to retail clients and the consequent risks

(including systemic risks and counterparty risks) related to the product and, in not taking these adequate steps, did not ensure that the purchase of third-party ABCP was appropriately understood by its clients," contrary to IIROC rules, and agreed to pay to IIROC a "fine in the amount of $3,100,000 (inclusive of costs)".

10. On December 21, 2009, an IIROC Hearing Panel accepted the settlement agreement with Canaccord. A copy of the IIROC Hearing Panel's Reasons for Decision and the settlement agreement with Canaccord is attached to this Affidavit as Exhibit "B".

11. Enforcement Staff also determined to initiate proceedings against ABCP Dealer, Credential Securities Inc. ("Credential"), which proceedings were settled in accordance with the terms of a settlement agreement dated December 17, 2009.

12. In the settlement agreement with Credential, Credential admitted that in 2006 and 2007, it "did not take adequate steps to ensure that its Approved Persons understood the complexities of the third-party ABCP product made available for purchase by its retail clients and the consequent risks (including systemic risks and counterparty risks) related to those products and, in not taking these adequate steps, did not ensure that the purchase of third-party ABCP was appropriately understood by its clients," contrary to IIROC rules, and agreed to pay to IIROC a "fine in the amount of $200,000 (inclusive of costs)".

13. On December 21, 2009, an IIROC Hearing Panel accepted the settlement agreement with Credential. A copy of the IIROC Hearing Panel's Reasons for Decision and the settlement agreement with Credential is attached to this Affidavit as Exhibit "C".

14. The settlements with Scotia, Canaccord and Credential were announced in a joint press release issued by IIROC, the Commission and the AMF on December 21, 2009. The joint press release also announced settlements reached by the Commission and the AMF with other ABCP Dealers and said, with regard to financial penalties imposed under the settlements, that "a fair and appropriate use for the sanction monies will be determined in accordance with applicable laws, court orders and in the public interest." A copy of the joint press release of December 21, 2009 is attached to this Affidavit as Exhibit "D".

15. The settlement agreements were entered into voluntarily by Scotia, Canaccord and Credential. Scotia, Canaccord and Credential paid the agreed amounts to IIROC in December, 2009 and January, 2010, after the settlements were accepted by IIROC Hearing Panels.

Proposed Distribution of Amounts Paid

16. IIROC has been recognized by every provincial securities regulator in Canada as a self-regulatory organization, under identical recognition orders issued by each of the recognizing securities regulators (the "Recognition Order"). The terms and conditions of IIROC's Recognition Order provide:

> **Use of Fines and Settlements**
>
> All fines collected by IIROC and all payments made under settlement agreements entered into with IIROC may be used only as follows:
>
> a. as approved by the Corporate Governance Committee,
>
> (i) for the development of systems or other non-recurring capital expenditures that are necessary to address emerging regulatory issues

resulting from changing market conditions and are directly related to protecting investors and the integrity of the capital markets;

(ii) for the education of securities market participants and members of the public about or research into investing, financial matters or the operation or regulation of securities markets;

(iii) to contribute to a non-profit, tax-exempt organization, the purposes of which include protection of investors, or those described in paragraph (a)(ii); or

b. for reasonable costs associated with the administration of IIROC's hearing panels.

A copy of IIROC's Recognition Order is attached to this Affidavit as Exhibit "E".

17. As a result of the restrictions contained in its Recognition Order, IIROC requires an exemption from each of its recognizing securities regulators to enable it to distribute funds obtained under a settlement agreement in another manner. To date, IIROC has never requested such an exemption.

18. Fines paid to IIROC under an order made by an IIROC hearing panel or under a settlement of an enforcement proceeding are held by IIROC in its "Externally Restricted Fund". IIROC has created a separate "Externally Restricted ABCP Fund" into which it deposited the fines received from Scotia, Canaccord and Credential.

19. Staff of IIROC ("IIROC Staff") have cooperated with staff of the Commission ("Commission Staff") in developing a proposal to distribute funds obtained in the ABCP settlements to clients who purchased third-party ABCP from Scotia, Canaccord and

Credential. As a result of this cooperation, IIROC Staff recommended to IIROC's Corporate Governance Committee that:

(a) the fine paid by Scotia be distributed to Scotia clients who purchased third-party ABCP from it between July 25 and August 10, 2007, and who were not aware of the email referred to in paragraph 5, above, or its contents;

(b) that the fine paid by Canaccord be distributed to Canaccord clients who purchased third-party ABCP from Canaccord and who continued to hold the purchased ABCP on August 13, 2007, the date on which the ABCP market in Canada froze; and

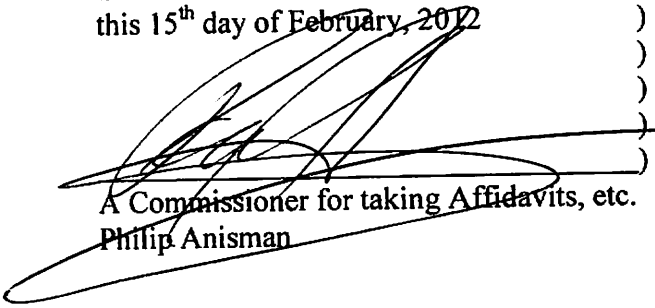
(c) that the fine paid by Credential be distributed to Credential clients who purchased third-party ABCP from Credential and who continued to hold the purchased ABCP on August 13, 2007.

20. On October 11, 2011, the Corporate Governance Committee authorized the distribution of the funds received from Scotia, Canaccord and Credential under the settlement agreements in the manner proposed by IIROC Staff, subject to IIROC obtaining an exemption from each of its recognizing securities regulators to permit it to distribute the fines to such clients. If this application is granted, IIROC intends to apply to each of its recognizing securities regulators for an appropriate exemption.

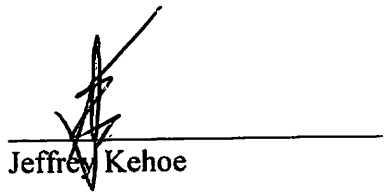
21. The distribution of the funds received by IIROC from Scotia, Canaccord and Credential is to be conducted in a process to be administered jointly by IIROC and the Commission. Accordingly, IIROC has joined in this Application as a co-applicant, and IIROC and the Commission intend to publish a joint press release announcing the filing of the Application. A copy of the draft joint press release is attached to this Affidavit as Exhibit "F".

22. I affirm this Affidavit for purposes of this application and for no other purpose.

Affirmed before me)
at the City of Toronto)
in the Province of Ontario)
this 15th day of February, 2012)



A Commissioner for taking Affidavits, etc.
Philip Anisman



Jeffrey Kehoe

This is Exhibit "A" to the
Affidavit of Jeffrey Kehoe,
affirmed February 15, 2012

Philip Anisman
A Commissioner for Taking Affidavits

Re Scotia Capital Inc

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

SCOTIA CAPITAL INC

[2009] IIROC No. 53

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

Heard: December 21, 2009
Decision: December 21, 2009
(5 paras.)

Hearing Panel:
Mr. Frederick Webber (chair)
Mr. Donald (Sandy) Grant
Mr. Guenther Kleberg

Appearances:
Ms. Elsa Renzella, Enforcement counsel
Mr. Jim Douglas, Respondent's counsel

HEARING PANEL DECISION

¶ 1 As a result of a settlement agreement entered into between IIROC and the Respondent, a settlement hearing was held on December 21, 2009. The hearing panel received and considered oral submissions from IIROC counsel and counsel for the Respondent as well as a copy of the settlement agreement.

¶ 2 The Respondent admitted the following contraventions of IIROC Rules, Guidance, IDA By-laws Regulations or Policies:

> Between July 25 and August 10, 2007, the Respondent failed to adequately respond to emerging issues in the Coventree ABCP market insofar as it continued to sell Coventree ABCP without engaging Compliance and other appropriate processes for the assessment of such emerging issues, contrary to IDA By-law 29.(1)(ii) (now Dealer Member Rule 29.1(ii).

¶ 3 The terms of settlement agreed to by the parties are as follows:

(a) Payment of $28,950,000 pursuant to IIROC Dealer Member Rules, upon acceptance of the settlement agreement;

(b) Payment of investigation costs of $320,000,· upon acceptance of the settlement agreement; and

(c) The retention of an independent consultant to verify the remedial actions taken by the Respondent, in accordance with Schedule A of the settlement agreement.

¶ 4 The issue for the panel is whether to accept or reject the settlement. The principle to be applied by the panel is whether the settlement falls within a reasonable range, having regard to the nature of the contraventions, the principles of protection of the public and the integrity of the market, specific and general deterrence as well as relevant mitigating factors.

¶ 5 Based upon representations from both counsel that the sum of $28,950,000 fell within the limits of Rule 20.34, it is the decision of this panel that the terms of the settlement agreement were reasonable and accordingly the settlement agreement was accepted by the panel

Dated as of December 21, 2009.

Frederick H. Webber- Chair

Donald (Sandy) Grant

Guenther Kleberg

* * * * *

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 Scotia Capital Inc. (the "Respondent" or "Scotia Capital").

2. 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

3. 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 Rule 20.35-20.40, inclusive and Rule 15 of the Dealer Member 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 Respondent 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 rights under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal and IIROC agrees not to

initiate or continue any disciplinary proceedings against the Respondent or any of its current or former employees in connection with the same or similar facts as are set out in the Settlement Agreement.

8. 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.

9. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.

10. 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. Nothing in this section is intended to restrict the Respondent from making full answer and defence to any civil proceedings against it.

11. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

III. Statement of Facts

ACKNOWLEDGEMENT

12. Staff and the Respondent agree with the facts set out in this Section for the purpose of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to the Respondent or Staff in any other proceeding of any kind, including, but without limiting the generality of the foregoing, any proceedings brought by IIROC or any civil or other proceedings which may be brought by any other person or agency. No other person or agency may raise or rely upon the terms of this Settlement Agreement or any agreement to the facts stated herein whether or not this Settlement Agreement is approved by the Hearing Panel.

OVERVIEW

13. At all material times, the Respondent was a Member firm of the IDA, with its head office located in Toronto, Ontario. On June 1, 2008, the Respondent became a Member firm of IIROC.

14. On August 13, 2007, the Canadian non-bank sponsored asset-backed commercial paper ("ABCP" or "third-party ABCP") market collapsed, leaving Canadian investors holding illiquid investments that they could neither sell nor redeem.

15. The Respondent acted as a distribution agent for third-party ABCP.

ASSET-BACKED COMMERCIAL PAPER

16. ABCP is a short-term debt instrument with typical maturities of 30 to 180 days. ABCP is backed by a pool of underlying assets and offers a yield slightly better than the yield offered on short-term government debt.

17. ABCP is issued by a special purpose vehicle (also referred to as a conduit). In Canada, the conduits are trusts established by sponsors. Sponsors generally select underlying assets, administer the assets and arrange for the sale of the ABCP notes. The Canadian ABCP market included two categories: bank-sponsored and non-bank-sponsored (or third-party) ABCP.

18. As the underlying assets held by conduits were long-term and the ABCP notes were short-term, there was a timing mismatch between the cash flowing from the assets and the cash needed to repay maturing ABCP. For many years, conduits met their maturity obligations by selling newly issued ABCP, the proceeds of which were used to pay maturing ABCP. The liquidity of ABCP was an important characteristic for investors along with credit ratings and yields.

19. To safeguard against difficulty meeting maturity obligations, conduits entered into agreements with liquidity providers which provided credit lines under certain conditions. In general, there were two types of liquidity facilities: (1) general market disruption ("GMD") and (2) global-style. GMD liquidity

was also called "Canadian-style" since it was only available in the Canadian ABCP market. Unlike global-style liquidity facilities, Canadian-style liquidity facilities required specified "general market disruption" events and a credit rating affirmation before liquidity was provided.

20. Liquidity agreements were subject to confidentiality provisions. Many details of the pre-conditions required for liquidity support for individual conduits, including the definition of a "general market disruption event", were not known to the public, investors or to the distributors of ABCP who were not also the liquidity providers to those individual conduits. Conduits generally disclosed the existence of their liquidity arrangements and disclosed that there were pre-conditions to draws.

21. As of September 2005, ABCP was distributed in Canada pursuant to the short-term debt exemption in section 2.35 of National Instrument 45-106 – Prospectus and Registration Exemptions, which provided an exemption for commercial paper with an approved credit rating from an approved credit rating organization. The conduits issuing the ABCP were not reporting issuers under applicable securities laws and therefore were not required to provide continuous disclosure.

22. Dominion Bond Rating Services Limited ("DBRS"), an approved credit rating organization, was the sole credit rating organization which rated third-party ABCP in Canada.

23. On January 19, 2007, DBRS announced changes to its rating methodology for certain new transactions entered into by ABCP issuers. The DBRS press release set out specific new rating criteria, including a requirement for global-style liquidity, to be applied prospectively in the marketplace. No credit ratings on existing ABCP in the marketplace were affected by these changes.

THIRD-PARTY ABCP

24. ABCP has been in the Canadian marketplace for over a decade, and non-bank sponsors entered the marketplace in approximately 2000.

25. Historically, the assets underlying ABCP consisted of traditional assets such as consumer loans, credit card receivables and residential mortgages. Non-traditional complex synthetic assets, such as collateralized debt obligations, came into these structures over time.

26. Third-party ABCP was typically issued by a series of notes, the most common being Series "A" Notes and Series "E" Notes. The "A" Notes were supported by the Canadian-style liquidity facilities. "E" Notes were not, but could be extended up to 364 days after the original issuance date if certain conditions were met, including that market conditions did not allow for "E" Notes to be sold at a specified spread.

27. The sponsors provided limited information regarding the underlying pool of assets in conduits issuing ABCP. Sponsors typically provided an information memorandum describing the basic elements of ABCP. In most cases, the general asset classes were the only information publicly disclosed; there was no disclosure of the specific assets held in the conduits or the terms of the liquidity agreements supporting the ABCP.

COVENTREE INC.

28. At all material times, Coventree Inc. was the largest sponsor of third-party ABCP in Canada. Coventree Inc. also issued third-party ABCP through a subsidiary, Nereus Financial Inc. ("Nereus").

29. At all material times, Coventree Inc. and Nereus (collectively, "Coventree") sponsored the following third-party ABCP conduits: Apollo Trust, Aurora Trust, Comet Trust, Gemini Trust, Planet Trust, Rocket Trust, Slate Trust, Venus Trust, Structured Investment Trust III ("SIT III") and Structured Asset Trust ("SAT").

30. All Coventree conduits but one received an R1-(high) rating (the highest credit rating available, equivalent to a "AAA" for long term debt) by DBRS, as did other Canadian third-party ABCP. This

rating remained in place at all material times up to and including August 13, 2007. Coventree ABCP was rated by DBRS above the minimum "approved credit rating" required by NI45-106 at all material times.

DISTRIBUTION OF THIRD-PARTY ABCP

31. In general, third-party ABCP was distributed to investors through a dealer group (the "dealer syndicate"). Typically, one member of the dealer syndicate would be appointed as lead dealer. Some of the lead dealer's daily duties included the allocation of ABCP notes to dealer syndicate members and setting the yield in consultation with the conduit sponsor.

32. The dealer syndicate members maintained trading lines, up to a credit limit, for third-party ABCP mainly to provide a market-making function. Dealer syndicate members would typically purchase third-party ABCP that was not sold at the end of a trading day. These positions were to be held on a short-term basis, typically overnight, until the notes could be sold to investors. Dealer syndicate members also purchased previously issued third-party ABCP from clients. While the dealer syndicate was under no obligation to purchase any previously issued third-party ABCP, they did so from time to time as a service to their clients. Dealer syndicate members other than the lead dealer also had the option to turn back ABCP to the lead dealer if they were unable to sell their daily allocation, but this was not their ordinary practice.

33. Third-party ABCP traded in a dealer market, also known as an over-the-counter ("OTC") market. Unlike an auction market or exchange, the OTC market did not have a centralized quotation system.

34. Investors were provided with access by the conduit sponsors to information memoranda, conduit reports and other documentation prepared by the sponsors, and to DBRS reports. The information that ABCP purchasers typically requested of dealers and dealers provided was the name, yield, term and credit rating of third-party ABCP.

THE MARKET FREEZE

35. On August 13, 2007, a number of Canadian third-party ABCP conduits including the Coventree conduits were unable to sell new ABCP to fund the repayment of maturing ABCP. Many of the conduits' liquidity providers did not agree that the conditions for liquidity funding had occurred and refused to provide liquidity to the affected conduits.

36. As of August 13, 2007, the third-party ABCP market totaled approximately $35 billion, with Coventree conduits representing approximately 46 percent of the value of the third-party ABCP market.

37. On August 16, 2007, a consortium representing banks, asset providers and major ABCP holders agreed to take steps to establish normal operations in the ABCP market. This agreement was known as the Montreal Proposal.

38. A Pan-Canadian Investors Committee, including investors who were signatories to the Montreal Proposal plus other significant holders, was established to oversee the restructuring of third-party ABCP. It put forward the Plan of Compromise and Arrangement (the "Plan"), which was implemented on January 21, 2009.

39. Pursuant to the Plan, holders of the eligible third-party ABCP had their short-term notes exchanged for longer term notes to match more closely the maturity dates of the underlying assets. These new notes were issued by Master Asset Vehicles ("MAVs"). It is not currently possible to determine if any or all of the notes of the MAVs will mature at par value.

THE RESPONDENT'S ROLE IN SELLING THIRD PARTY ABCP

40. The Respondent first started selling third-party ABCP market around 2002.

41. At all material times, the Respondent was a member of the dealer syndicates distributing *all of the* Coventree conduits. The Respondent acted as lead distribution agent for Coventree conduits SIT III and

SAT.

42. The Respondent sold Coventree ABCP primarily to institutional investors that did not rely on the Respondent for advice. While five retail clients purchased Coventree ABCP through the Respondent prior to July, 2007, the Respondent did not market Coventree ABCP to retail clients.

EMERGING ISSUES

(a) US Subprime Exposure

43. During the period from March to June, 2007, increasing defaults in US subprime mortgages started to place strains on credit markets in the United States.

44. The Respondent first learned that some of the Coventree conduits may have contained United States (US) subprime mortgages in March 2007.

45. The Respondent and some of its clients attended a Coventree investor presentation in late April 2007. At the presentation, Coventree disclosed that the overall US subprime exposure in its conduits was 7.4 percent.

46. As a result of the widening spreads for fixed income securities during the summer of 2007, the Respondent's senior management required staff to manage down inventories, including commercial paper inventories.

47. During July 2007, the Respondent raised with Coventree the issue of the possible effects of US subprime on the credit markets and recommended in a July 20th email that Coventree provide full disclosure regarding US subprime in the individual conduits. The Respondent was concerned about the negative effect unwarranted rumours might have on the third-party ABCP market. The head of Coventree's funding group responded to the email by stating that she agreed that Coventree should be proactive and disclose the exposure of its conduits.

48. On July 23, 2007, the Respondent authorized the purchase of $38.9 million in Comet E notes from the CDPQ. The purchase of the Comet E position was contrary to management's objective of managing down inventory levels. Upon learning of the Comet E purchase, management directed the sales staff to sell the position.

49. On July 24, 2007, Coventree sent an email (the "July 24th email") to all of Coventree's syndicate members, including the Respondent, setting out information regarding US subprime exposure in Coventree conduits as of June 28, 2007. The US subprime content in each of the conduits was noted as follows:

Conduits	**Series A**	**Series E**	**Total ABCP**
Aurora Trust	0%	8%	3%
Comet Trust	0%	**42%**	16%
Planet Trust	**26%**	3%	17%
Slate Trust	0%	**16%**	13%
Apollo Trust Gemini Trust Rocket Trust Venus Trust	0%	0%	0%
SAT	0%	0%	0%
SIT III	1%	0%	1%

TOTAL	3%	6%	5%

50. The email included summary notes which stated, among other things, that all deals remained at AAA level, were performing as expected, there were minimal loss levels and that subprime exposure was to the more favourable pre-2006 vintages. The Respondent had not previously received such particulars on the subject of US subprime from Coventree.

51. Coventree did not put any limitations on disclosure of the information contained in the July 24th email. Coventree expressly told the Respondent that it left it to the syndicate members to exercise their own judgement in deciding whether to distribute the information to clients.

52. The information communicated in the July 24th email concerning subprime content was not verifiable through publicly available sources. The Respondent, however, took steps to verify the information. Specifically, it confirmed with Coventree the fact that the subprime assets were of the more favourable pre-2006 vintage in addition to the fact that Coventree was rebalancing the subprime content of its conduits. The Respondent also confirmed with DBRS, who had full knowledge of the subprime content, that there was no threat of a ratings downgrade in any of the Coventree conduits and that the assets continued to be rated AAA notwithstanding the subprime content.

53. The Respondent encouraged Coventree to publicly disseminate the information with the necessary contextual information and interpretation.

54. The Respondent requested that DBRS provide further transparency on subprime exposure, stability cushions and downgrade remoteness, but DBRS did not do so. In addition, Coventree did not publicly disclose the information contained in the July 24th email.

55. In the weeks following the July 24th email, the Respondent came to believe that some of its clients had already learned of US subprime mortgage exposure in Coventree conduits. At the same time, one of the Respondent's other clients that was in receipt of the July 24th email was asking questions about US subprime content in third-party ABCP.

56. After the Respondent's management became aware of the July 24th email, it did not change the earlier direction to reduce inventories. From July 25 to August 1, 2007, the Respondent sold the Comet E position in seven trades to corporate/institutional purchasers who were previous purchasers of Coventree ABCP. The notes were to mature on August 21, 2007.

(b) Liquidity Issues

57. Beginning in late July 2007, the ability to place Coventree paper was a concern for the Respondent although Coventree ABCP continued to roll up to August 13, 2007. The dealer syndicates including the Respondent offered higher yields in order to sell Coventree ABCP to investors. While the widening spreads were one indicator of liquidity issues that was apparent to investors, the Respondent, in its capacity as lead dealer, possessed additional information regarding the ability of Coventree's syndicates to roll over maturing ABCP and issue new ABCP. Some of the Respondent's clients did not have the ability to independently assess the liquidity in the market.

58. By late July, the Respondent began to collect information on the procedures to be followed to draw down liquidity from the liquidity providers. By August 3, 2007, the Respondent was aware that liquidity issues may affect the Coventree ABCP market.

59. The Respondent continued to buy and distribute Coventree ABCP pursuant to its obligations in dealer agreements up to August 10, 2007. The Respondent's parent bank honoured its liquidity agreements on August 13, 2007 and the Respondent expected that other liquidity providers would also advance funds under their liquidity agreements. However, the Respondent did not have access to the liquidity agreements of other liquidity providers.

THE RESPONDENT'S RESPONSE TO EMERGING ISSUES

60. Notwithstanding the events described above, the Respondent failed to fully assess the information in the July 24th e-mail in a meaningful way. The Respondent did not notify its Compliance Department ("Compliance") of the July 24th email or its contents until after August 13, 2007.

61. Notwithstanding its concerns about emerging market issues for Coventree ABCP, the Respondent failed to engage an adequate process to fully assess the impact of those concerns. The Respondent did not notify Compliance of its concerns.

62. Notwithstanding the emerging issues relating to the Coventree ABCP market as described above, the Respondent continued to sell Coventree ABCP to institutional clients, primarily by way of newly issued paper.

63. From July 25 to August 3, 2007, the Respondent sold Comet E from inventory, as noted in paragraph 56, and newly issued Planet A ABCP in the amount of $35,400,000, to institutional clients who the Respondent was not aware had knowledge of the US subprime exposure.

64. On August 3 the Respondent sold $28 million and from August 7 to 10 the Respondent sold $235 million in newly issued Aurora A, SAT A, and SIT III A to institutional clients (excluding sales of ABCP that matured prior to August 13, 2007 and sales to the CDPQ and other certain professional counterparties).

THE RESPONDENT'S POSITION

65. Upon the market disruption, the Respondent issued market disruption notices to the conduits. The Respondent's parent, Scotiabank, had entered into liquidity agreements with conduits with terms intended to ensure that in circumstances such as those that occurred, Scotiabank would advance funds to the conduits to enable them to repay investors whose paper was maturing. When the market disruption occurred, Scotiabank honoured its liquidity agreements paying out $91 million in a timely manner that went to pay investors whose ABCP was maturing at that time.

66. In 2007, Scotiabank also led the restructuring of another non-Coventree third-party ABCP conduit that resulted in purchasers receiving back 98.7% of their principal.

67. At the request of the Pan-Canadian Investors' Committee, Scotiabank committed $200 million to provide additional margin support for the restructured long-term notes issued in exchange for the outstanding third-party ABCP, which is to the benefit of investors.

68. In August, 2007, the retail brokerage division of the Respondent repurchased third-party ABCP from retail clients who purchased third-party ABCP through the Respondent.

69. Since August 2007, the Respondent has taken, and continues to take, steps which, directly or indirectly, will enhance compliance awareness among the Respondent's commercial paper personnel.

70. The Respondent fully cooperated with the regulatory investigation.

IV. Contraventions

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

> Between July 25 and August 10, 2007, the Respondent failed to adequately respond to emerging issues in the Coventree ABCP market insofar as it continued to sell Coventree ABCP without engaging Compliance and other appropriate processes for the assessment of such emerging issues, contrary to IDA By-law 29.1 (ii) (now Dealer Member Rule 29.1(ii)).

V. Terms of Settlement

72. Based on these facts and admissions, Scotia Capital Inc. agrees to the following terms of settlement :

(a) Payment of $28,950,000 pursuant to IIROC Dealer Member Rules, upon acceptance of the Settlement Agreement;

(b) Payment of investigation costs of $320,000, upon acceptance of the Settlement Agreement; and

(c) The retention of an independent consultant to verify the remedial actions taken by the Respondent, in accordance with Schedule A of the Settlement Agreement.

VI. STAFF COMMITMENT

73. If the Hearing Panel approves this Settlement Agreement, Staff, the Ontario Securities Commission and Autorité des marchés financiers will not commence any proceeding under applicable legislation and rules against the Respondent or any of its affiliates or their respective present or former directors, officers, employees or agents in relation to the facts set out in Part III of this Settlement Agreement.

AGREED TO by the Respondent at the City of Toronto in the Province of Ontario, this 17th day of December, 2009.

Witness signature	**Respondent's signature**
Witness	**Respondent**

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this 17th day of December, 2009.

Witness signature	**"Elsa Renzella"**
Witness	**Elsa Renzella** Enforcement Counsel on behalf of Staff of the Investment Industry Regulatory Organization of Canada
"Witness signature"	**"Tamara Brooks"**
Witness	**Tamara Brooks** 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 21st day of December, 2009, by the following Hearing Panel:

Per: "Frederick Webber"

Mr. Frederick Webber, Panel Chair

Per: "Donald (Sandy) Grant"

Mr. Donald (Sandy) Grant, Panel Member

Per: "Guenther Kleberg"

Mr. Guenther Kleberg, Panel Member

SCHEDULE "A" – TERMS OF REFERENCE FOR COMPLIANCE VERIFICATION

A. Remedial Steps Taken by the Respondent

1. After August 2007, the Respondent reviewed its policies and procedures in connection with the fixed income business and has taken, and continues to take, remedial actions, which include the following:
    a. increasing the number of Compliance positions supporting the Respondent's wholesale business;
    b. enhancing Compliance presence on the Respondent's trade floor;
    c. increasing the number of Alternate Designated Persons within the Respondent's wholesale business;
    d. enhancing Compliance awareness of supervisory personnel, including by: delivering a memorandum to the UDP and ADPs reminding them of their regulatory responsibilities; and revising the Job Description of the UDP to reflect Compliance responsibilities;
    e. documenting enhanced Supervisory Procedures for Fixed Income;
    f. establishing a Compliance Committee for the Respondent's wholesale business, in addition to its Board of Directors and Operating Committee;
    g. revising and reissuing the Respondent's Compliance Policies as Global Compliance Policies, and highlighting as a Key Policy the escalation of issues to Compliance;
    h. developing a New Business Approval Policy and establishing a New Business Committee;
    i. conducting Compliance training sessions for wholesale staff, including Fixed Income personnel.

B. Retention of the Consultant

1. The Consultant's reasonable compensation and expenses shall be borne exclusively by the Respondent.
2. The agreement with the Consultant ("Agreement") shall provide that the Consultant will conduct a verification of the implementation of the actions outlined in A above insofar as they relate to:
    a. The Respondent's compliance and oversight functions concerning its trading and sales functions with the fixed income department;
    b. any committees or other mechanisms established to review and approve new securities products in the fixed income department and changes to those products;
    c. the Respondent's training of its staff concerning new securities products in the fixed income department, and changes to those products; and
    d. the Respondent's training of its staff concerning the escalation of issues to compliance and engaging other appropriate processes.

    (collectively, the "Review").

C. The Consultant's Reporting Obligations

1. The Consultant shall issue a draft report to the Respondent and IIROC within 3 months of appointment and in that regard will be provided the opportunity to present its report to the Board of Directors of the Respondent.
2. The Consultant shall engage with the Respondent in discussions regarding the draft report with a view to reaching consensus and finalizing the report within 1 month of the delivery of the draft report. If requested by the Consultant, the Consultant will be provided with an opportunity to present its final report to the Board of Directors of the Respondent, and may explain any areas of disagreement with management of the Respondent.
3. The Consultant will deliver the final report to the Respondent and to IIROC.
4. The Consultant's draft and final reports shall include a description of the Review performed, whether the remedial action outlined in Schedule A taken by the Respondent as they relate to B.2 (a-d) have been

fulfilled, and, if not, the Consultant's recommendations for any changes to those remedial actions as the Consultant reasonably deems necessary.

5. The Respondent will, within 60 days after receipt of the Consultant's report, advise IIROC of a timetable to implement the recommendations contained in the report; however, in the event the Respondent disagrees with any of the recommendations, the Respondent shall so advise IIROC and provide its reasons for such position and, if applicable, any alternative actions, policies or procedures the Respondent intends to adopt.
6. The Respondent shall certify to IIROC, by certificate executed on its behalf by each of the CEO, the UDP, the CCO and the and the Chair of the Board of Directors of the Respondent, that the Respondent has implemented those recommendations of the Consultant which it had agreed upon, and will do so promptly following such implementation.
7. For greater certainty, the terms of this Review do not limit in any respect the authority of IIROC to undertake, as part of their normal course audit activities, a review of all matters within the scope of the Review or any other aspect of the business of the Respondent.

D. Terms of the Consultant's Retention

1. The selection of the Consultant shall be made promptly following the approval of the Settlement Agreement, but in any event by no later than January 31, 2010, by mutual agreement between the Respondent and IIROC.
2. The Consultant shall have reasonable access to all of the Respondent's books and records. The Respondent shall instruct and otherwise encourage its officers, directors, and employees to cooperate fully with the Review conducted by the Consultant, and inform its officers, directors, and employees that failure to cooperate with the Review may be grounds for disciplinary action.
3. The Consultant shall make and keep notes of interviews conducted, and keep a copy of documents gathered, in connection with the performance of his or her responsibilities.

This is Exhibit "B" to the
Affidavit of Jeffrey Kehoe,
affirmed February 15, 2012

Philip Anisman
A Commissioner for Taking Affidavits

Re Canaccord Financial

IN THE MATTER OF:

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

AND

CANACCORD FINANCIAL LTD.
(FORMERLY CANACCORD CAPITAL CORPORATION)

[2009] IIROC No. 56

Investment Industry Regulatory Organization of Canada
Hearing Panel (Pacific District)

Heard: December 21, 2009 at Vancouver B.C.
Decision: January 15, 2010
(46 paras.)

Hearing Panel:
John Rogers, Chair
Brian Field
Chris Lay

Appearances:
Tamara Brooks, Enforcement Counsel, for the Investment Industry Regulatory Organization of Canada
Donald J. Sorochan, Q.C., Miller Thompson LLP, Barristers & Solicitors, for the Respondent

REASONS FOR DECISION

¶ 1 A hearing panel of the Investment Industry Regulatory Organization of Canada ("IIROC") was convened on December 21, 2009 in accordance with Rule 15 of the IIROC Dealer Member Rules of Practice and Procedure to review a settlement agreement ("Settlement Agreement") dated December 16, 2010 negotiated between the Enforcement Department of IIROC and Canaccord Financial Ltd. ("Respondent") in accordance with Rule 20.35 of Part 10 of the IIROC Dealer Member Rules (the "Rules") and Rule 15 of the Dealer Member Rules of Practice and Procedure. A copy of the Settlement Agreement is attached to this decision.

Preliminary Application

¶ 2 At the commencement of the Settlement Agreement Hearing, Enforcement Counsel advised the Hearing Panel that similar proceedings to the matter at hand were being conducted across Canada. She confirmed that these other hearings related to matters referred to in the Settlement Agreement, matters which most likely the Canadian financial press would find of interest. In an attempt to coordinate the release to the public of the decisions resulting from this Hearing and the other hearings, Enforcement Counsel requested that we defer any decision that we might make in this matter until 2:00 PM Vancouver time.

¶ 3 The Respondent consented to this approach.

¶ 4 Therefore, following the submissions of counsel, the Settlement Agreement Hearing was adjourned until 2:00 PM Vancouver time when we delivered the decision below set out.

Statement of Facts

¶ 5 The Settlement Agreement contains certain facts agreed to by IIROC and the Respondent for the purpose of the Settlement Agreement. A summary of these facts are set out below.

The Asset Backed Commercial Paper Market

The Security

¶ 6 During 2006 and 2007 the Respondent offered for sale to its clients a security known as Asset Backed Commercial Paper ("ABCP"). ABCP is a short-term debt instrument with typical maturities of 30 to 180 days, offering a yield slightly better than the yield offered on short-term government debt, and backed by a pool of long term underlying financial assets. The security offered by the Respondent was issued by a trust which was established by a sponsor. The sponsor of a particular trust selected the underlying assets for the trust, administered these assets, and arranged for the sale of the ABCP securities. The Canadian ABCP market included two categories of ABCP securities: bank-sponsored and non-bank-sponsored ("third party").

¶ 7 The pool of underlying financial assets included traditional financial assets such as consumer loans, credit card receivables and residential mortgages; however the pool might also include non-traditional more complex synthetic assets with a different risk profile such as collateralized debt obligations. There was no disclosure of the specific assets in the pool of assets held by the trust, with, in most cases, the general asset classes being the only information publicly disclosed.

Liquidity Agreements

¶ 8 As the underlying assets supporting the trust had a long term maturity and the maturity of the ABCP securities had a short term maturity, maturing ABCP securities of a particular trust were financed by the issuance of new short term ABCP securities by that trust. To safeguard against difficulty in financing the redemption of the ABCP securities upon their maturity, the issuing trust entered into an agreement with a liquidity provider to provide back up credit lines under certain conditions. These conditions included the requirement that specified "general market disruption events" had occurred and a credit rating affirmation before liquidity would be provided.

¶ 9 These liquidity agreements were subject to confidentiality provisions prohibiting disclosure of many of their terms, including disclosure of the definition of the general market disruption event condition.

Dominion Bond Rating Services Limited

¶ 10 Dominion Bond Rating Services Limited ("DBRS"), an approved credit rating organization, was the sole credit rating organization which rated the ABCP securities sold to the Respondent's clients. These ABCP securities received from DBRS the highest credit rating available, being R-1 (high), and this credit rating remained in place until August 13, 2007.

¶ 11 On January 19, 2007, DBRS announced changes to its rating methodology. These changes included a new set of requirements for liquidity agreements for ABCP securities for which a DBRS rating was being sought. These changes did not apply to the issuance by trusts of new ABCP securities to finance the redemption of DBRS rated ABCP securities issued prior to January 19, 2007.

ABCP Over-the-Counter Market

¶ 12 Third party ABCP securities were distributed to investors through a dealer syndicate. One member of the dealer syndicate was appointed as the lead dealer whose duties included the allocation of the ABCP securities to dealer syndicate members and, in consultation with the sponsor, setting the yield on the securities offered.

¶ 13 The third party ABCP securities traded in an over-the-counter dealer market which was not transparent

to investors. Participating investors were, therefore, reliant mainly upon the dealer syndicate for information relating to issues such as pricing, market depth and market volume. The primary information that dealers disclosed to investors was the yield and credit rating of the third party ABCP securities traded in that market.

The Market Freeze

¶ 14 On August 13, 2007, a number of Canadian trusts which had previously issued ABCP securities were unable to sell new ABCP securities to fund the repayment of their previously issued and maturing ABCP securities. In addition, many of the liquidity providers did not agree that the conditions for liquidity funding had occurred and refused to provide liquidity to fund this repayment.

Remedial Action

¶ 15 As a result of this market freeze, on August 16, 2007 a consortium representing banks, asset providers and major holders of ABCP securities agreed to take steps to establish normal operations in the ABCP market (the "Montreal Proposal"). Subsequently, a Pan-Canadian Investors Committee, including parties to the Montreal Proposal and other significant holders of ABCP securities, put forward a Plan of Compromise and Arrangement (the "Plan"). The Plan as eventually implemented on January 21, 2009 led to the exchanging of short term ABCP securities for ABCP securities of a longer term more closely matching the maturity dates of the underlying financial assets securing the ABCP securities.

The Respondent's Involvement in the ABCP Market

¶ 16 The Respondent was a secondary dealer in both bank sponsored and third party ABCP securities. The Respondent relied primarily on another Member firm who was the lead dealer for the majority of the third party ABCP securities traded by the Respondent. As well, the Respondent was the carrying broker for a Member firm who also sold third party ABCP securities to its retail clients.

¶ 17 By August 2007, the Respondent's retail clients represented approximately 11% of the retail holdings of third party ABCP securities in Canada.

¶ 18 In about 1998, the Respondent's executive committee established the Respondent's general criteria for the Respondent's retail offerings of fixed income products. These criteria included the provision that such offerings be restricted to those fixed income products which carried a DBRS rating of R-1 (high). The bank sponsored and third party ABCP securities met this restriction.

Lack of Adequate Due Diligence

¶ 19 In the Settlement Agreement, the Respondent acknowledges that it did not perform adequate due diligence on the ABCP securities in which it traded. It relied primarily on the credit rating provided by DBRS and secondarily on corroborating information from the other Member firm who was the lead dealer for the majority of the third party ABCP securities supplied to the Respondent.

¶ 20 Specifically, the Respondent acknowledges that:

1. It did not learn and remain informed of the complexities of the ABCP securities and the consequent systemic risks arising from the manner in which the securities were rated by DBRS and the counterparty risks arising from the liquidity agreements;
2. It did not differentiate between bank sponsored ABCP securities and third party ABCP securities;
3. As the third-party ABCP securities met the executive committee's basic criteria of the R-1 (high) rating by DBRS, they automatically became part of the Respondent's pool of fixed income product offerings without further due diligence; and
4. It did not take steps to adequately ensure that its approved persons involved in the sale and distribution of third party ABCP securities to retail clients were trained in and understood the complexities of the ABCP product and the consequent risks related to these securities to make proper decisions involving suitability.

¶ 21 Consequently, without a full understanding of the ABCP securities being offered, the Respondent's retail advisors were representing the ABCP securities to their clients as interest-rate sensitive investments with a credit rating identical to a government Treasury Bill, and as an alternative to a Guaranteed Investment Certificate or a term deposit.

The Respondent's Remedial Actions

¶ 22 Following the market freeze on August 13, 2007, the Respondent made significant efforts to assist its clients. The Settlement Agreement acknowledges that:

1. From the time of the market freeze, the Respondent assisted clients suffering hardship because their holdings of ABCP securities were frozen;
2. As a party to the Montreal Proposal and as a participant in the Pan-Canadian Investors Committee, it provided both financial and leadership support;
3. Complementary to and in support of the Plan of Compromise and Arrangement, the Respondent established the Canaccord Relief Program to assist eligible clients, paying out a total of $152.2 million under this program in addition to unpaid interest and restructuring costs; and
4. For clients who were not eligible for the Canaccord Relief Program, the Respondent has made offers to assist them, substantially all of which offers have been accepted by such clients.

Contraventions

¶ 23 The Settlement Agreement contains the Respondent's admission that contrary to IIROC Dealer Member Rule 1300.1(a), in or about 2006 and 2007 it did not take adequate steps to ensure that its sales staff understood the complexities of the third party ABCP securities it offered for sale to retail clients and the consequent risks (including systemic risks and counterparty risks) related to these securities, and, in not taking these steps, it did not ensure that the purchase of third party ABCP securities was properly understood by its clients.

Terms of Settlement

¶ 24 In the Settlement Agreement, IIROC and the Respondent agree to the following terms of settlement:

1. That the Respondent will pay a fine in the amount of $3,100,000 (inclusive of costs); and
2. That the Respondent will have an outside consultant undertake a compliance review of the Respondent's product due diligence practices insofar as such practices relate to the fixed income business of the Respondent, with the goal of this review to be remedial and preventive.

¶ 25 The complete terms of reference for the compliance review agreed to by the Respondent, together with the consultant's reporting obligations and the terms of the consultant's retainer, are more particularly set out in Schedule A of the Settlement Agreement.

¶ 26 Although not referred to in the Settlement Agreement, the parties confirmed at the Settlement Agreement Hearing that if the Settlement Agreement were accepted by the Hearing Panel, that the fine and costs agreed to by the Respondent were to be payable immediately.

Staff Commitment

¶ 27 The Settlement Agreement provides that if this Hearing Panel accepts the Settlement Agreement, that IIROC Enforcement Staff will not commence any proceeding under the Rules against the Respondent or any of its affiliates or their respective present or former directors, officers, employees or agents in relation to the facts set out in the Settlement Agreement.

¶ 28 This provision is also stated in the Settlement Agreement to bind the Ontario Securities Commission and Autorité des marchés financiers to prevent the commencement of any proceeding under their applicable legislation and rules.

¶ 29 The Hearing Panel was advised by Enforcement Counsel that although not referred to in the Settlement

Agreement, that the British Columbia Securities Commission has, as well, agreed to be bound by this provision.

Decision

¶ 30 The Hearing Panel accepts the Settlement Agreement.

Reasons

¶ 31 Rule 20.36 empowers a Hearing Panel upon the conclusion of a settlement agreement hearing to either accept or reject the settlement agreement under consideration. Neither in Rule 20.36 nor elsewhere in the Rules is there guidance for what criteria a Hearing Panel should use in making this decision.

Appropriateness of Penalty

¶ 32 Past decisions of Hearing Panels determining whether or not to accept a settlement agreement are of assistance. In *Milewski* [1999] I.D.A.C.D. No. 17, Bulletin No. 2605, August 5, 1999, and *Clark* [1999] I.D.A.C.D. No. 40, Bulletin No. 2674, December 14, 1999 the test for a Hearing Panel to use in determining whether or not to accept a settlement agreement was defined as whether or not the settlement agreement reached between the respondent and IIROC Enforcement Staff includes a penalty which clearly falls outside a "reasonable range of appropriateness". If in the opinion of the Hearing Panel the penalty falls outside this reasonable range, the Hearing Panel should not accept the settlement agreement. Otherwise it should do so. The rationale behind this approach is that a Hearing Panel should be cognizant of the settlement process and should not interfere in a negotiated settlement by attempting to substitute its discretion for that of the parties.

¶ 33 Further assistance as to what factors should be considered by a Hearing Panel in determining whether or not to accept that a settlement agreement containing an appropriate penalty was provided in *Derivative Services Inc.*, [2000] I.D.A.C.D. No. 26 at page 3. The decision lists five considerations of which a Hearing Panel should be cognizant in determining an appropriate penalty. These considerations are:

1. Protection of the investing public;
2. Protection of the IIROC membership;
3. Protection of the integrity of the IIROC hearing process;
4. Protection of the integrity of the securities markets; and
5. Prevention of a repetition of the conduct leading to the penalty.

¶ 34 The terms of settlement in the Settlement Agreement contain two elements – a monetary fine and an agreement to have an outside consultant conduct a compliance review. To deal firstly with the compliance review.

Compliance Review

¶ 35 The Respondent relied on the DBRS R-1 (high) rating as the sole and "automatic" criterion for including the ABCP securities as part of the Respondent's pool of fixed income product offerings. In taking this approach, as Counsel for the Respondent candidly acknowledges, the Respondent "did not know what it did not know".

¶ 36 The Respondent did not perform its own due diligence on the ABCP securities it offered to its clients in order to learn and remain informed about the complexities of the security. It did not properly understand the manner in which DBRS had rated the ABCP security or the risks involved if the liquidity providers failed to meet their contractual commitments or, indeed, the possibility of them failing to do so. Although the confidentiality restrictions governing the liquidity agreements might have prevented the Respondent from finding out these and other factors as part of a due diligence program, the Respondent did not attempt such a program. .

¶ 37 For product knowledge, the Respondent relied primarily on the credit rating provided by DBRS and secondarily on the corroborating information from the broker leading the syndicate. A situation the Respondent

acknowledges in the Settlement Agreement was insufficient and which it has since taken steps to remedy.

¶ 38 Nor did the Respondent make an adequate effort to ensure that its approved persons understood and conveyed to their clients the complexities of the ABCP securities, the lack of transparency surrounding these financial products, and the consequent risks from purchasing these products.

¶ 39 We were advised by Respondent's Counsel that following the market freeze on August 13, 2007, the Respondent commenced and has followed through with changes to its due diligence program for its fixed income product offerings. These changes were undertaken to ensure that the new due diligence program is in compliance with appropriate regulatory standards for such practices and their implementation by secondary market dealers in Canada and the IIROC notice 09-0087 entitled Best Practices for Product Due Diligence.

¶ 40 The Settlement Agreement provides that this new due diligence program introduced by the Respondent will be reviewed by an outside consultant. This review will include an examination of the provisions in the program that relate to the Respondent's training of the Respondent's staff concerning fixed income securities and the Respondent's procedures regarding staff compliance with these changes. The consultant will report results of this review to both the Respondent and to IIROC.

¶ 41 We believe that this compliance review will confirm the effectiveness of the remedial actions undertaken by the Respondent and will deal with the concerns in regard to prevention and protection as set out in *Derivative Securities* . It is, therefore, clearly within the range of an appropriate penalty in accordance with *Milewski*.

Monetary Fine

¶ 42 In attempting to determine the reasonable range of appropriateness of the monetary fine, we are faced with a paucity of criteria against which to compare the fine negotiated by the parties.

¶ 43 There is reference to the fact that in August of 2007, the Respondent's clients represented approximately 11% of the retail holdings of third-party ABCP in Canada, but there is no indication of the total amount of these holdings.

¶ 44 The Settlement Agreement itself does not enumerate the criteria used by the parties in arriving at the fine inclusive of costs of $3,100,000.

¶ 45 With respect to mitigating circumstances, we note:

1. The Respondent's role in the ABCP securities market was restricted to that of a secondary dealer relying on another Member firm to act as lead dealer;
2. From the commencement of the market freeze on August 13, 2007, Respondent made significant efforts to assist its clients and was an active participant in the Pan-Canadian Investors Committee providing both financial and leadership support;
3. Complementary to and in support of the Plan of Compromise and Arrangement, the Respondent established the Canaccord Relief Program to assist eligible clients, paying $152.2 million under this program together with unpaid interest and restructuring costs;
4. For clients who were not eligible clients under the Canaccord Relief Program, the Respondent has made them offers, substantially all of which offers have been accepted by these non-eligible clients; and
5. The submission by IIROC Enforcement Counsel that the Respondent from the beginning of the market freeze accepted full responsibility and cooperated fully with IIROC officials and Enforcement Staff.

¶ 46 Based upon the above, it is obvious that the Respondent took immediate steps to assist its clients affected by the ABCP market freeze cooperating fully with IIROC officials and Enforcement Staff to work through what became a very difficult and financially challenging process. We see no reason to question the amount of the fine arrived at by the parties and find the amount arrived at by them within a reasonable range of appropriateness.

Dated at Vancouver, British Columbia, this 15th day of January, 2010.

John Rogers, Chair

Brian Field

Chris Lay

* * * * *

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 Canaccord Financial Ltd. ("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. On or about December 1, 2009, Canaccord Capital Corporation changed its name to Canaccord Finacial Ltd.

4. 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

5. The Respondent consents to be subject to the jurisdiction of IIROC.

6. 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.

7. The Settlement Agreement is subject to acceptance by the Hearing Panel.

8. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

9. 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.

10. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives its right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.

11. 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.

12. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.

13. 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.

14. Staff and the Respondent jointly recommend that the Hearing Panel accept the Settlement Agreement.

III. Statement of Facts

(i) Acknowledgment

15. 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

ASSET-BACKED COMMERCIAL PAPER ("ABCP")

16. ABCP is a short-term debt instrument with typical maturities of 30 to 180 days. ABCP is backed by a pool of underlying assets and offers a yield slightly better than the yield offered on short-term government debt.

17. ABCP is issued by a special purpose vehicle (also referred to as a conduit). In Canada, the conduits are trusts established by sponsors. Sponsors generally select underlying assets, administer the assets and arrange for the sale of the ABCP notes. The Canadian ABCP market included two categories: bank-sponsored and non-bank-sponsored (or third party) ABCP.

18. As the underlying assets were long term and the ABCP notes were short term, there was a timing mismatch between the cash flowing from the assets and the cash needed to repay maturing ABCP. For many years, conduits met their obligations by selling newly issued ABCP, the proceeds of which were used to pay maturing ABCP. The liquidity of ABCP was an important characteristic for investors.

19. To safeguard against difficulty meeting maturity obligations, conduits entered into agreements with liquidity providers which provided credit lines under certain conditions. In general, there were two types of liquidity facilities: (1) general market disruption ("GMD") and (2) global-style. GMD liquidity was also called "Canadian-style" since it was only used in the Canadian ABCP market. Unlike global-style liquidity facilities, Canadian-style liquidity facilities required specified "general market disruption" events and a credit rating affirmation before liquidity was provided.

20. Liquidity agreements were subject to confidentiality provisions. Many details of the pre-conditions required for liquidity support, including the definition of a "general market disruption event", were not known to the public, to investors or to the distributors of ABCP who were not also liquidity providers. Conduits generally disclosed only the existence of their liquidity arrangements and disclosed that there were pre-conditions to draws.

21. As of September 2005, ABCP distributed in Canada was prospectus-exempt under the short-term debt exemption in section 2.35 of National Instrument 45-106 – *Prospectus and Registration Exemptions,* which provided an exemption for commercial paper with an approved credit rating from an approved credit rating organization.

22. Dominion Bond Rating Services Limited ("DBRS"), an approved credit rating organization, was the sole credit rating organization which rated third-party ABCP in Canada.

23. On January 19, 2007, DBRS announced changes to its rating methodology for certain new transactions entered into by ABCP issuers. The DBRS press release set out specific new rating criteria, including a requirement for global-style liquidity. These rating criteria were only applied prospectively in the marketplace.

THIRD-PARTY ABCP

24. ABCP has been in the Canadian marketplace for over a decade, and non-bank sponsors entered the marketplace in approximately 2000.

25. Historically, the assets underlying ABCP consisted of traditional assets such as consumer loans, credit card receivables and residential mortgages. Non-traditional complex synthetic assets, such as collateralized debt obligations, came into these structures over time.

26. Third-party ABCP was typically issued by a series of notes, the most common being Series "A" Notes and Series "E" Notes. The "A" Notes were supported by the Canadian-style liquidity facilities. "E" Notes were not, but could be extended up to 364 days after the original maturity date if certain conditions were met, including that market conditions did not allow for "E" Notes to be sold at a specified spread.

27. The sponsors provided limited information regarding the underlying pool of assets in conduits issuing ABCP. Sponsors typically provided an information memorandum describing the basic elements of ABCP. In most cases, the general asset classes were the only information publicly disclosed; there was no disclosure of the specific assets.

COVENTREE INC.

28. At all material times, Coventree Inc. was the largest sponsor of third-party ABCP in Canada. Coventree Inc. also issued third-party ABCP through a subsidiary, Nereus Financial Inc. ("Nereus").

29. At all material times, Coventree Inc. and Nereus (collectively, "Coventree") sponsored the following third-party ABCP conduits: Apollo Trust, Aurora Trust, Comet Trust, Gemini Trust, Planet Trust, Rocket Trust, Slate Trust, Venus Trust, Structured Investment Trust III and Structured Asset Trust.

30. All Coventree conduits but one received an R-1 (high) rating (the highest credit rating available, equivalent to a "AAA" for long term debt) by DBRS, as did other Canadian third-party ABCP. This rating remained in place at all material times up to and including August 13, 2007.

THE DISTRIBUTION OF THIRD-PARTY ABCP

31. In general, third-party ABCP was distributed to investors through a dealer group (the "dealer syndicate"). Typically, one member of the dealer syndicate would be appointed as lead dealer. Some of the lead dealer's daily duties included the allocation of ABCP notes to dealer syndicate members and setting the yield in consultation with the conduit sponsor.

32. The dealer syndicate members maintained trading lines, up to a credit limit, for third-party ABCP mainly to provide a market-making function. Dealer syndicate members would typically purchase third-party ABCP that was not sold at the end of a trading day. These positions were to be held on a short-term basis, typically overnight, until the notes could be sold to investors. Dealer syndicate members also purchased third-party ABCP from clients in the secondary market. While the dealer syndicate was under no obligation to purchase any third-party ABCP, they did so to provide a secondary market, maintain liquidity in the market and/or as a service to their clients. Dealer syndicate members other than the lead dealer also had the option to turn back ABCP to the lead dealer if they were unable to sell their daily allocation, but this was not their ordinary practice.

33. Third-party ABCP traded in a dealer market, also known as an over-the-counter ("OTC") market. Unlike an auction market or exchange, the OTC market was not transparent to investors. As such, investors relied mainly upon the dealer syndicate for information relating to issues such as pricing, market depth and market volume.

34. The primary information that dealers disclosed to investors was the yield and credit rating of third-party ABCP.

THE MARKET FREEZE

35. On August 13, 2007, a number of Canadian third-party ABCP conduits including the Coventree conduits were unable to sell new ABCP to fund the repayment of maturing ABCP. Many of the conduits' liquidity providers did not agree that the conditions for liquidity funding had occurred and refused to provide liquidity to the affected conduits.

36. As of August 13, 2007, the third-party ABCP market totaled approximately $35 billion, with Coventree conduits representing approximately 46 percent of the value of the third-party ABCP market.

37. On August 16, 2007, a consortium representing banks, asset providers and major ABCP holders agreed to take steps to establish normal operations in the ABCP market. This agreement was known as the Montreal Proposal.

38. A Pan-Canadian Investors Committee, including investors who were signatories to the Montreal Proposal plus other significant holders, was established to oversee the restructuring of third-party ABCP. It put forward the Plan of Compromise and Arrangement (the "Plan"), which was implemented on January 21, 2009.

39. Pursuant to the Plan, holders of the eligible third-party ABCP had their short-term notes exchanged for longer-term notes to match more closely the maturity dates of the underlying assets.

THE RESPONDENT'S OFFERING OF THIRD-PARTY ABCP

40. By August 2007, the Respondent's retail clients represented approximately 11% of the retail holdings of third-party ABCP in Canada.

41. The Respondent was a secondary dealer in both bank-sponsored and third-party ABCP. The Respondent relied primarily upon another Member firm who was the lead dealer for the majority of the third-party ABCP supplied to the Respondent. In addition, the Respondent was the carrying broker for another Member firm that also sold third-party ABCP to its retail clients.

42. Approximately 80% of the third-party ABCP sold by the Respondent to its retail clients was Structured Investment Trust III ("SIT III").

43. The Respondent's criteria for approving fixed-income products in general was set out in or around 1998 by its executive committee. This committee, consisting of senior management including the CEO, restricted the Respondent's retail offerings of fixed income products to those that were either rated R-1 (high) by DBRS Ltd (or an equivalent rating by another rating agency) or banker's acceptances rated "AA" or better. Fixed-income products rated R-1 (high) included bank-sponsored ABCP, third-party ABCP and government bonds.

44. Since the third-party ABCP products selected by the Respondent met the executive committee's basic criteria of R-1 (high) rating, they automatically became part of the Respondent's pool of fixed-income product offerings.

PRODUCT KNOWLEDGE

45. The Respondent did not perform adequate due diligence on bank-sponsored and third-party ABCP in order to learn and remain informed about the complexities of the ABCP product and the consequent risks (including systemic risks and counterparty risks) related to the product. The Respondent relied primarily on the credit rating provided by DBRS and secondarily relied upon corroborating information from the other Member firm who was the lead dealer for the majority of the third-party ABCP supplied to the Respondent. The Respondent did not differentiate between bank-sponsored and third-party ABCP since all relevant information available to the Respondent was virtually identical – liquidity structures, ratings, selling process, yields and pricing. So long as third-party ABCP met the minimum credit rating threshold, the Respondent's bond desk ("bond desk") was permitted to include third-party ABCP as part of its fixed-income offerings to retail clients.

46. The bond desk did not conduct any meaningful review of the complexities of the ABCP product and the consequent risks (including systemic risks and counterparty risks) related to the product. The bond desk placed third-party ABCP as a product on the Respondent's fixed-income offering sheet, providing only basic information about the credit rating, terms and return. The Respondent regularly circulated this offering sheet to its retail advisors. The Respondent also circulated DBRS rating reports that included a securitization report.

47. The Respondent did not take steps to adequately ensure its approved persons, *including* bond desk traders and retail advisors, involved in the sale and distribution of third-party ABCP to retail clients

understood the complexities of the ABCP product and the consequent risks related to the product including but not limited to the following:

- The basic structure of ABCP and the roles of the various entities (Canadian and international banks, sponsors, issuer, trustee, asset providers);
- The nature and composition of the underlying assets;
- The lack of transparency relating to the providers of underlying assets;
- The nature and limitations of the liquidity facilities;
- The new ratings methodologies of DBRS and the fact that they were applied only prospectively; and
- The lack of transparency relating to the identity of the liquidity providers.

48. Any queries about bank-sponsored and third-party ABCP from the Respondent's retail advisors or the Member firm with which it held a carrying broker arrangement were directed to the Respondent's bond desk. The bond desk in turn relied on answers it received from the lead dealer to respond to inquiries. The bond desk acted as a flow-through for information from the lead dealer and as such, it was overly reliant on that information and the DBRS rating.

49. The Respondent provided training to Approved Persons on matters generally restricted to the technical and mechanical aspects of trading these products. The information provided was insufficient given the complexities of the ABCP product and the consequent risks (including systemic risks and counterparty risks) related to the product.

50. Staff interviewed several of the Respondent's retail advisors who revealed that, except for basic information relating to term, return and rating, they knew very little about the complexities of the ABCP product and the consequent risks (including systemic risks and counterparty risks) related to the product. These advisors knew nothing about the issuer, the role of the issuer, the composition and structure of the product and its evolving characteristics. Consequently, advisors based suitability decisions on the rating, return and term of the product as well as any information they received from the bond desk.

51. The Respondent did not take steps to adequately ensure that its sales staff, including retail advisors, understood and appreciated the qualitative differences between the bank-sponsored and third-party ABCP and the other fixed income products it made available for sale to retail clients particularly as it related to the complexities of the ABCP product and the consequent risks (including systemic risks and counterparty risks) related to the product.

52. Without a full understanding of the complexities of the ABCP product and the consequent risks (including systemic risks and counterparty risks) related to the product, retail advisors were representing the product to their clients as an interest-rate sensitive investment with a credit rating identical to a government Treasury Bill, and as an alternative to a Guaranteed Investment Certificate or a term deposit.

CONTRAVENTION

53. In or about 2006 and 2007, the Respondent did not take steps to adequately ensure its sales staff understood the complexities of the third-party ABCP product it offered for sale to retail clients and the consequent risks (including systemic risks and counterparty risks) related to the product and, in not taking these adequate steps, did not ensure that the purchase of third-party ABCP was appropriately understood by its clients, contrary to Regulation 1300.1(a).

ADDITIONAL FACTORS

54. The Respondent made significant efforts to assist its clients after the market freeze. It was a party to the Montreal Proposal and, as a participant to the Pan-Canadian Investors Committee, provided both financial and leadership support.

55. Complementary to and in support of the Plan of Compromise and Arrangement, the Respondent established the Canaccord Relief Program to assist eligible clients. The total amount paid to eligible clients under this program was $152.2 million plus any unpaid interest and restructuring costs.

56. From the time of the market freeze, the Respondent also assisted clients suffering hardship because of their frozen ABCP holdings. Further, the Respondent has made offers to all its clients who are not eligible clients under the Canaccord Relief Program. Substantially all of these offers have been accepted by the clients.

VI. TERMS OF SETTLEMENT

57. IIROC and the Respondent agree to the following terms of settlement:

(i) A fine in the amount of $3,100,000 (inclusive of costs);

(ii) The Respondent agrees to undertake a compliance review by an outside Consultant, as detailed in Schedule A.

VII. STAFF COMMITMENT

58. If the Hearing Panel approves this Settlement Agreement, Staff, the Ontario Securities Commission and Autorité des marchés financiers will not commence any proceeding under applicable legislation and rules against the Respondent or any of its affiliates or their respective present or former directors, officers, employees or agents in relation to the facts set out in Part III of this Settlement Agreement.

AGREED TO by the Respondent at the City of Vancouver in the Province of British Columbia, this 16th day of December, 2009.

"Witness signature"

_____

Witness

"Martin L. MacLachlan"

Respondent

MARTIN L. MACLACHLAN

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this 17th day of December, 2009.

"Witness signature"

Witness

"Tamara Brooks"

Tamara Brooks

Enforcement Counsel on behalf of Staff of the Investment Industry Regulatory Organization of Canada

"Witness signature" _____

Witness

"Elsa Renzella"

Elsa Renzella

Enforcement Counsel on behalf of Staff of the Investment Industry Regulatory Organization of Canada

ACCEPTED at the City of Vancouver in the Province of British Columbia, this 21st day of December, 2009, by the following Hearing Panel:

Per: "John Rogers"

Panel Chair

Per: "Chris Lay"

Panel Member

Per: "Brian Field"

Panel Member

SCHEDULE "A" – TERMS OF REFERENCE FOR COMPLIANCE REVIEW

A. Retention of the Consultant

Canaccord Financial Ltd. (the "Respondent") agrees to retain a third-party independent Consultant to carry out a review and report concerning the Respondent's due diligence practices and procedures relating to fixed income securities, subject to the terms set out below.

B. Terms of Reference for Engagement of the Consultant

1. The agreement with the Consultant ("Agreement") shall provide that the Consultant will conduct a review of the current state of the Respondent's product due diligence practices insofar as they relate to the fixed income business in the context of appropriate regulatory standards for such practices and their implementation by secondary market dealers in Canada and the IIROC notice 09-0087 entitled Best Practices for Product Due Diligence. The goal of the review is remedial and preventative.

2. The agreement with the Consultant ("Agreement") shall provide that the Consultant examine the policies, procedures and effectiveness of the current state of the Respondent's practices outlined in B(1) above insofar as they relate to:

   a) The Respondent's oversight of sales with respect to fixed income securities made available to clients pursuant to Dealer Member Rule 1300.1 and Dealer Member Rule 2500;

   b) Any committees or other mechanisms established to review and approve new fixed income securities products made available to clients and changes to those securities and products;

   c) The training of the Respondent's staff concerning fixed income securities; and

   d) The Respondent's procedures regarding staff compliance with the foregoing.

   (collectively the "Review")

C. The Consultant's Reporting Obligations

1. The Consultant shall issue a draft report to the Respondent and IIROC within three months of appointment and in that regard will be provided the opportunity to present its report to the Board of Directors of the Respondent.

2. The Consultant shall engage with the Respondent in discussions regarding the draft report with a view to reaching consensus and finalizing the report within one month of the delivery of the draft report. If requested by the Consultant, the Consultant will be provided with an opportunity to present its final report to the Board of Directors of the Respondent and to explain any areas of disagreement with management of the Respondent.

3. The Consultant will deliver the final report to the Respondent and to IIROC.

4. The Consultant's draft and final reports shall include a description of the review performed, the conclusions reached, and the Consultant's recommendations for any changes or improvements to the Respondent's policies and procedures as the Consultant reasonably deems necessary to conform to regulatory requirements set out in Dealer Member Rule 1300.1, Dealer Member Rule 2500, and the IIROC notice 09-0087 entitled Best Practices for Product Due Diligence applicable to the subject matter of the Review in Section B(1) above.

5. The Respondent will, within 60 days after receipt of the Consultant's report, advise IIROC of a timetable to implement the recommendations contained in the report; however, in the event the Respondent disagrees with any of the recommendations, the Respondent shall so advise IIROC and provide its reasons for such position and, if applicable, any alternative actions, policies or procedures the Respondent intends to adopt.

6. Promptly following the implementation of those recommendations of the Consultant with which it did not disagree, the Respondent shall certify to IIROC, by certificate executed on its behalf by each of the President, the UDP and the CCO of the Respondent, that the Respondent has so implemented them.

7. For greater certainty, the terms of the Review do not limit in any respect the authority of IIROC to undertake, as part of their normal course audit activities, a review of all matters within the scope of the Review or any other aspect of the business of the Respondent.

D. Terms of the Consultant's Retention

1. The selection of the Consultant shall be made promptly following the approval of the Settlement Agreement, but in any event by no later than January 31, 2010, by mutual agreement between the Respondent and IIROC.

2. The Consultant shall enter into a confidentiality and non-disclosure agreement satisfactory to the Consultant, the Respondent and IIROC (all acting reasonably), and the Consultant shall then have reasonable access to all of the Respondent's books and records which reasonably relate to the scope of the Review and the ability to meet privately with the Respondent's personnel who are reasonably relevant to the Review. The Respondent shall instruct and otherwise encourage its officers, directors, and employees to cooperate fully with the Review conducted by the Consultant, and inform its officers, directors, and employees that failure to cooperate with the Review may be grounds for disciplinary action.

3. The Consultant shall have the right, as reasonable and necessary in his or her judgment, to retain, at the Respondent's expense, lawyers, accountants, and other persons or firms, other than officers, directors, or employees of the Respondent, to assist in the discharge of the Consultant's obligations. The Respondent shall pay all reasonable fees and expenses (as reasonably documented) of any persons or firms retained by the Consultant.

4. The Consultant shall make and keep notes of interviews conducted, and keep a copy of documents gathered, in connection with the performance of his or her responsibilities.

5. The Consultant's reasonable compensation and expenses shall be borne exclusively by the Respondent.

This is Exhibit "C" to the
Affidavit of Jeffrey Kehoe,
affirmed February 15, 2012

Philip Anisman
A Commissioner for Taking Affidavits

Re Credential Securities Inc

IN THE MATTER OF:

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

AND

CREDENTIAL SECURITIES INC

[2009] IIROC No. 55

Investment Industry Regulatory Organization of Canada
Hearing Panel (Pacific District)

Heard: December 21, 2009 at Vancouver B.C.
Decision: January 15, 2010
(43 paras.)

Hearing Panel:
John Rogers, Chair
Brian Field
Chris Lay

Appearances:
Tamara Brooks, Enforcement Counsel, for the Investment Industry Regulatory Organization of Canada
Tim McCafferty, McCarthy Tétrault, Barristers & Solicitors, for the Respondent

REASONS FOR DECISION

¶ 1 A hearing panel of the Investment Industry Regulatory Organization of Canada ("IIROC") was convened on December 21, 2009 in accordance with Rule 15 of the IIROC Dealer Member Rules of Practice and Procedure to review a settlement agreement ("Settlement Agreement") dated December 17, 2010 negotiated between the Enforcement Department of IIROC and Credential Securities Inc. ("Respondent") in accordance with Rule 20.35 of Part 10 of the IIROC Dealer Member Rules (the "Rules") and Rule 15 of the Dealer Member Rules of Practice and Procedure. A copy of the Settlement Agreement is attached to this decision.

Preliminary Application

¶ 2 At the commencement of the Settlement Agreement Hearing, Enforcement Counsel advised the Hearing Panel that similar proceedings to the matter at hand were being conducted across Canada. She confirmed that these other hearings related to matters referred to in the Settlement Agreement, matters which most likely the Canadian financial press would find of interest. In an attempt to coordinate the release to the public of the decisions resulting from this Hearing and the other hearings, Enforcement Counsel requested that we defer any decision that we might make in this matter until 2:00 PM Vancouver time.

¶ 3 The Respondent consented to this approach.

¶ 4 Therefore, following the submissions of counsel, the Settlement Agreement Hearing was adjourned until

2:15 PM Vancouver time when we delivered the decision below set out.

Statement of Facts

¶ 5 The Settlement Agreement contains certain facts agreed to by IIROC and the Respondent for the purpose of the Settlement Agreement. A summary of these facts are set out below.

The Asset Backed Commercial Paper Market

The Security

¶ 6 During 2006 and 2007 the Respondent offered for sale to its clients a security known as Asset Backed Commercial Paper ("ABCP"). ABCP is a short-term debt instrument with typical maturities of 30 to 180 days, offering a yield slightly better than the yield offered on short-term government debt, and backed by a pool of long term underlying financial assets. The security offered by the Respondent was issued by a trust which was established by a sponsor. The sponsor of a particular trust selected the underlying assets for the trust, administered these assets, and arranged for the sale of the ABCP securities. The Canadian ABCP market included two categories of ABCP securities: bank-sponsored and non-bank-sponsored ("third party").

¶ 7 The pool of underlying financial assets included traditional financial assets such as consumer loans, credit card receivables and residential mortgages; however the pool might also include non-traditional more complex synthetic assets with a different risk profile such as collateralized debt obligations. There was no disclosure of the specific assets in the pool of assets held by the trust, with, in most cases, the general asset classes being the only information publicly disclosed.

¶ 8 The Respondent mainly traded in third party ABCP securities, which securities by August 2007 had non-traditional underlying assets.

Liquidity Agreements

¶ 9 As the underlying assets supporting the trust had a long term maturity and the maturity of the ABCP securities had a short term maturity, maturing ABCP securities of a particular trust were financed by the issuance of new short term ABCP securities by that trust. To safeguard against difficulty in financing the redemption of the ABCP securities upon their maturity, the issuing trust entered into an agreement with a liquidity provider to provide back up credit lines under certain conditions. These conditions included the requirement that specified "general market disruption events" had occurred and a credit rating affirmation before liquidity would be provided.

¶ 10 These liquidity agreements were subject to confidentiality provisions prohibiting disclosure of many of their terms, including disclosure of the definition of the general market disruption event condition.

Dominion Bond Rating Services Limited

¶ 11 Dominion Bond Rating Services Limited ("DBRS"), an approved credit rating organization, was the sole credit rating organization which rated the ABCP securities sold to the Respondent's clients. These ABCP securities received from DBRS the highest credit rating available, being R-1 (high), and this credit rating remained in place until August 13, 2007.

¶ 12 On January 19, 2007, DBRS announced changes to its rating methodology. These changes included a new set of requirements for liquidity agreements for ABCP securities for which a DBRS rating was being sought. These changes did not apply to the issuance by trusts of new ABCP securities to finance the redemption of DBRS rated ABCP securities issued prior to January 19, 2007.

ABCP Over-the-Counter Market

¶ 13 Third party ABCP securities were distributed to investors through a dealer syndicate. One member of the dealer syndicate was appointed as the lead dealer whose duties included the allocation of the ABCP securities to dealer syndicate members and, in consultation with the sponsor, setting the yield on the securities offered.

¶ 14 The third party ABCP securities traded in an over-the-counter dealer market which was not transparent to investors. Participating investors were, therefore, reliant mainly upon the dealer syndicate for information relating to issues such as pricing, market depth and market volume. The primary information that dealers disclosed to investors was the yield and credit rating of the third party ABCP securities traded in that market.

The Market Freeze

¶ 15 On August 13, 2007, a number of Canadian trusts which had previously issued ABCP securities were unable to sell new ABCP securities to fund the repayment of their previously issued and maturing ABCP securities. In addition, many of the liquidity providers did not agree that the conditions for liquidity funding had occurred and refused to provide liquidity to fund this repayment.

Remedial Action

¶ 16 As a result of this market freeze, on August 16, 2007 a consortium representing banks, asset providers and major holders of ABCP securities agreed to take steps to establish normal operations in the ABCP market (the "Montreal Proposal"). Subsequently, a Pan-Canadian Investors Committee, including parties to the Montreal Proposal and other significant holders of ABCP securities, put forward a Plan of Compromise and Arrangement (the "Plan"). The Plan as eventually implemented on January 21, 2009 led to the exchanging of short term ABCP securities for ABCP securities of a longer term more closely matching the maturity dates of the underlying financial assets securing the ABCP securities.

The Respondent's Involvement in the ABCP Market

¶ 17 The Respondent was an introducing broker and had a carrying broker agreement in place with another non-syndicate Member firm that sold third party ABCP securities. While the Respondent's money market activity was handled by the carrying broker's bond desk, the Respondent's decision to make products available to its retail clients remained with it.

¶ 18 During the period that the Respondent was trading in ABCP securities, the Respondent's Product Review Committee, a subcommittee of the Respondent's Investment Risk Committee, established the Respondent's general criteria for the Respondent's retail product offerings. These criteria included the provision that products that were rated by a recognized bond rating agency as investment grade BBB or better were pre-approved by the Product Review Committee for distribution by the Respondent to its clients. Since the third party ABCP securities met this threshold, they automatically became eligible as part of the Respondent's pool of fixed income products available for purchase by the Respondent's clients through the Respondent's approved persons.

Lack of Adequate Due Diligence

¶ 19 In the Settlement Agreement, the Respondent acknowledges that it did not perform adequate due diligence on the ABCP securities in which it traded. It relied primarily on the credit rating provided by DBRS and secondarily on corroborating information from its carrying broker.

¶ 20 Specifically, the Respondent acknowledges that:

1. It did not learn and remain informed of the complexities of the ABCP securities and the consequent systemic risks arising from the manner in which the securities were rated by DBRS and the counterparty risks arising from the liquidity agreements;
2. As the third-party ABCP securities met the basic criteria of the BBB rating by DBRS, they automatically became part of the Respondent's pool of fixed income product offerings without further due diligence; and
3. It did not take steps to adequately ensure that its approved persons involved in the sale and distribution of third party ABCP securities to retail clients were trained in and understood the complexities of the ABCP product and the consequent risks related to these securities to make proper decisions involving suitability.

¶ 21 Consequently, without a full understanding of the ABCP securities being offered, certain of the Respondent's approved persons were representing the ABCP securities to their clients as a safe and secure investment that was similar to a Treasury Bill, Guaranteed Investment Certificate or a term deposit.

The Respondent's Remedial Actions

¶ 22 Following the market freeze on August 13, 2007, the Respondent made significant efforts to assist its clients. The Settlement Agreement acknowledges that:

1. From the time of the market freeze, under its relief program the Respondent returned to the vast majority of its retail clients full face value plus interest and costs of up to $1 million in exchange for the longer term ABCP securities issued under the Plan;
2. From the time when the issues surrounding the third party ABCP securities became known, the Respondent proactively undertook an examination of and has instituted several changes to its procedures and systems to strengthen the review of complex fixed income securities that are traded by its retail clients;
3. The Respondent has made additions to its risk monitoring personnel; and
4. The Respondent is in the process of instituting additional training modules for its approved persons.

Contraventions

¶ 23 The Settlement Agreement contains the Respondent's admission that contrary to IIROC Dealer Member Rule 1300.1(a), in or about 2006 and 2007 it did not take adequate steps to ensure that its sales staff understood the complexities of the third party ABCP securities it offered for sale to retail clients and the consequent risks (including systemic risks and counterparty risks) related to these securities, and, in not taking these steps, it did not ensure that the purchase of third party ABCP securities was properly understood by its clients.

Terms of Settlement

¶ 24 In the Settlement Agreement, IIROC and the Respondent agree to the following terms of settlement:

1. That the Respondent will pay a fine in the amount of $200,000 (inclusive of costs); and
2. That the Respondent will have an outside consultant undertake a verification review of the Respondent's due diligence practices, policies and procedures relating to fixed income securities.

¶ 25 The complete terms of reference of the verification review agreed to by the Respondent, together with the consultant's reporting obligations and the terms of the consultant's retainer, are more particularly set out in Schedule A of the Settlement Agreement.

Staff Commitment

¶ 26 The Settlement Agreement provides that if this Hearing Panel accepts the Settlement Agreement, that IIROC Enforcement Staff will not commence any proceeding under the Rules against the Respondent or any of its affiliates or their respective present or former directors, officers, employees or agents in relation to the facts set out in the Settlement Agreement.

¶ 27 This provision is also stated in the Settlement Agreement to bind the Ontario Securities Commission and Authorité des marchés financiers to prevent the commencement of any proceeding under their applicable legislation and rules.

¶ 28 The Hearing Panel was advised by Enforcement Counsel that although not referred to in the Settlement Agreement, that the British Columbia Securities Commission has, as well, agreed to be bound by this provision.

Decision

¶ 29 The Hearing Panel accepts the Settlement Agreement.

Reasons

¶ 30 Rule 20.36 empowers a Hearing Panel upon the conclusion of a settlement agreement hearing to either accept or reject the settlement agreement under consideration. Neither in Rule 20.36 nor elsewhere in the Rules is there guidance for what criteria a Hearing Panel should use in making this decision.

Appropriateness of Penalty

¶ 31 Past decisions of Hearing Panels determining whether or not to accept a settlement agreement are of assistance. In *Milewski* [1999] I.D.A.C.D. No. 17, Bulletin No. 2605, August 5, 1999, and *Clark* [1999] I.D.A.C.D. No. 40, Bulletin No. 2674, December 14, 1999 the test for a Hearing Panel to use in determining whether or not to accept a settlement agreement was defined as whether or not the settlement agreement reached between the respondent and IIROC Enforcement Staff includes a penalty which clearly falls outside a "reasonable range of appropriateness". If in the opinion of the Hearing Panel the penalty falls outside this reasonable range, the Hearing Panel should not accept the settlement agreement. Otherwise it should do so. The rationale behind this approach is that a Hearing Panel should be cognizant of the settlement process and should not interfere in a negotiated settlement by attempting to substitute its discretion for that of the parties.

¶ 32 Further assistance as to what factors should be considered by a Hearing Panel in determining whether or not to accept that a settlement agreement contains an appropriate penalty was provided in *Derivative Services Inc.*, [2000] I.D.A.C.D. No. 26 at page 3. The decision lists five considerations of which a Hearing Panel should be cognizant in determining an appropriate penalty. These considerations are:

1. Protection of the investing public;
2. Protection of the IIROC membership;
3. Protection of the integrity of the IIROC hearing process;
4. Protection of the integrity of the securities markets; and
5. Prevention of a repetition of the conduct leading to the penalty.

¶ 33 The terms of settlement in the Settlement Agreement contain two elements – a monetary fine and an agreement to have an outside consultant conduct a verification review. To deal firstly with the verification review.

Verification Review

¶ 34 The Respondent did not perform its own due diligence on the ABCP securities it offered to its clients in order to learn and remain informed about the complexities of the security. It did not properly understand the manner in which DBRS had rated the ABCP security or the risks involved if the liquidity providers failed to meet their contractual commitments or, indeed, the possibility of them failing to do so. Although the confidentiality restrictions governing the liquidity agreements might have prevented the Respondent from finding out these and other factors as part of a due diligence program, the Respondent did not attempt such a program. .

¶ 35 For product knowledge, the Respondent relied primarily on the credit rating provided by DBRS and secondarily on the corroborating information from its carrying broker which, in turn, received its information from the broker leading the syndicate. A situation the Respondent acknowledges in the Settlement Agreement was insufficient and which it has since taken steps to remedy.

¶ 36 Nor did the Respondent make an adequate effort to ensure that its approved persons understood and conveyed to their clients the complexities of the ABCP securities, the lack of transparency surrounding these financial products, and the consequent risks from purchasing these products.

¶ 37 The Settlement Agreement acknowledges that after August 2007, the Respondent reviewed its policies and procedures in connection with its fixed income business, particularly in relation to third party ABCP securities, and took the following remedial actions:

1. Reviewed and revised its product review policy, practices and systems;

2. Engaged additional personnel to assist with risk monitoring; and
3. Commenced development of additional training modules for advisors on due diligence practices and fixed income structured products.

¶ 38 These remedial actions and their implementation will be subject to a verification review by an outside consultant insofar as they relate to:

1. The Respondent's compliance and oversight functions concerning its sales with respect to fixed income securities made available to clients;
2. Any committees or other mechanisms established to review and approve new fixed income securities made available to clients and changes to those securities;
3. The training of the Respondent's staff concerning fixed income securities; and
4. The Respondent's procedures regarding staff compliance with the foregoing.

¶ 39 We believe that this verification review will confirm the effectiveness of the remedial actions undertaken by the Respondent and will deal with the concerns in regard to prevention and protection as set out in *Derivative Securities* . It is, therefore, clearly within the range of an appropriate penalty in accordance with *Milewski*.

Monetary Fine

¶ 40 In attempting to determine the reasonable range of appropriateness of the monetary fine, we are faced with a paucity of criteria against which to compare the fine negotiated by the parties.

¶ 41 The Settlement Agreement itself does not enumerate the criteria used by the parties in arriving at the fine inclusive of costs of $200,000.

¶ 42 With respect to mitigating circumstances, we note:

1. The Respondent's role in the ABCP securities market was restricted to that of an introducing broker relying for its knowledge of the ABCP securities it traded on another Member firm, which, in turn, relied on another Member firm which acted as lead dealer;
2. From the commencement of the market freeze on August 13, 2007, Respondent made significant efforts to assist its clients and returned to the vast majority of its retail clients the full face value of their investment together with interest and costs;
3. Proactively, the Respondent undertook an examination of and has instituted several remedial changes to its procedures and systems; and
4. The submission by IIROC Enforcement Counsel that the Respondent from the beginning of the market freeze accepted full responsibility and cooperated fully with IIROC officials and Enforcement Staff.

¶ 43 Based upon the above, it is obvious that the Respondent took immediate steps to assist its clients affected by the ABCP market freeze cooperating fully with IIROC officials and Enforcement Staff to work through what became a very difficult and financially challenging process. We see no reason to question the amount of the fine arrived at by the parties and find the amount arrived at by them within a reasonable range of appropriateness.

Dated at Vancouver, British Columbia, this 15th day of January, 2010.
John Rogers, Chair
Brian Field
Chris Lay

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 Credential Securities Inc. ("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 its 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

ASSET-BACKED COMMERCIAL PAPER ("ABCP")

15. ABCP is a short-term debt instrument with typical maturities of 30 to 180 days. ABCP is backed by a pool of underlying assets and offers a yield slightly better than the yield offered on short-term government debt.

16. ABCP is issued by a special purpose vehicle (also referred to as a conduit). In Canada, the conduits are trusts established by sponsors. Sponsors generally select underlying assets, administer the assets and arrange for the sale of the ABCP notes. The Canadian ABCP market included two categories: bank-sponsored and non-bank-sponsored (or third party) ABCP.

17. As the underlying assets were long term and the ABCP notes were short term, there was a timing mismatch between the cash flowing from the assets and the cash needed to repay maturing ABCP. For many years, conduits met their obligations by selling newly issued ABCP, the proceeds of which were used to pay maturing ABCP. The liquidity of ABCP was an important characteristic for investors.

18. To safeguard against difficulty meeting maturity obligations, conduits entered into agreements with liquidity providers which provided credit lines under certain conditions. In general, there were two types of liquidity facilities: (1) general market disruption ("GMD") and (2) global-style. GMD liquidity was also called "Canadian-style" since it was only used in the Canadian ABCP market. Unlike global-style liquidity facilities, Canadian-style liquidity facilities required specified "general market disruption" events and a credit rating affirmation before liquidity was provided.

19. Liquidity agreements were subject to confidentiality provisions. Many details of the pre-conditions required for liquidity support, including the definition of a "general market disruption event", were not known to the public, to investors or to the distributors of ABCP who were not also liquidity providers. Conduits generally disclosed only the existence of their liquidity arrangements and disclosed that there were pre-conditions to draws.

20. As of September 2005, ABCP distributed in Canada was prospectus-exempt under the short-term debt exemption in section 2.35 of National Instrument 45-106 – *Prospectus and Registration Exemptions,* which provided an exemption for commercial paper with an approved credit rating from an approved credit rating organization.

21. Dominion Bond Rating Services Limited ("DBRS"), an approved credit rating organization, was the sole credit rating organization which rated third-party ABCP in Canada.

22. On January 19, 2007, DBRS announced changes to its rating methodology for certain new transactions entered into by ABCP issuers. The DBRS press release set out specific new rating criteria, including a requirement for global-style liquidity. These rating criteria were only applied prospectively in the marketplace.

THIRD-PARTY ABCP

23. ABCP has been in the Canadian marketplace for over a decade, and non-bank sponsors entered the marketplace in approximately 2000.

24. Historically, the assets underlying ABCP consisted of traditional assets such as consumer loans, credit card receivables and residential mortgages. Non-traditional complex synthetic assets, such as collateralized debt obligations, came into these structures over time.

25. Third-party ABCP was typically issued by a series of notes, the most common being Series "A" Notes and Series "E" Notes. The "A" Notes were supported by the Canadian-style liquidity facilities. "E" Notes were not, but could be extended up to 364 days after the original maturity date if certain conditions were met, including that market conditions did not allow for "E" Notes to be sold at a specified spread.

26. The sponsors provided limited information regarding the underlying pool of assets in conduits issuing ABCP. Sponsors typically provided an information memorandum describing the basic elements of ABCP. In most cases, the general asset classes were the only information publicly disclosed; there was no disclosure of the specific assets.

COVENTREE INC.

27. At all material times, Coventree Inc. was the largest sponsor of third-party ABCP in Canada. Coventree Inc. also issued third-party ABCP through a subsidiary, Nereus Financial Inc. ("Nereus").

28. At all material times, Coventree Inc. and Nereus (collectively, "Coventree") sponsored the following third-party ABCP conduits: Apollo Trust, Aurora Trust, Comet Trust, Gemini Trust, Planet Trust, Rocket Trust, Slate Trust, Venus Trust, Structured Investment Trust III ("SIT III") and Structured Asset Trust ("SAT").

29. All Coventree conduits but one received an R-1 (high) rating (the highest credit rating available, equivalent to a "AAA" for long term debt) by DBRS, as did other Canadian third-party ABCP. This rating remained in place at all material times up to and including August 13, 2007.

THE DISTRIBUTION OF THIRD-PARTY ABCP

30. In general, third-party ABCP was distributed to investors through a dealer group (the "dealer syndicate"). Typically, one member of the dealer syndicate would be appointed as lead dealer. Some of the lead dealer's daily duties included the allocation of ABCP notes to dealer syndicate members and setting the yield in consultation with the conduit sponsor.

31. The dealer syndicate members maintained trading lines, up to a credit limit, for third-party ABCP mainly to provide a market-making function. Dealer syndicate members would typically purchase third-party ABCP that was not sold at the end of a trading day. These positions were to be held on a short-term basis, typically overnight, until the notes could be sold to investors. Dealer syndicate members also purchased third-party ABCP from clients in the secondary market. While the dealer syndicate was under no obligation to purchase any third-party ABCP, they did so to provide a secondary market, maintain liquidity in the market and/or as a service to their clients. Dealer syndicate members other than the lead dealer also had the option to turn back ABCP to the lead dealer if they were unable to sell their daily allocation, but this was not their ordinary practice.

32. Third-party ABCP traded in a dealer market, also known as an over-the-counter ("OTC") market. Unlike an auction market or exchange, the OTC market was not transparent to investors. As such, investors relied mainly upon the dealer syndicate for information relating to issues such as pricing, market depth and market volume.

33. The primary information that dealers disclosed to investors was the yield and credit rating of third-party ABCP.

THE MARKET FREEZE

34. On August 13, 2007, a number of Canadian third-party ABCP conduits including the Coventree conduits were unable to sell new ABCP to fund the repayment of maturing ABCP. Many of the conduits' liquidity providers did not agree that the conditions for liquidity funding had occurred and refused to provide liquidity to the affected conduits.

35. As of August 13, 2007, the third-party ABCP market totaled approximately $35 billion, with Coventree conduits representing approximately 46 percent of the value of the third-party ABCP market.

36. On August 16, 2007, a consortium representing banks, asset providers and major ABCP holders agreed to take steps to establish normal operations in the ABCP market. This agreement was known as the Montreal Proposal.

37. A Pan-Canadian Investors Committee, including investors who were signatories to the Montreal Proposal plus other significant holders, was established to oversee the restructuring of third-party ABCP. It put forward the Plan of Compromise and Arrangement (the "Plan"), which was implemented on January 21, 2009.

38. Pursuant to the Plan, holders of the eligible third-party ABCP had their short-term notes exchanged for longer term notes to match more closely the maturity dates of the underlying assets.

THE RESPONDENT'S OFFERING OF THIRD-PARTY ABCP

39. The Respondent is a registered dealer with a predominantly retail client base. The Respondent is not and never was a sponsor, ABCP syndicate member dealer, asset or liquidity provider, active trader or investor in ABCP or otherwise involved in the third-party ABCP market, other than in acting as dealer for clients who wished to invest in ABCP. As such, at the relevant time, the Respondent did not have access to or detailed knowledge of certain of the information regarding third-party ABCP discussed above, including the information in paragraphs 18, 19, and 22.

40. At all material times, the Respondent was an introducing broker and had a carrying broker agreement in place with another Non-syndicate Member firm that sold third-party ABCP. While the Respondent's money market activity was handled by the carrying broker's bond desk, the Respondent's decision to make products available to its retail clients remained with it.

41. The Respondent first made third-party ABCP available to its retail clients in or about June 2006.

42. The majority of third-party ABCP made available by the Respondent to its clients was SIT III. By August 2007, SIT III held only non-traditional assets.

43. The Respondent's Product Review Committee ("the Committee") was a subcommittee of its Investment Risk Committee. The Committee was made up of senior individuals including certain department heads. Included on the Committee were individuals with expertise in compliance and financial markets. The Committee had the responsibility to create guidelines for product approval based on risk criteria. During the material time, products that were rated by a recognized bond rating agency as investment grade BBB or better were pre-approved by the Committee for distribution.

44. Since third-party ABCP met the Respondent's product approved threshold, they automatically became eligible as part of the Respondent's pool of fixed-income products available for purchase by clients through the Respondent's Approved Persons.

PRODUCT KNOWLEDGE

45. The Respondent did not use adequate due diligence in order to learn and remain informed that there were additional complexities relating to the third-party ABCP products that were made available to retail clients and the consequent risks (including systemic risks and counterparty risks) related to those products. The Respondent relied primarily on the credit rating provided by DBRS as the basis for making these products available.

46. More specifically, the Respondent failed to take adequate steps to ensure that its Approved Persons involved in the sale and distribution of third-party ABCP to retail clients understood the complexities and risks inherent in the product arising out of :

    - The basic structure of ABCP and the roles of the various entities (sponsors, issuer, trustee, asset providers);
    - The nature and composition of the underlying assets;
    - The lack of transparency relating to the underlying assets and liquidity agreements; and
    - The nature and limitations of the liquidity facilities.

47. Where Approved Persons had questions about third-party ABCP, they had access to the bond desk of the carrying broker through the internet, e-mail and in some circumstances telephone. The Respondent relied upon the carrying broker for information relating to third-party ABCP.

48. Staff interviewed several of the Respondent's retail advisors who revealed that, except for basic information relating to term, return and rating, they knew very little about the complexities of the ABCP product and the consequent risks (including systemic risks and counterparty risks) related to the product. Advisors based their investment recommendations on the rating, return and term of the product as well as

any information they received from the carrying broker's bond desk.

49. Without a full understanding of the complex nature of third-party ABCP, certain Approved Persons were representing the product to their clients as a safe and secure investment that was similar to a T-bill, Guaranteed Investment Certificate or a term deposit.

50. Under its relief program, the Respondent returned to the vast majority of its retail clients full face value plus interest and costs of up to $1 million in exchange for the Notes issued following the restructuring of the third-party ABCP market.

51. Since the time when the issues surrounding the third-party ABCP became known, the Respondent proactively undertook an examination of and has instituted several changes to its procedures and systems to strengthen the review of complex fixed income securities that are traded by its retail clients and has made additions to its risk monitoring personnel. The Respondent is in the process of instituting additional training modules for its Approved Persons regarding due diligence practices, fixed income structured products and is taking other appropriate steps.

IV. CONTRAVENTIONS

52. In or about 2006 and 2007, the Respondent did not take adequate steps to ensure that its Approved Persons understood the complexities of the third-party ABCP product made available for purchase by its retail clients and the consequent risks (including systemic risks and counterparty risks) related to those products and, in not taking these adequate steps, did not ensure that the purchase of third-party ABCP was appropriately understood by its clients, contrary to Regulation 1300.1(a).

V. TERMS OF SETTLEMENT

53. IIROC and the Respondent agrees to the following terms of settlement:

    (i) A fine in the amount of $200,000 (inclusive of costs); and

    (ii) The retention of an independent consultant in accordance with Schedule A of this Settlement Agreement.

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

55. 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.

VI. STAFF COMMITMENT

56. If the Hearing Panel approves this Settlement Agreement, Staff, the Ontario Securities Commission and Autorité des marchés financiers will not commence any proceeding under applicable legislation and rules against the Respondent or any of its affiliates or their respective present or former directors, officers, employees or agents in relation to the facts set out in Part III of this Settlement Agreement.

AGREED TO by the Respondent at the City of Vancouver in the Province of British Columbia, this 17th day of December, 2009.

Credential Securities Inc.

RESPONDENT

"Witness signature"

Witness

"Doce Tomic"

DOCE TOMIC

President & Chief Executive Officer

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this 17th day of December, 2009.

"Witness signature"

Witness

"Tamara Brooks"

Tamara Brooks

Enforcement Counsel on behalf of Staff of the Investment Industry Regulatory Organization of Canada

"Witness signature"

Witness

"Elsa Renzella"

Elsa Renzella

Enforcement Counsel on behalf of Staff of the Investment Industry Regulatory Organization of Canada

ACCEPTED at the City of Vancouver in the Province of British Columbia, this 21st day of December, 2009, by the following Hearing Panel:

Per: "John Rogers"

Panel Chair

Per: "Chris Lay"

Panel Member

Per: "Brian Field"

Panel Member

SCHEDULE "A" – TERMS OF REFERENCE FOR COMPLIANCE REVIEW

Credential Securities Inc. (the "Respondent") agrees to retain an independent third-party Consultant to carry out a verification review concerning the Respondent's due diligence practices, policies and procedures relating to fixed income securities, subject to the terms set out below:

A. Remedial Steps Taken by the Respondent In Light of ABCP Market Disruption

After August 2007, the Respondent reviewed its policies and procedures in connection with its fixed income business particularly in relation to third-party ABCP and took the following remedial actions:

a. reviewed and revised its Product Review Policy, practices and systems;

b. engaged additional personnel to assist with risk monitoring; and

c. commenced development of additional training modules for advisors on due diligence practices and fixed income structured products.

B. Terms of Reference for Engagement of the Consultant

1. The agreement between the Respondent and the Consultant ("Agreement") shall provide that the Consultant will conduct a verification review of the implementation of the remedial actions outlined in A above insofar as they relate to:

a. The Respondent's compliance and oversight functions concerning its sales with respect to fixed income securities made available to clients;

b. any committees or other mechanisms established to review and approve new fixed income securities made available to clients and changes to those securities;

c. the training of the Respondent's staff concerning fixed income securities; and

d. the Respondent's procedures regarding staff compliance with the foregoing.

(collectively, the "Verification Review").

C. The Consultant's Reporting Obligations

1. The Consultant shall issue a draft report concerning its Verification Review to the Respondent and IIROC within 3 months of its appointment. The Consultant may request the opportunity to present its draft report to the Board of Directors of the Respondent.

2. The Consultant shall engage with the Respondent in discussions regarding the draft report with a view to reaching consensus and finalizing the report within 1 month of the delivery of its draft report. If requested by the Consultant, the Consultant will be provided with an opportunity to present its final report to the Board of Directors of the Respondent, and may explain any areas of disagreement with management of the Respondent.

3. The Consultant will deliver its final report to the Respondent and to IIROC.

4. The Consultant's report shall include a description of the Verification Review performed and whether the remedial actions taken by the Respondent conforms with the applicable requirements of Dealer Member Rules 1300.1 and 2500, and IIROC notice 09-0087 entitled Best Practices for Product Due Diligence as those Rules and Notice apply to the subject matter of the Verification Review in Section B(1) above , and if not, the Consultant's recommendations for any changes to those remedial actions that the Consultant reasonably deems necessary.

5. The Respondent will, within 60 days after receipt of the Consultant's report, advise IIROC of a timetable to implement the recommendations contained in the Consultant's report, provided however, that in the event that the Respondent disagrees with or wishes to adopt other actions, policies or procedures in lieu of any of the Consultant's recommendations, the Respondent shall so advise IIROC and provide its reasons for its position and any alternative actions, policies or procedures the Respondent intends to adopt.

6. The Respondent shall certify to IIROC, by certificate executed on its behalf by each of the CEO, the UDP and the CCO of the Respondent and the Chair of the Board of Directors of the Respondent that the Respondent has implemented those recommendations of the Consultant or other actions, policies or procedures which it has agreed to adopt, promptly following such implementation.

7. For greater certainty, the terms of this Verification Review do not limit in any respect the authority of IIROC to undertake, as part of their normal course audit activities, a review of all matters within the scope of the Verification Review or any other aspect of the business of the Respondent.

D. Required Terms of Agreement with Consultant

1. The selection of the Consultant shall be made promptly following the approval of the Settlement Agreement, but in any event by no later than January 31, 2010, by mutual agreement between the Respondent and IIROC.

2. The Consultant shall have reasonable access to all of the Respondent's books and records and the ability to meet privately with the Respondent's personnel. The Respondent shall instruct and otherwise encourage its officers, directors, and employees to cooperate fully with the Verification Review conducted by the Consultant, and inform its officers, directors, and employees that failure to cooperate with the Verification Review may be grounds for disciplinary action.

3. The Consultant shall make and keep notes of interviews conducted, and keep a copy of documents

gathered, in connection with the performance of his or her responsibilities, copies of which will be made available to the Respondent and IIROC.

4. The Consultant's reasonable compensation and expenses shall be borne by the Respondent.

This is Exhibit "D" to the
Affidavit of Jeffrey Kehoe,
affirmed February 15, 2012

Philip Amsman
A Commissioner for Taking Affidavits

ONTARIO SECURITIES COMMISSION

AUTORITÉ DES MARCHÉS FINANCIERS

IIROC OCRCVM

FOR IMMEDIATE RELEASE

ABCP

SETTLEMENTS REACHED FOLLOWING A JOINT INVESTIGATION

Montréal, December 21st, 2009 – The *Autorité des marchés financiers* (AMF), the Ontario Securities Commission (OSC) and the Investment Industry Regulatory Organization of Canada (IIROC) announced that they have reached settlements in connection with the investigations into the Canadian asset-backed commercial paper (ABCP) market providing for the payment of $138.8 million in administrative penalties and investigation costs, broken down as follows:

Institution	Amount obtained
National Bank Financial Inc. (NBF)	$75 million
Scotia Capital Inc. (Scotia)	$29.27 million
Canadian Imperial Bank of Commerce and CIBC World Markets Inc. (CIBC / CIBCWM)	$22 million
HSBC Bank Canada (HSBC)	$6 million
Laurentian Bank Securities Inc. (Laurentian)	$3.2 million
Canaccord Financial Ltd. (Canaccord)	$3.1 million
Credential Securities Inc. (Credential)	$0.2 million

With regard to financial penalties imposed, a fair and appropriate use for the sanction monies will be determined in accordance with applicable laws, court orders and in the public interest. In addition, the sanctions approved by the respective organizations include a focus upon compliance – each institution agrees to have an independent compliance review or verification of its fixed income department undertaken by an outside consultant.

Settlements were reached between the regulators and those seven institutions involved in the Canadian third party ABCP market. The OSC has reached two settlements: one with CIBC and the other with HSBC. IIROC has reached three settlements, with Scotia, Canaccord and Credential respectively. Lastly, the AMF has reached two settlements, one of which is with NBF, and the other with Laurentian.

Five of the institutions involved are alleged to have failed to adequately respond to issues in the third party ABCP market, as they continued to buy and/or sell without engaging compliance and other appropriate processes for assessing such issues. Particularly, they did not disclose to all their clients the July 24th e-mail from Coventree providing the subprime exposure of each Coventree ABCP conduit. In the case of Credential and Canaccord , these institutions are alleged to have failed to take adequate steps to ensure that its Approved Persons understood the complexities of the third party ABCP and, in not taking these adequate steps, did not ensure that the purchase of third party ABCP was appropriately understood by its clients.

The enforcement review activity related to the ABCP matter is the product of a close collaboration among the AMF, the OSC and IIROC who worked together in the public interest to respond to the securities regulatory issues arising from the ABCP market freeze.

ONTARIO SECURITIES COMMISSION

AUTORITÉ DES MARCHÉS FINANCIERS
5 YEARS OF A COMMITMENT TO INFORMATION, REGULATION, PROTECTION.

IIROC OCRCVM
Investment Industry Regulatory Organization of Canada
Organisme canadien de réglementation du commerce des valeurs mobilières

The OSC and IIROC have begun disciplinary hearings against Coventree and Deutsche Bank Securities Limited in this matter.

The *Autorité des marchés financiers* (AMF) is the regulatory and oversight body for Québec's financial sector.

The OSC is the regulatory body responsible for overseeing Ontario's capital markets, which include the equities, fixed income and derivatives markets.

IIROC is the national self-regulatory organization which oversees all investment dealers and trading activity on debt and equity marketplaces in Canada.

– 30 –

Information:

AUTORITÉ DES MARCHÉS FINANCIERS

Media only:
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Spokeperson
514-940-2176

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ONTARIO SECURITIES COMMISSION

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OSC Contact Centre
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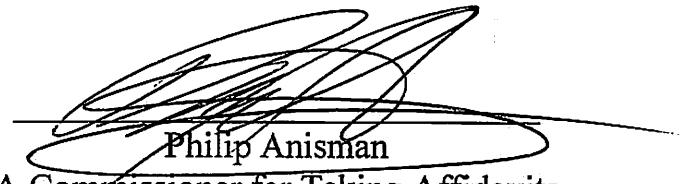
INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

For Media Inquiries:
Connie Craddock
Vice President Public Affairs
416-943-5870
http://www.iiroc.ca

This is Exhibit "E" to the
Affidavit of Jeffrey Kehoe,
affirmed February 15, 2012



Philip Anisman
A Commissioner for Taking Affidavits

IN THE MATTER OF
THE SECURITIES ACT, R.S.O. 1990, CHAPTER S.5,
AS AMENDED (the ACT)

AND

IN THE MATTER OF
THE COMMODITY FUTURES ACT, R.S.O. 1990, CHAPTER C.20,
AS AMENDED (the "CFA")

AND

IN THE MATTER OF
INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)

RECOGNITION ORDER
(Subsection 21.1(1) of the Act and Subsection 16(1) of the CFA)

The Investment Dealers Association of Canada (the IDA) has been recognized by the Alberta Securities Commission, British Columbia Securities Commission, Manitoba Securities Commission, Nova Scotia Securities Commission, Ontario Securities Commission, Saskatchewan Financial Services Commission, the Financial Services Regulation Division, Department of Government Services, Consumer & Commercial Affairs Branch (Newfoundland and Labrador) and the Autorité des marchés financiers (Québec), and has applied to the New Brunswick Securities Commission for recognition (together with the Securities Office, Consumer, Corporate and Insurance Services Division, Office of the Attorney General (Prince Edward Island), the Recognizing Regulators) as a self-regulatory organization or self-regulatory body pursuant to applicable legislation.

Market Regulation Services Inc. (RS) has been recognized by the Autorité des marchés financiers (Québec) and the Alberta Securities Commission, British Columbia Securities Commission, Manitoba Securities Commission and Ontario Securities Commission as a self-regulatory organization or self-regulatory body pursuant to applicable securities legislation.

The IDA and RS have agreed to combine their operations into IIROC.

IIROC will, among other things:

a. regulate investment dealers, including alternative trading systems (ATSs) and futures commission merchants (Dealer Members);

b. if retained by an ATS pursuant to National Instrument 23-101 *Trading Rules*, regulate the ATS as a Marketplace Member (defined below) and the subscribers of the ATS;

c. establish, administer and monitor its rules, policies and other similar instruments (Rules);

d. enforce compliance with its Rules by Dealer Members and others subject to its jurisdiction;

e. provide services to exchanges and quotation and trade reporting systems (QTRSs) (together with ATSs, Marketplace Members) that choose to retain it as a regulation services provider, as that term is defined under National Instrument 21-101 *Marketplace Operation*;

f. if retained by an exchange or QTRS, administer, monitor and/or enforce rules pursuant to a regulation services agreement between IIROC and that exchange or QTRS (RSA);

g. conduct certain functions delegated to it by Recognizing Regulators, including registration functions; and

h. perform investigation and enforcement functions on behalf of the IDA and RS for as long as each of the IDA and RS continues to be recognized by the Commission as a self-regulatory organization or a self-regulatory body.

On April 30, 2008, the Board of IIROC adopted the rules and policies of RS and the regulatory By-laws, Regulations, Forms and Policies of the IDA that were in force and effect at that time, subject to incidental conforming changes made to ensure consistency, and the Hearing Committees and Hearing Panels Rule as the Rules.

On April 30, 2008, the Board of IIROC adopted the market integrity notices issued by RS and all regulatory notices, bulletins, directives and guidance provided by the IDA that were in effect at that time.

IIROC has applied to the Ontario Securities Commission (Commission) and the other Recognizing Regulators for recognition as a self-regulatory organization pursuant to subsection 21.1(1) of the Act and subsection 16(1) of the CFA.

Based on the application filed on behalf of IIROC with the Recognizing Regulators with such changes as have been agreed to by the Recognizing Regulators, which includes the Rules, and subject to the representations and undertakings made by IIROC, the Commission is satisfied that recognizing IIROC will not be prejudicial to the public interest.

The Commission recognizes IIROC as a self-regulatory organization pursuant to subsection 21.1(1) of the Act and subsection 16(1) of the CFA on the terms and conditions set out in the appendix to this recognition order and the applicable provisions of the Memorandum of Understanding between the Recognizing Regulators, as amended from time to time (MOU).

Dated this 16th day of May, 2008, effective June 1, 2008.

"W. David Wilson"

"James E.A. Turner"

APPENDIX A

TERMS AND CONDITIONS

1. Recognition Criteria

IIROC must continue to meet the criteria attached at Schedule 1.

2. Notice and/or Approval of Changes

a. IIROC must promptly file in writing with Commission staff any material change to the information set out in the application letter dated December 21, 2007.

b. Prior Commission approval is required for any changes to the following:

(i) the corporate governance structure of IIROC, as reflected in IIROC's By-law No. 1 (By-law No. 1);

(ii) letters patent of IIROC, and any supplementary letters patent; and

(iii) the assignment, transfer, delegation or sub-contracting of the performance of all or a substantial part of its regulatory functions or responsibilities as a self-regulatory organization.

c. Prior Commission approval is required for material changes to the following:

(i) the fee model;

(ii) the functions IIROC performs;

(iii) IIROC's organizational structure;

(iv) the activities, responsibilities, and authority of the District Councils; and

(v) the Regulation Services Agreement between IIROC and any Marketplace Member.

d. IIROC must not, without providing the Commission at least twelve months prior written notice and complying with any terms and conditions the Commission may impose in the public interest, complete any transaction that would result in IIROC:

(i) ceasing to perform its services;

(ii) discontinuing, suspending or winding-up all or a significant portion of its operations; or

(iii) disposing of all or substantially all of its assets.

e. IIROC will:

(i) provide the Commission with three months prior written notice of any intended material change to its agreement with an information technology service provider regarding its critical technology systems; and

(ii) not terminate its agreement with an information technology service provider providing critical technology systems without providing the Commission prior written notice and complying with any terms and conditions the Commission may impose in the public interest.

f. IIROC will comply with the process for filing and obtaining Commission approval for by-laws, Rules and any amendments to by-laws or Rules as outlined in Appendix A of the MOU, as amended from time to time.

g. IIROC must advise the Commission in writing immediately upon being notified by any of the Recognizing Regulators that IIROC is not in compliance with one or more of the terms and conditions of recognition of IIROC in any jurisdiction or with the reporting requirements set out in the MOU.

3. Governance

a. IIROC must:

(i) ensure that at least 50% of its board of directors (Board), other than the President of IIROC, are independent directors as defined in By-law No. 1;

(ii) ensure that one of the directors represents an exchange or ATS that is not affiliated with a marketplace

(A) that retains IIROC, and

(B) has at least a 40% Market Share as defined in By-law No. 1 (Market Share); and

(iii) review the corporate governance structure, including the composition of the Board,

(A) within two years after the date of recognition and periodically thereafter, or

(B) at the request of the Commission,

to ensure that there is a proper balance between, and effective representation of, the public interest and the interests of marketplaces, dealers and other entities desiring access to the services provided by IIROC.

b. IIROC must report to Commission staff in writing the results of the corporate governance review referred to in subparagraph (a)(iii) upon completion.

c. The Code of Business Ethics and Conduct and the written policy about managing potential conflicts of interests of members of IIROC's Board must be filed with the Recognizing Regulators within one year after the date of this Recognition Order.

4. Fees

a. IIROC must develop an integrated fee model and submit it for approval with the Commission within two years of the date of the recognition order.

b. IIROC must report in writing on a quarterly basis for the first two years of operations on the status of the development of the fee model.

5. Due Process

Subject to applicable law and the Rules and by-laws of IIROC, before rendering a decision that affects the rights of a person or company in relation to membership, registration or enforcement matters, IIROC must provide that person or company an opportunity to be heard.

6. Financial Viability

a. IIROC must operate on a not-for-profit basis.

b. IIROC will immediately report to Commission staff if it cannot meet its expected expenses for the next quarter. In addition, IIROC must provide Commission staff with an action plan detailing the steps to be taken to remedy its financial condition.

7. Integration of Functions

a. IIROC must report in writing within six months of the date of the recognition order its plan and timelines for the integration of functions relating to policy, surveillance, compliance, investigations, enforcement and membership.

b. IIROC must report in writing on a quarterly basis for the first two years of operations on the status of the integration of its functions.

8. Performance of Regulatory Functions

a. IIROC must set Rules governing its members and others subject to its jurisdiction.

b. IIROC must administer and monitor compliance with the Rules and securities laws by members and others subject to its jurisdiction and enforce compliance with the Rules by Dealer Members, including ATSs, and others subject to its jurisdiction. In addition, IIROC will provide notice to the Commission of any violations of securities legislation of which it becomes aware.

c. If retained by an exchange or QTRS, IIROC must administer, monitor and/or enforce rules pursuant to an RSA.

d. IIROC must, subject to applicable legislation, collect, use and disclose personal information only to the extent reasonably necessary to carry out its regulatory activities and mandate.

e. IIROC must ensure that it is accessible for contact by the public for purposes relating to the performance of its functions as a self-regulatory organization/body.

f. IIROC must publish concurrently in English and French each document issued to the public at large or generally to any class of members and must provide the document to Commission staff immediately upon publication.

g. IIROC must adopt policies and procedures designed to ensure that confidential information about its operations or those of any Dealer Member, Marketplace Member or marketplace participant is maintained in confidence and not shared inappropriately with other persons, and must use all reasonable efforts to comply with these policies and procedures.

9. Use of Fines and Settlements

All fines collected by IIROC and all payments made under settlement agreements entered into with IIROC may be used only as follows:

a. as approved by the Corporate Governance Committee,

(i) for the development of systems or other non-recurring capital expenditures that are necessary to address emerging regulatory issues resulting from changing market conditions and are directly related to protecting investors and the integrity of the capital markets;

(ii) for the education of securities market participants and members of the public about or research into investing, financial matters or the operation or regulation of securities markets;

(iii) to contribute to a non-profit, tax-exempt organization, the purposes of which include protection of investors, or those described in paragraph (a)(ii); or

b. for reasonable costs associated with the administration of IIROC's hearing panels.

10. Disciplinary Matters

a. Subject to paragraph (b), IIROC must

(i) promptly notify the Commission, the public and the news media of:

(A) the specifics relating to each disciplinary or settlement hearing once the hearing date is set, and

(B) the terms of each settlement and the disposition of each disciplinary action once the terms or disposition is determined; and

(ii) ensure that disciplinary and settlement hearings are open to the public and news media.

b. Despite paragraph (a), IIROC may, on its own initiative or on request, order a closed-door hearing or prohibit the publication or release of information or documents if it determines that it is required for the protection of confidential matters. IIROC must establish written criteria for making a determination of confidentiality.

11. Capacity and Integrity of Systems

a. IIROC must

(i) ensure that each of IIROC's critical systems, including its technology systems, has

(A) appropriate internal controls to ensure integrity and security of information; and

(B) has reasonable and sufficient capacity, and backup to enable IIROC to properly carry on its business; and

(ii) have controls to manage the risks associated with its operations, including an annual review of its contingency and business continuity plans.

b. IIROC must promptly report to the Commission:

(i) any material failures in the controls described in paragraphs (a)(i) and (ii) above; and

(ii) any outage in IIROC's critical technology systems or backup systems,

and provide a description of the actions taken or to be taken to rectify the situation.

c. IIROC will on a reasonably frequent basis, and in any event, at least annually:

(i) make reasonable current and future capacity estimates for its critical systems;

(ii) conduct capacity stress tests to determine the ability of its critical systems to perform its regulation functions in an accurate, timely and efficient manner;

(iii) review and keep current the development and testing methodology of those systems; and

(iv) review the vulnerability of those systems to internal and external threats including physical hazards and natural disasters.

d. IIROC must cause to be performed an independent review, in accordance with established audit procedures and standards, of its controls for ensuring that it is in compliance with paragraph (c) above, and conduct a review by its Board of the report containing the recommendations and conclusions of the independent review. This term and condition will not apply if:

(i) the information technology provider retained by IIROC is required, either by law or otherwise, to conduct an annual independent review; and

(ii) IIROC's Board obtains and reviews annually a copy of the independent review report of its information technology provider to ensure that it has controls in place to address the matters outlined in paragraph (c) above.

e. Upon completion of the Board review, IIROC must provide the Commission with a copy of the report prepared under paragraph (d).

f. IIROC shall periodically benchmark surveillance systems and services provided by its information technology providers against comparable systems and services available from other third party technology providers and provide the Commissions with a report summarizing the process undertaken and the conclusions reached.

12. Ongoing Reporting Requirements

a. IIROC must provide the Commission with all information required in Schedule 2 of this Recognition Order.

b. IIROC must provide Commission staff within 30 days of the commencement of each fiscal year with a copy of its financial budget for that year, together with the underlying assumptions, that has been approved by its Board.

c. IIROC must file annual audited financial statements with Commission staff, accompanied by the report of an independent auditor, within 90 days after the end of each fiscal year.

d. IIROC must file with Commission staff quarterly financial statements for each of the first three financial quarters within 60 days after the end of each financial quarter.

e. IIROC must file its annual report with Commission staff upon completion.

f. IIROC must annually self-assess IIROC's performance of its regulatory responsibilities and report thereon to the Board and the Commission staff, together with any recommendations for improvements. The annual self-assessment must contain information as specified by Commission staff from time to time and include the following information:

(i) an assessment of how IIROC is meeting its regulatory mandate, including an assessment against the recognition criteria and the terms and conditions of the Recognition Order;

(ii) an assessment against its strategic plan;

(iii) a description of trends seen as a result of compliance reviews conducted and complaints received and IIROC's plan to deal with any issues;

(iv) whether IIROC is meeting its benchmarks and if not, why not; and

(v) a description and update on significant projects undertaken by IIROC.

IIROC must file the self-assessment with the Commission within 90 days of its fiscal year-end.

g. IIROC must give the Commission staff notice as soon as practicable of new directors.

h. IIROC must provide to the Commission, in addition to the information specifically required in this Recognition Order and the MOU, any information the Commission may reasonably require from time to time.

SCHEDULE 1

CRITERIA FOR RECOGNITION

1. Governance

a. The governance structure and arrangements must ensure:

(i) effective oversight of the entity;

(ii) fair, meaningful and diverse representation on the governing body (Board) and any committees of the Board, including a reasonable proportion of independent directors;

(iii) a proper balance among the interests of the different persons or companies subject to regulation by IIROC; and

(iv) each director or officer is a fit and proper person.

2. Public Interest

IIROC must regulate to serve the public interest in protecting investors and market integrity. It must articulate and ensure it meets a clear public interest mandate for its regulatory functions.

3. Conflicts of Interest

IIROC must effectively identify and manage conflicts of interest.

4. Fees

a. All fees imposed by IIROC must be equitably allocated. Fees must not have the effect of creating unreasonable barriers to access.

b. The process for setting fees must be fair and transparent.

c. IIROC must operate on a cost-recovery basis.

5. Access

a. IIROC must have reasonable written criteria that permit all persons or companies that satisfy the criteria to access IIROC's regulatory services.

b. The access criteria and the process for obtaining access should be fair and transparent.

6. Financial Viability

IIROC must have sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

7. Capacity to Perform Regulatory Functions

a. IIROC must maintain its capacity to effectively and efficiently perform its regulatory functions, which include governing the conduct of persons or companies subject to its regulation and monitoring and enforcing applicable requirements.

b. IIROC must maintain in each jurisdiction where it has an office

(i) sufficient financial, technological, human and other resources; and

(ii) appropriate organizational structures and adequate technological systems

to efficiently, effectively and in a timely manner perform its regulatory functions and responsibilities.

8. Capacity and Integrity of Systems

IIROC must maintain controls to ensure capacity, integrity requirements and security of its technology systems.

9. Rules

a. IIROC must establish and maintain Rules that:

(i) are necessary or appropriate to govern and regulate all aspects of its functions and responsibilities as a self-regulatory entity;

(ii) are designed to:

(A) ensure compliance with securities laws,

(B) prevent fraudulent and manipulative acts and practices,

(C) promote just and equitable principles of trade and the duty to act fairly, honestly and in good faith,

(D) foster cooperation and coordination with entities engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities,

(E) foster fair, equitable and ethical business standards and practices,

(F) promote the protection of investors, and

(G) provide for appropriate discipline of those whose conduct it regulates;

(iii) do not impose any burden or constraint on competition or innovation that is not necessary or appropriate in furtherance of IIROC's regulatory objectives;

(iv) do not impose costs or restrictions on the activities of market participants that are disproportionate to the goals of the regulatory objectives sought to be realized; and

(v) are not contrary to the public interest.

10. Disciplinary Matters

The process for discipline must be fair and transparent.

11. Information Sharing and Regulatory Cooperation

To assist other regulatory authorities in regulatory matters, IIROC must share information and cooperate with:

(a) the Commission and any other securities regulatory authority, whether domestic or foreign;

(b) exchanges;

(c) self-regulatory organizations;

(d) clearing agencies;

(e) financial intelligence or law enforcement agencies or authorities; and

(f) investor protection or compensation funds, whether domestic or foreign.

This assistance includes the collection and sharing of information and other forms of assistance for the purpose of market surveillance, investigations, enforcement litigation, investor protection and compensation and for any other regulatory purpose and is subject to applicable laws related to information sharing and protection of personal information.

12. Other Criteria – Québec

Constituting documents, by-laws and operating rules of IIROC should allow that the power to make decisions relating to the supervision of its activities in Québec will be exercised mainly by persons residing in Québec.

SCHEDULE 2

REPORTING REQUIREMENTS

IIROC will provide the information and reports outlined in this Schedule to the Recognizing Regulators of all jurisdictions in which a Member that is the subject of a report or notification is registered, unless otherwise specified.

1. General

a. Prompt notice of any material violations of securities legislation of which IIROC becomes aware in the ordinary course operation of its business.

b. Prompt notice of actual or apparent misconduct or non-compliance by Members and their Approved Persons or Participants and others where investors, clients, creditors, Members, the Canadian Investor Protection Fund (CIPF) or IIROC may reasonably be expected to suffer serious damage as a consequence thereof, including but not limited to:

(i) where the solvency of a Member is at risk;

(ii) where fraud is present; or

(iii) where serious deficiencies in supervision or internal controls exist.

IIROC will include the party's name, the misconduct or deficiency, and its proposed response to ensure that the situations are resolved.

2. Financial Compliance

a. Prompt notification of situations that would reasonably be expected to raise concerns about a Member's continued viability, including but not limited to, capital deficiency and any condition which, in the opinion of IIROC, could give rise to payments being made out of CIPF, including any condition which, alone or together with other conditions, could, if appropriate corrective action is not taken, reasonably be expected to:

(i) inhibit the Member from promptly completing securities transactions, promptly segregating clients' securities as required or promptly discharging its responsibilities to clients, other Members or creditors;

(ii) result in material financial loss to the Member and its clients; or

(iii) result in material misstatement of the Member's financial statements.

IIROC will include the Member's name, the circumstances that gave rise to the situation, and its proposed response to ensure the identified situations are resolved.

b. Prompt notice following the taking of any action with respect to a Member in financial difficulty, including a description of the circumstances of the failure or the cause of the financial difficulty, and a summary of the actions taken.

c. At the beginning of each calendar year, an examination plan summarizing the scheduled financial compliance examinations for the upcoming year, set out on a quarterly basis and by IIROC office. The examination plan should explain the selection method used in determining the Members that are subject to an examination.

d. On a quarterly basis, notification of any material changes to Financial Compliance's processes or scope of its work, including material changes to its risk assessment model. Such notification may be provided verbally at the quarterly conference calls of staff of IIROC and the Recognizing Regulators.

3. Business Conduct Compliance

a. At the beginning of each calendar year, an examination plan summarizing the scheduled business conduct compliance examinations for the upcoming year, set out on a quarterly basis. The examination plan should explain the selection method used in determining the Member's office(s) that are subject to an examination and the resources that will be dedicated to reviews of branch offices. The examination plan should also

include for head office examinations the name of the Dealer Member and the address, and for branch office examinations that IIROC reasonably expects to complete the name of the Dealer Member and the address.

b. On a quarterly basis, a comparison of IIROC's Dealer Member business conduct compliance examination results to the examination plan by IIROC office. This comparison will include an explanation of any variances of actual results compared to the examination plan, and an action plan to ensure that the variances are resolved.

c. On a quarterly basis, a progress report on all examinations that were in progress as of or started since the last report by each IIROC office. This report will include:

(i) the name of the Dealer Member;

(ii) whether the examination involved a head office or branch;

(iii) the start and expected completion dates of the field work;

(iv) the status of the examination;

(v) whether a report has been issued and, if so, the issue date;

(vi) a summary of the material deficiencies noted during the examination;

(vii) identification of any repeated deficiencies; and

(viii) the follow up actions planned by IIROC to ensure that the identified problems will be resolved.

d. On a quarterly basis, notification of any material changes to Business Conduct Compliance's processes or scope of its work, including material changes to its risk assessment model. Such notification may be provided verbally at the quarterly conference calls of staff of IIROC and the Recognizing Regulators.

4. Trade Desk Review

a. At the beginning of each calendar year, a plan summarizing the scheduled trade desk reviews for the upcoming year, set out on a quarterly basis, including the name of the Dealer Member. The plan should explain the selection method used in determining the Members that are subject to a trade desk review.

b. On a quarterly basis, a comparison of IIROC's trade desk review results to the plan by IIROC office. This comparison will include an explanation of any variances of actual results compared to the plan, and an action plan to ensure that the variances are resolved.

c. On a quarterly basis, a progress report on all trade desk reviews that were in progress as of or started since the last report by each IIROC office. This report will include:

(i) the name of the Dealer Member;

(ii) the start and expected completion dates of the field work;

(iii) the status of the review;

(iv) whether a report has been issued and, if so, the issue date;

(v) a summary of the material deficiencies noted during the review;

(vi) identification of any repeated deficiencies; and

(viii) the follow up actions planned by IIROC to ensure that the identified problems will be resolved.

d. On a quarterly basis, notification of any material changes to trade desk review processes or scope. Such notification may be provided orally at the quarterly conference calls of staff of IIROC and the Recognizing Regulators.

5. Membership

a. Immediate notice of the admission of a new Member. In each case, IIROC will include the Member's name and any terms and conditions that are imposed on the Member.

b. Immediate notice of Members whose membership will be suspended or terminated. In each case, IIROC will include:

(i) The Member's name; and

(ii) The reasons for the proposed suspension or termination.

c. Immediate notice of receipt from a Member its intention to resign.

d. The notice required by this section may be provided by IIROC issuing a public notice containing the information, provided that such public notice will be issued immediately after the decision is made for admission, suspension and termination of membership and immediately after receipt of a notice of intention to resign, as the case maybe.

6. Registration

a. A quarterly report summarizing any terms and conditions imposed on Approved Persons, containing:

(i) the name of the Dealer Member and Approved Person on whom the terms and conditions were imposed;

(ii) the date terms and conditions were imposed;

(iii) the terms and conditions; and

(iv) a description of the reasons for the decision to impose terms and conditions.

b. A quarterly report summarizing all exemptions granted to individuals for proficiency requirements and full-time employment requirements under IIROC Rules and applicable securities legislation, and the reasons for granting the exemptions. This report should not include non-discretionary exemptions set out in IIROC Rules that were previously approved by the Recognizing Regulators.

7. Marketplace Regulation Exemptions

A quarterly report summarizing all exemptions granted during the period to marketplace participants pursuant to IIROC's Marketplace Regulation Rules, containing the information set out below:

a. the name of the marketplace participant;

b. type of exemption;

c. date of the exemption; and

d. a description of IIROC staff's reason for the decision to approve the exemption.

8. Investigations and Enforcement

a. Ad Hoc Reporting

(i) Information concerning all investigations which led to disciplinary or settlement proceedings, to be sent promptly after the disposition of the disciplinary or settlement proceedings and containing the following information:

(A) any discipline imposed,

(B) the terms of any settlement proposal accepted, and

(C) any written decisions and reasons.

b. *Monthly Reporting*

(i) A summary of all new investigations by IIROC offices, which will:

(A) indicate the date an investigation started,

(B) indicate whether the investigation concerns primarily Member Regulation matters, Marketplace Regulation matters or has significant elements of both,

(C) include name of the complainant for complaints that resulted in investigations,

(D) indicate whether the file was referred by another department of IIROC and the name of the department,

(E) identify:

a. for Member Regulation cases, the Dealer Member and relevant Approved Person(s), or

b. for Marketplace Regulation cases, the marketplace participant,

(F) summarize the misconduct alleged, and highlight any securities act violations of which IIROC becomes aware in the course of the investigation, and

(G) identify the name(s) of IIROC staff assigned to the investigation.

(ii) A summary of all closed investigations which did not lead to disciplinary or settlement proceedings by IIROC offices, which will:

(A) indicate the dates an investigation was started and closed,

(B) include detailed information concerning the investigation,

(C) identify:

a. for Member Regulation cases, the Dealer Member and relevant Approved Person(s), or

b. for Marketplace Regulation cases, the marketplace participant, and

(D) include a copy of the final investigation report and recommendations.

c. *Quarterly Reporting*

(i) A quarterly report summarizing client complaints based upon ComSet data, including:

(A) a graphical report setting out the number of open client complaints and the relative age of the client complaints as of each quarter and on an annual basis, and

(B) the relative age of closed client complaints, closed in the quarter and on an annualized basis.

(ii) Summary statistics by IIROC offices regarding the current caseload for each of complaints, investigations and prosecutions, separated between Member and Marketplace Regulation cases and within Marketplace Regulation cases, separately for each exchange, quotation and trade reporting system and alternative trading system, including:

(A) the number of files outstanding at the beginning and at the end of the period, by operating department,

(B) the number of new files opened during the period, by operating department,

(C) the number of files transferred between sections during the period, by operating department, and

(D) the number of files referred and closed during the period.

(iii) An ageing report by IIROC offices as at quarter end for files that remain open at the end of the quarter, which identifies the length of time a file has been open in each operating department.

d. Annual Reporting

(i) A summary of all complaints and the disposition thereof, together with an analysis of any emerging problems or trends;

(ii) A summary of all investigations and the disposition thereof, together with an analysis of any emerging problems or trends;

(iii) A summary of all prosecutions and the disposition thereof, together with an analysis of any emerging problems or trends;

(iv) an analysis of market surveillance files that includes a discussion of any emerging problems or trends;

(v) enforcement-related policy changes;

(vi) enforcement-related functional and administrative changes; and

(vii) ongoing initiatives which are enforcement-related, but not case specific.

This is Exhibit "F" to the
Affidavit of Jeffrey Kehoe,
affirmed February 15, 2012

Philip Anisman
A Commissioner for Taking Affidavits

DRAFT –ABCP news release
Feb. 10, 2012

OSC and IIROC apply to court for distribution of ABCP fine proceeds

February xx, 2012 (Toronto, ON) – The Ontario Securities Commission (OSC) and Investment Industry Regulatory Organization of Canada (IIROC) have applied to the Superior Court of Justice of Ontario – Commercial List to confirm that their proposed plan to distribute funds to investors who purchased third-party Asset-Backed Commercial Paper (ABCP) is permitted by an earlier court order.

The OSC and IIROC have asked the Court to rule that the Order dated June 5, 2008 by the Honourable C. Campbell J. (the "ABCP Order") does not preclude them from distributing $59.875 million received from the following five investment dealers in settling ABCP enforcement actions:

- Canadian Imperial Bank of Commerce/CIBC World Markets Inc. and HSBC Bank of Canada agreed to pay $21.7 million and $5.925 million, respectively, to the OSC.
- Scotia Capital Inc., Canaccord Financial Ltd. and Credential Securities Inc. agreed to pay $28.95 million, $3.1 million and $200,000, respectively, to IIROC.

The application outlines the OSC's and IIROC's proposed plan to distribute the funds to certain eligible investors who purchased ABCP from a settling dealer.

The application is scheduled to be heard on March 13, 2012 in Toronto. More information on the proposed distributions will be published by the OSC and IIROC following the court's decision.

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The OSC is the regulatory body responsible for overseeing Ontario's capital markets. The OSC administers and enforces Ontario's securities and commodity futures laws. Its mandate is to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets.

IIROC is the national self-regulatory organization which oversees all investment dealers and trading activity on debt and equity marketplaces in Canada. IIROC sets high quality regulatory and investment industry standards, protects investors and strengthens market integrity while maintaining efficient and competitive capital markets.

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Related documents: (links)

- NOA
- Affidavits (2)
- The settlement agreements
- Applicants' Factum
  ABCP Order (2008)

For More Information:

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IN THE MATTER OF THE ONTARIO SECURITIES COMMISSION AND THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

Court File No.: CV-12-9606-00CL

Applicants

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at TORONTO

AFFIDAVIT OF JEFFREY KEHOE
(Affirmed February 15, 2012)

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