Re Ahrens

IN THE MATTER OF:

The Dealer Member Rules of the Investment Industry Regulatory Organization of Canada

and

Robert Justin Ahrens

2014 IIROC 13

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

Heard: September 16 to 19, 2013 and October 29, 2013 in Vancouver, BC
Decision: March 17, 2014

Hearing Panel:
Mr. Stephen D. Gill, Chair, Mr. Chris Lay and Ms. L. Karen Henderson
Appearances:
Ms. Kathryn Andrews, Enforcement Counsel
Mr. Robert Justin Ahrens, Present

DECISION ON THE MERITS

INTRODUCTION

¶ 1 By Notice of Hearing dated February 15, 2013 the Investment Industry Regulatory Organization of Canada ("IIROC") alleged that Robert Justin Ahrens ("Ahrens" or the "Respondent") committed the following contravention:

> "From December, 2008 to March, 2009, Robert Justin Ahrens, as Branch Manager failed to adequately supervise Registered Representative Doreen Lowe, contrary to IIROC Dealer Member Rules 1300.2 and 2500."

¶ 2 IIROC then set forth in 17 paragraphs the "Particulars" being a summary of the facts alleged and relied upon by staff. The first paragraph provides a helpful insight into the allegations in this case:

> **"Overview**
>
> In late 2008 and early 2009, Justin Ahrens, as Branch Manager, failed to take reasonable and adequate steps to supervise the trading activities of Doreen Lowe ("Lowe") in two securities in certain client accounts at Research Capital Corporation (now Mackie Research Capital Corporation) in Vancouver. After a brief absence from the office, on his second day of assuming duty as Branch Manager, Ahrens lifted trading restrictions imposed upon Lowe by the previous Branch Manager, without addressing the concerns that led to their imposition. In place of the restrictions, Ahrens prescribed terms on Lowe's trading activities but failed to ensure that he monitored Lowe's compliance with the imposed terms. In the subsequent three months, Lowe facilitated suspicious trading activities with minimal scrutiny from Ahrens."

¶ 3 On or about April 22, 2013 Mr. Ahrens filed a Response to the Notice of Hearing wherein he put forward his position and/or commented upon the allegations and Particulars of IIROC in the Notice of Hearing.

In many instances, Mr. Ahrens accepted that the facts set forth in the Particulars were factually correct, but he challenged them on the grounds of "hearsay and conjecture". For example, with respect to the overview, his Response stated:

> "Although this paragraph contains factual statements, I will challenge most of the language as hearsay and conjecture. This is basically a paragraph of creative writing that only contains part of the story of half-truths in an attempt to paint me in a poor light. I will attempt to demonstrate that I followed a logical process in my decision to allow trading, and in my supervision of Lowe and the prescribed terms; using witness testimony and email correspondence as evidence."

Further, in his Response, he acknowledged with respect to the Particulars that paragraphs 2 to 8 were factually correct. With reference to paragraph 9, he accepted the statement as correct but challenged the statement that these were "red flags" as conjecture.

¶ 4 Further, his Response with reference to paragraph 9 (red flags), he guessed that the statements were factually accurate, but challenged them for relevance "…as the responsibility of all credit-related functions resides within head office and were never delegated to the BM…".

STANDARD OF PROOF

¶ 5 No issue was taken with IIROC's submission that the standard of proof is proof on a balance of probabilities. In F. H. v. McDougall[1] Justice Rothstein for the Court stated:

> "40. Like the House of Lords, I think it is time to say, once and for all in Canada, that there is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course, context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. However, these considerations do not change the standard of proof. …"

¶ 6 We applied this standard in making our decision on the allegations, and evidence adduced.

¶ 7 In Re Floyd & McDonald[2] with respect to the degree of proof required the Panel stated:

> "10. …As was stated in Re Boulieris (2004) 27 OSCB, affirmed [2005] O.J. No. 1984 (Ont. Div. Ct.):
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> > [33] The degree of proof required…is such that before a tribunal reaches a conclusion of fact, the tribunal must be reasonably satisfied that the fact occurred; and whether the tribunal is so satisfied depends on the totality of the circumstances including the nature and consequences of the facts to be proved, the seriousness of an allegation made, and the gravity of consequences that will flow from a particular finding. See Bernstein and College of Physicians and Surgeons of Ontario (1977), 15 O.R. (2d) 447 at 470 (Ont. Div. Ct.): and Re Coates et al. and Registrar of Motor Vehicle Dealers and Salesmen (1988), 65 O.R. (2d) 526 at 536 (Ont. Div. Ct.)
> >
> > [34] Bernstein stands for the proposition that grave charges against a person cannot be established to the reasonable satisfaction of a discipline committee by fragile or suspect testimony. The evidence to establish the charges have to be of such quality and quantity as to lead a discipline committee acting with care and caution to the fair and reasonable conclusion that the person is guilty of those charges. **The degree of proof must be nothing short of clear and convincing and based on cogent evidence which is accepted by the tribunal. See Bernstein at 485 and Coates at 536.***" (emphasis added)*

We have applied this criteria in coming to our decision.

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[1] *F.H. v. McDougall*, 2008 SCC 53 at paras. 40, 44-46, 49

[2] *Re Floyd & McDonald*, 2013 IIROC 04

SUPERVISION

¶ 8 The relevant portions of Rule 2500 entitled "Minimum Standards for Retail Account Supervision" are as follows:

> "This Rule establishes minimum industry standards for retail account supervision. These standards were developed by the Joint Industry Compliance Group (now the Compliance and Legal Section).
>
> These standards represent the minimum requirements necessary to ensure that a Dealer Member has in place procedures to properly supervise retail account activity. The Rule does not:
>
> (a) relieve Dealer Members from complying with specific SRO by-laws, rules, regulations and policies and securities legislation applicable to particular trade or accounts; or
>
> (b) preclude Dealer Members from establishing a higher standard of supervision and in certain situations a higher standard may be necessary to ensure proper supervision.
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>
> The following principles have been used to develop these minimum standards:
>
> (a) The term "review" in this Rule has been used to mean a preliminary screening to detect items for further investigation or an examination of unusual trading activity or both. It does not mean that every trade meeting the selection process of this Rule must be investigated. The reviewer must use reasonable judgment in selecting the items for further investigation.
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> ---
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> (c) The compliance with the know-your-client rule and suitability of investment requirements is primarily the responsibility of the registered representative. The supervisory standards in this Rule relating to know-your- client and suitability are intended to provide supervisors with a check-list against which to monitor the handling of these responsibilities by the registered representative."

¶ 9 Rule 2500, paragraph I,C,1. states "Tasks and procedures may be delegated but not responsibility."

¶ 10 Rule 2500, paragraph III, entitled Branch Office Account Supervision states:

> **"Introduction**
>
> Each branch manager must undertake certain activities within the branch for purposes of assessing compliance with regulatory requirements and the Dealer Member's policies. These activities should be designed to identify failures to adhere to required policy and procedure and provide a means of revealing and addressing undesirable account activity.
>
> **A. Daily Reviews**
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> 1. The branch manager (or designate) must review the previous day's trading using any convenient means. This review is undertaken to attempt to detect the following:
>
> lack of suitability;
>
> undue concentration of securities;
>
> excessive trade activity;
>
> trading in restricted securities;
>
> conflict of interest between registered representative and client trading activity;
>
> excessive trade transfers, trade cancellations etc. indicating possible unauthorized

trading;

inappropriate/high risk trading strategies;

quality downgrading of client holdings;

excessive/improper crosses of securities between clients;

improper employee trading;

front running;

account number changes;

late payment;

outstanding margin calls;

violation of any internal trading restrictions.

2. In addition to transactional activity, branch managers must also keep themselves informed as to other client related matters such as:

client complaints;

cash account violations;

undisclosed short sales;

transfers of funds and securities between unrelated accounts or between pro and client accounts or deposits from pro to client accounts

trading under margin.

B. Monthly Reviews

1. Client and branch personnel monthly statements must be reviewed on a monthly basis and should encompass areas of concern as discussed in the daily activity review.

2. It is recognized that it may not be possible to review each statement produced. However, branch managers must review all monthly statements which produce gross commissions of $1,500 or more for the month.

3. All non-client accounts generating a statement must be reviewed on a monthly basis.

4. This review should be completed within 21 days of the period covered by the statement unless precluded by unusual circumstances."

¶ 11 Rule 1300, Supervision of Accounts, states as follows:

"1300.2

(a) Each Dealer Member shall designate a director, partner or officer or, in the case of a branch office, a branch manager reporting directly to the designated director, partner or officer who shall be responsible for the opening of new accounts **and the supervision of account activity**. …The director, partner or officer as the case may be, **shall be responsible for establishing and maintaining procedures for account supervision and such persons or, in the case of a branch office, the branch manager shall ensure that the handling of client business is within the bounds of ethical conduct, consistent with just and equitable principles of trade and not detrimental to the interests of the securities industry.** As part of this supervision each new account shall be opened pursuant to a new account

form which includes, at a minimum, the information required by Form No. 2, …" *(emphasis added)*

¶ 12 In Re Floyd & McDonald[3] the Panel addressed the supervisory obligations of branch managers:

> "11 Re Mills [2000] IDACD 41 described the supervisory obligations of branch managers as follows (at page 3):
>
> "…paragraph 1300.1 …requires each member to use due diligence to learn the essential facts relating to every customer and to every account and order that it accepts (the "know-your-client obligation") and to ensure that recommendations made for any account are appropriate for the client and in keeping with its investment objectives (the "suitability" obligation).
>
> … (the Policy) requires completion of a NAAF for each new account so that the registered representative and supervisory staff are able to "conduct the necessary review to ensure that the recommendations made for any account are appropriate for the client and in keeping with his investment objectives" and to ensure that "all recommendations made for any account are and continue to be appropriate for a client's investment objective"…
>
> The Policy also obligates branch managers to review ongoing activities in branch accounts. …**The daily review must "attempt to detect, among other things," lack of suitability, undue concentration of securities, excessive trading activity, inappropriate/high risk trading strategies and quality downgrading of client holdings. In addition, branch managers must inform themselves on other client related matters, such as complaints, undisclosed short sales and trading under margin.**" *(emphasis added)*
>
> 12 Re Mills establishes that the test to be applied is one of reasonableness (at page 10):
>
> "Did Mr. Mills take the supervisory steps that were reasonably required in light of the information available to him and his obligations under the Policy? The answer … must be based on the facts relating to the accounts, taking into consideration the standards of the industry during the relevant period and the practices followed at (the firm)."

This test is applicable to the Respondent in this case.

¶ 13 In Re Youden[4] the Panel also addressed the supervisory obligations of branch managers and stated:

> "(i) Supervisory Obligations of Branch Managers
>
> 11 Paragraph 1300.2 of the Association's Regulations sets out that each member of the Association must designate a branch manager in each of its branch offices. The branch manager is responsible, inter alia, for the opening of new accounts and the supervision of account activity in the branch and must "ensure that the handling of client business is within the bounds of ethical conduct, consistent with just and equitable principles of trade and not detrimental to the interests of the security industry".
>
> 12 While Regulation 1300.2 establishes the supervisory obligations, it does not specify the procedures or standards to be followed in performing them. These are contained in the Association's Policy 2, entitled "Minimum Standards for Retail Account Supervision" which standards were developed by the Joint Industry Compliance Group.

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[3] *Re Floyd & McDonald*, 2013 IIROC 04

[4] *Re Youden*, [2005] I.D.A.C.D. No. 52

As the title states, it prescribes "minimum requirements necessary" to comply with Regulation 1300.2. It expressly states that Policy 2 does not preclude members from establishing a higher standard of supervision and that "**in certain situations a higher standard may be necessary to ensure proper supervision**". *(emphasis added)*

13 …Branch managers are required to comply with all by-laws and rules of the Association applicable to members. The supervisory standards in Policy 2 are intended to provide branch managers and other supervisors with a check list for monitoring the handling of these "know your client" and suitability options by registered representatives, who are primarily responsible for them.

14 Policy 2, in addition to setting out the importance of documenting information about a client in connection with the opening of new accounts, **requires branch managers to review ongoing activities in branch accounts, both on a daily and monthly basis. The branch manager must review the daily activity of each account no later than the following day with a view to identifying unusual trading activity or other items for further investigation or examination.** Policy 2 defines a "review" of any nature "to be a preliminary screening to detect items for further investigation or examination of unusual trading activity or both". Policy 2 states that the daily review must "attempt to detect, among other things," lack of suitability, undue concentration of securities, excessive trade activity, inappropriate/high risk trading strategies and quality downgrading of client's holdings, front running or outstanding margin calls to name a few. Branch Managers must also keep themselves informed of other client-related matters, such as complaints, undisclosed short sales, cash account violations and trading under margin. *(emphasis added)*

15. **Similarly, monthly reviews of client accounts are also required in order to detect the possibility of the same type of trading activities as identified under the daily reviews.** In accordance with Policy 2, Mr. Youden as branch manager was obligated to review monthly statements within 21 days of the period covered by the statement, unless prevented from doing so by unusual circumstances. Policy 2 recognized that while it may not be possible to review each statement produced on a monthly basis, branch managers were required to review all monthly statements that produced gross commissions of $1,000 or more for the month. Furthermore, evidence of the reviews, such as inquiries made, replies received, data received, etc. were required to be maintained for 2 years." *(emphasis added)*

THE EVIDENCE

¶ 14 During the hearings, Mr. Ahrens objected to some of the evidence sought to be introduced by IIROC on the basis that it had been disclosed after an agreed deadline. Having considered the submissions of the parties, the panel determined that the evidence appeared to be relevant, there was no prejudice to the Respondent by its introduction, and it was admitted.

¶ 15 At the hearing, counsel for IIROC called as the principal witness Ms. Pat Gerada, Senior Investigator with IIROC. We found Ms. Gerada to be a very credible witness. IIROC also presented documentary evidence (Exhibits 1 to 5 and 6 to 8) and two transcripts of the Respondent's sworn interviews: the first statement (Ex.1 tab 6) was an interview done on April 28, 2010 wherein the Respondent was interviewed in person by Carolyn Bean and Pat Gerada, investigators with IIROC, and also present was Kathryn Andrews, counsel for IIROC. The interview was extensive and the transcript was 75 pages; it took place in the IIROC offices in Vancouver.

¶ 16 This interview was continued more than a year later, on June 21, 2011, by telephone, involving the Toronto and Vancouver offices of IIROC, and present were Carolyn Bean and Kathryn Tanaka, another IIROC investigator, and Kathryn Andrews, counsel for IIROC. The transcript of the second interview is 28 pages: (Ex.1/7).

¶ 17 Staff also tendered in evidence the sworn statement of Mr. Andrew Dunlop, also a branch manager (Ex.1/8) which telephone interview was conducted on June 10, 2010 by Ms. Gerada, in Vancouver, and Mr. Doug Cope, Manager of Investigations at IIROC, in Toronto.

¶ 18 Counsel for IIROC also referred the Panel to the IIROC Panel decision involving Doreen Lowe, and another RR: Re Myatovic & Lowe, 2012 IIROC 47, July 31, 2012[5], (Ex.1/10). In that decision the Panel stated:

> "330. In summary, we find that the evidence before us is clear, cogent and compelling proof on a balance of probabilities that the Respondents facilitated manipulative or suspicious trading activity in the Trading Accounts by pre arranging trades and taking instructions from Mr. TSP who was not the account holder."
>
> **"DECISION ON COUNT 2"**
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> 341. We find that **during April 2008 to March 2009**, Ms. Lowe failed in her role as gatekeeper by facilitating manipulative or suspicious trading activity in several client accounts by pre-arranging trades and taking instructions from an individual who was not the account holder, thereby engaging in conduct unbecoming contrary to IDA By law 29.1 and IIROC Dealer Member Rule 29.1." *(emphasis added)*

We note that the time period under review in the aforesaid Lowe decision includes the material time in this case. We were informed this decision is being appealed.

MR. AHRENS REGISTRATION HISTORY

¶ 19 Mr. Ahrens first became a registrant in 2000; he was employed as a co-branch manager and/or assistant branch manager for approximately a year and a half at two other member firms prior to the events under review at Research Capital. Further, Ahrens was branch manager at Research Capital on three occasions: from January 9, 2008 until March 7, 2008; from July 23, 2008 until August 13, 2008; and from December 2, 2008 to February 11, 2011; a total of approximately 26 months. Mr. Ahrens was also the assistant branch manager at Research Capital on two occasions: from October 23, 2006 to January 9, 2008; and from March 7, 2008 to July 23, 2008; a period of approximately 4 ½ months. In cross examination Mr. Ahrens agreed that he had been a branch manager at three firms: TD Waterhouse, Gateway Securities and Research Capital, and that he had taken the branch manager course and the PDO exam, and had taken continuing education courses between 2007 and 2008. We were advised that Research Capital had undergone a merger transaction with Mackie Capital at a certain point in time, to become Mackie Research. For purposes of this decision, we will refer to "Research" throughout as the dealer member who employed the Respondent during the material time.

¶ 20 Further, the Respondent admitted in cross examination that he was familiar with IIROC Rules 2500 and 1300.2, and that he knew from his experience as a branch manager what his responsibilities were as a branch manager at each member firm for whom he worked. He also acknowledged that he had access to the firm's Policies and Procedures Manual (online) as of December, 2008. Ms. Gerada stated that she had seen a policy and procedures manual dated March, 2009, but no manual for the material time was reviewed by her or produced as evidence.

¶ 21 Mr. Ahrens testified that he had not received any specific training for the position of branch manager at Research but he did receive some guidance with regard to supervision, in particular being taught how to do the daily blotter, amongst other things (Ex.1/7/84).

¶ 22 Thus it is clear that based on his time and experience in the securities industry, Mr. Ahrens was at all material times a registrant with extensive experience in the securities industry, and, by his own admission, was aware of his obligations and responsibilities as a branch manager.

TRADING IN 2007-08

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[5] *Re Myatovic & Lowe,* 2012 IIROC 47

¶ 23 Doreen Lowe ("Lowe"), an RR, was a subject of inquiries by Ahrens and others, including Compliance, at Research in 2007. There are in evidence a number of emails which indicate that the Respondent and others at Research knew that there were concerns with Lowe's trading in 2007. For example, in an email dated June 27, 2007 (Ex.4, tab 33, page 819) from Fabian DiGiovanni ("DiGiovanni"), a Compliance Officer, to Mr. Ahrens stated:

> "Doreen Lowe's trading in Great Pacific International Inc. (GPI) – while she was with Wolverton – is being investigated by the IDA. I noticed that 3 of her client's traded GPI yesterday and 2 of the clients crossed with each other. It also looks like 2 of the clients were solicited. The total volume for GPI was 86,025. I know none of the clients are listed as insiders on SEDI but please speak to Doreen and let me know whether the clients have any relationship with the company/each other. Also, let me know what the solicitations were based on. Finally, Erica Fearn also had a couple of clients that sold GPI yesterday so let me know whether there is some kind of working relationship between the Advisers/any of their clients. Thanks."

¶ 24 The email went on to list three trades in GPI: a sale of 37,000 shares at $1.03, a buy of 21,000 shares at $1.06, solicited, and a sale of 21,000 shares at $1.06 unsolicited. Ahrens responded by email on July 11, 2007 and passed on the response Lowe had given him, denying the clients had any relationship.

¶ 25 In an email on July 17, 2008 from Ahrens to Lowe, he said:

> "Hey, strange trading on OSE Corp yesterday, buying and selling, all unsolicited, one husband and wife account. Need you to breakdown the hows and whys for me, thanks."

The email went on to list 15 trades in OSE done by Lowe.

¶ 26 Ms. Gerada testified as to the results of the IIROC investigation, and the relationship between a number of Lowe's clients. T.P. became Lowe's client at Research in February 2008. T.P. was the President, Chief Executive Officer, and a Director of Great Pacific International ("GPI") a junior oil and gas company listed on the TSX Venture Exchange.

¶ 27 OSE Corp. ("OSE") was also listed on the TSE Venture Exchange; T.P. was involved in private placements of OSE, and he knew OSE insiders and associates. SNL Enterprises Ltd. ("SNL") was a junior resource company listed on the TSX Venture Exchange and T.P. was a director, officer and insider of SNL.

¶ 28 In all material times, Ahrens knew or could have known that T.P. was the director and president of GPI, and that T.P. was a director, officer and insider of SNL. These issuer relationships were documented on the account KYC forms and were also printed on the daily trading blotters (also called commission sheets).

ASSOCIATED ACCOUNTS

¶ 29 Ms. Gerada testified IIROC's investigation disclosed a number of accounts of individuals who were associated with T.P. who also had accounts with Lowe: R.B., S.P., S.N.P., 08….2 BC Ltd., V.P., and P.S. (Ex.2/13 to 2/21). S.N.P. is T.P.'s wife; S.P. is T.P.'s mother and she resided in Kelowna, and she had an account at Canaccord.

¶ 30 R.B., who resides in Surrey, was referred by T.P. and he also had a Canaccord account.

¶ 31 M.S. was the President of OSE, and also was a director of OSE and a director of SNL. P.S. is the wife of M.S.

¶ 32 V.P., who resides in North Vancouver, was a referral from T.P., and had accounts at Canaccord and Wolverton; he was an officer/director of SNL.

¶ 33 08….2 BC Ltd. ("BC Ltd.") was a client of Lowe whose principal was R.L. R.L. was an associate of T.P., and listed X.M.C. as his employer in his NCAF. He also indicated that he was a director and insider of both GPI and OSE.

¶ 34 Based upon the evidence, it is clear that TP was at all material times closely connected to the three

issuers GPI, OSE and SNL. Given his connection to Lowe, and the pattern of his trading, Ahrens knew, or ought to have known that T.P., during the material time, had numerous connections to Lowe clients involved in these three issuers.

¶ 35 Further, the Daily Commission Reports for December 2008 and February 2009, which were initialed by Ahrens, clearly indicate issuer relationships and therefore connections between some of the Lowe client accounts. (Ex. 6/3, 6/5 and 6/6).

¶ 36 Ahrens admitted, under cross examination, that he knew that Lowe was under investigation by the IDA in 2007 involving her trading in GPI while at Wolverton (DiGiovanni email to Ahrens June 27, 2007, Ex.4/33/819). While he wasn't sure, Ahrens admitted that it was possible he knew that Lowe was under close supervision during 2007 when she was at Research. Further, Ahrens knew by early February 2009 that IIROC was investigating Research Capital's supervision of Lowe. We infer that given Ahrens experience and responsibilities, he would have known Lowe was under close supervision. Ms. Gerada described that she did not know what Research's practices were as to who was responsible to complete the required "close supervision" reports; she did not look for them and these reports are not in evidence.

¶ 37 Lowe's trading was problematic in 2007 when Ahrens and others at Research were making inquiries into her trading activity in certain client accounts. There are a number of emails that establish that Ahrens and others knew that there were problems at this time. For example, in an email of June 27, 2007 DiGiovanni (Compliance Officer) asked Ahrens about Lowe's trading in GPI. On July 10, 2007 Ahrens sent an email to Lowe setting out three trades in GPI and stated:

> "In regards to trades on Great Pacific at the end of June. Two were solicited and one was a cross. Do these clients have any relationship with the company/each other? Also, I need to know what the solicitations were based on (first two trades marked solicited)."

¶ 38 Further, in an email to Lowe on August 29, 2007 Ahrens referenced

> "trades from Monday – Great Pacific Intl
>
> I think we have discussed this security before, but I have a request from compliance to look into the sell of 20,000 shares for 5426YA2 and the buy of 2500 shares for 5442KA5. **These transactions represented all of the volume in Great Pacific on Monday.** I was just looking to see the rationale behind the trades: were they solicited/unsolicited? Do the clients know each other? Was there a cross involved?" *(emphasis added)*
>
> Mr. Ahrens testified, during his cross-examination, that in relation to this email and the trading being "all of the volume" that he could not recollect if he was concerned at this point in time about this trading, and he did not produce any notes or emails in reference to it.

¶ 39 Ms. Gerada noted that the volume of GPI for the month of August, 2007 was over 846,000 shares.

¶ 40 Further, on October 29, 2007 DiGiovanni, in an email to Ahrens, with respect to two of Lowe's accounts stated:

> "Justin, the trades of Lowe drew my attention. The clients' trades are more than half the day's volume (Great Pacific usually has pretty low volumes) and it looks like he lost money on the trades. Nothing necessarily wrong with the transactions but please let me know if Doreen knows why the client decided to sell. Thanks."

¶ 41 Ms. Gerada in conducting her investigation requested Research provide all supervision documents related to Lowe at the Vancouver office; however there were no documented supervision inquiries by Compliance or the branch manager regarding Lowe between the Fall of 2007 and June 2008.

LOWE'S TRADING IN JULY 2008

¶ 42 In an email on July 17, 2008 (Ex.4/33/813) DiGiovanni asked Ahrens, in relation to 4 client accounts:

> "Justin, please review the trades below with Doreen and let me know why some clients bought OSE Corp and others sold it. In particular, why some of it has occurred between spouses (the T.P .accounts). Thanks"

and DiGiovanni then listed 15 trades in OSE. Ahrens then sent an email to Lowe, (Ex.4/33/815) setting out the same trades and said:

> "Hey, strange trading on OSE Corp. yesterday, buying and selling, all unsolicited, one husband and wife account. Need you to break down the hows and whys for me, thanks."

¶ 43 Ahrens responded to DiGiovanni the next day by sending him a copy of a Lowe email attempting to explain why they were buying and selling at the same time. No notes or documents were produced indicating what, if any, investigation Ahrens had conducted.

¶ 44 By an email on July 29, 2008 DiGiovanni asked Ahrens about a Lowe OSE buy, when other of Lowe's clients were selling OSE at the same time.

¶ 45 It is clear that in the months leading up to the material time, (December 2008 to March 2009), the Respondent was receiving email inquiries from Compliance relating to unusual Lowe trading in GPI, OSE and SNL. As an experienced branch manager Ahrens knew, or ought to have known, that Lowe's trading was deserving of further inquiry and supervision. From the evidence adduced, Ahrens neglected or failed to carry out this supervision adequately.

RED FLAG RE: DEBITS

¶ 46 IIROC alleges that Ahrens, as branch manager, under Rule 2500 was responsible to detect late payment and undue concentration of securities. Staff submit that the debit issues for a number of Lowe client accounts were so pervasive and egregious that they were, or should have been, red flags to Ahrens. These red flags should have led him to make further inquiries about these accounts and why they were always going into debits, or to restrict clients from buying without money in the account first, or imposing some other controls. We appreciate that Mr. Ahrens' testified that, as branch manager, credit was principally controlled from Toronto, but at some point, particularly with the Lowe client accounts, in our view, the branch manager ought to have become involved.

¶ 47 On the evidence, Ahrens was aware of debit issues as he was copied on various emails from the credit department in December 2008 and February 2009. For example, an email on December 16, 2008 from Kabita Shukor, Senior Credit/Risk Administrator, to Doreen Lowe was copied to Ahrens. The subject was the R.B. account and Kabita stated:

> "Doreen, you bought more when this account is in a debit now the debit is $110,190.00 no further trades until debit is cleared."

¶ 48 On February 4, 2009 Credit (Kabita Shukor) in an email to Lowe, copied to Ahrens, entitled "delinquent accounts" stated:

> "Please advise what actions will be taken to clear up the following accounts. No more buying in the below accounts until all debit is covered."

and some 14 accounts were listed including S.P. with a debit of over $94,000; T.P. over $92,000; P.S. over $99,000; S.N.P. over $94,000, etc. (Ex.4/37/961-2).

¶ 49 On February 19, 2009 Credit (Kabita Shukor) emailed Lowe, and copied Ahrens, re the N.M. account and stated:

> "Doreen the above account is trading with an outstanding bal(ance) $25,210.00 which is against IIROC Rules. This account will be restricted." (Ex.4/34/941)

¶ 50 In a later email to Lowe copied to Ahrens on February 19, 2009 Credit (Kabita Shukor) referred to the N.M. account and said:

> "Doreen, N.M. was on the list that I sent on February 04, still no action taken. The two N.M. accounts will be restricted for overdue payment."

¶ 51 Further, there is a series of emails from Credit to Lowe, with a copy to Ahrens, with respect to Lowe's delinquent accounts commencing January 29, 2009 through to February 18, 2009 showing significant delinquent accounts, including five accounts between $86,000 and $120,000. This included Lowe permitting clients to purchase more stock when the account was already in a debit, and in some cases the debit was over $100,000. Ms. Gerada did not find, and Mr. Ahrens did not produce, any notes, documents or inquiries by Ahrens commenting on or supervising this situation.

¶ 52 During the material time, Lowe allowed persistent overdue debits to be maintained in her client accounts. Ms. Gerada found that the Lowe client accounts purchased and sold OSE and GPI shares, and accumulated large debit balances mid-month. In most cases, the debit balances were cleared up at month end by selling the securities, but just before the end of the month, the account then purchased more of the same securities, for settlement early the following month, resulting in new significant debit balances. (See statements, Ex.2/14, 2/16, 2/18 and 2/21). A good example of this is in the R.B. account for the period August 1 to 31, 2008 (Ex.2/14/248-249).

¶ 53 Ms. Gerada also testified that large and persistent debits occurred in the account of V.P. Between June 2008 and March 2009 debit balances resulting from trades in his account were not settled in a timely manner. Large overdue debit balances were accumulated in his account each month. There was no evidence that this pattern was queried by Mr. Ahrens in early 2009. V.P.'s debit balances were eliminated on a number of occasions by deposit of bank drafts and cheques in amounts ranging from $36,300 to $94,000. Ms. Gerada found that five bank drafts from the Toronto Dominion Bank were deposited into V.P.'s account between July 30 and December 30, 2008 for amounts ranging from $36,300 to $94,000, for a total of $295,100. There were no notes or emails from Mr. Ahrens commenting on this activity. Ahrens described in cross-examination that he did not ever see the bank drafts or incoming deposits; that was something processed in the cage area and was not shown to him as the branch manager.

¶ 54 Staff submitted that the drafts for V.P.'s accounts were particularly suspicious as they were issued from 3 different Toronto Dominion branches. The deposit of multiple large bank drafts for the same client over a short period of time was likely a red flag that warranted further inquiries by Credit. However, there is no evidence the branch Manager would be involved at this stage, and Ahrens has testified credit was controlled in Toronto.

¶ 55 Ms. Gerada also noted that Ahrens had access to credit and cash delinquency reports which were available on Research's online system. He had the ability to review these documents if he wanted to do so, but there is no evidence that he did, or took any steps in response thereto.

CONCENTRATION

¶ 56 Ms. Gerada reviewed the monthly statements of 7 Lowe clients and found concentration issues in GPI, OSE and SNL in all of the accounts. Gerada defined "concentration" occurring where an account had large holdings in a specific stock, particularly at month end. During the Spring of 2008 to March 2009, these accounts held other securities, but they were very small holdings, and for the most part any trades in them were effected within the month. For example, Ms. Gerada reviewed R.B's account statement during January 2009: the total value of all holdings stemmed from OSE, GPI and SNL. In Ms. Gerada's opinion this was a high concentration, and she described similar patterns were seen in other Lowe client accounts.

¶ 57 IIROC submitted that the concentration and the active trading of OSE and GPI in these client accounts, when considering it was to the near exclusion of any other securities, was a red flag which should have been significant to Ahrens when conducting his supervision as branch manager. Again there are no notes or emails to indicate that Ahrens took any steps in respect of what IIROC submits was concentration.

¶ 58 In response to these points, Ahrens disputed the use of the term "concentration" as these were not marginable securities, and in his view, it was reasonable that the client who was the President of a company

would have a significant amount of that stock in his account and/or in his wife's account. In other words, he did not view that the holdings in these clients' accounts as being an issue.

TRADING PRICE AND VOLUME OF OSE AND GPI

¶ 59 Ms. Gerada also carefully examined the trading price and volume of OSE and GPI. Initially OSE and GPI were thinly traded securities. The OSE TOQ's (being the Trades, Orders, and Quotes report from the TSX Venture Exchange) show limited market activity in each day. In an October 27, 2008 email from Christina March ("March"), Senior Compliance Officer at Research, to Lowe, which was copied to Andrew Dunlop, Susan Beaudet and DiGiovanni, Ms. March said:

> "Hi Doreen,
>
> The trading for OSE/GPI/SNL in the accounts mentioned below is rather concerning. The answers you provided are helpful but do not entirely eliminate the issue. There appears to be a small group of clients which include insiders and individuals who are "affiliated" to the insiders, **trading these very thinly traded securities, between and amongst each other, for no or very little economic gain.** Since this type of pattern is suspect to the Regulators, we recommend that you divest yourself of these accounts and trading in these securities by these individuals cease...
>
> It is also important that you as an IA and as a registrant, remember that although you are receiving "unsolicited" orders, **you still have an obligation to act as "gatekeeper" meaning that it is your responsibility to know and understand why you clients are trading these securities and for what purposes** (other than to make money as it is a general understanding that individuals will invest in the market to make a profit). **If you choose to keep these accounts, please ensure that your gatekeeper responsibilities are fulfilled and that you note the aspects of these conversations with your clients so that they may be relied upon in the future if need be.** If you have any questions now, or at any time, please feel free to contact Compliance for direction…" *(emphasis added)* (Ex.4/33/863)

¶ 60 As part of her evidence, Ms. Gerada entered printouts for Bloomberg data for GPI and OSE, and a table she prepared for each security using Bloomberg data summarizing monthly price range, price at month end, and trading volume of the entire market for these two securities for the period between June 2007 and April 2009 (Ex.1/12). The OSE table shows that the trading volume in 2008 and early 2009 was substantially higher compared to 2007. During the last 6 months of 2007, the volume traded ranged from 5000 to 79,000 shares per month, whereas in the material time in this matter (December 2008 to March 2009) the volume traded ranged from 1.4 million to almost 4 million shares per month (Ex.1/12/192).

¶ 61 These tables also show the share price of OSE in 2008 was significantly higher compared to 2007. OSE shares traded between $0.15 and $0.45 between June and November 2007, and increased to $0.95 by the end of 2007. The price was maintained at around $2.00 during most of 2008. The share price started to decline in late 2008, and declined to less than $0.10 per share by late March when Lowe was then restricted from accepting anything other than liquidating orders for these securities. (Ex.1/12/192).

¶ 62 The GPI table shows the price of GPI was substantially higher during the period between February and September 2008, reaching a high of $1.54 in April, compared to the previous 6 months. Trading volume in 2008 and early 2009 was higher than the year prior. The price of GPI decreased after September 2008 to a month end close of $0.08 in March 2009 (Ex.1/12/188).

¶ 63 As part of her investigation Ms. Gerada reviewed the account statements of the Lowe clients, and found that during the material time the accounts were actively buying and selling OSE and GPI. Compliance at Research observed on at least two occasions during 2007 that the trading activities of certain of the Lowe clients accounted for a significant share, or all of, the market volume of these two securities on those dates (Ex.4/33/795 and 817).

EVENTS LEADING TO LOWE RESTRICTION

¶ 64 In September and October 2008 Ahrens was not at Research, and Andrew Dunlop ("Dunlop") was the acting branch manager in the Vancouver office. On September 21, 2008, Susan Beaudet ("Beaudet") the Calgary branch manager, who was doing the daily review for Vancouver, asked Lowe about buys for the R.B. and R.L. company accounts. Ms. Beaudet said:

> "Hi Doreen:
>
> I noticed, in reviewing the blotter, you had several unsolicited buys for R.B. and BC 08…..2 Ltd.
>
> Can you please describe for me the circumstances of these and whether these accounts are related or affiliated in any way." (Ex.4/33/825)

Further, on October 15, 2008, Ms. Beaudet queried Lowe:

> "In reviewing the blotter, there are a number of orders both buying and selling OSE Corp, both solicited and unsolicited.
>
> Can you please review and confirm that these are all correctly marked." (Ex.4/33/827)

The trades in question involved T.P. and S.N.P.

¶ 65 In an email dated October 20, 2008 March, Senior Compliance Officer at Research, asked Dunlop about trading in the three issuers, and she copied Beaudet and Mark Censale ("Censale"), Chief Compliance Officer at Research. March stated that the only trading is all unsolicited and is being done by a select few of Lowe's clients, and that no other accounts at the firm held or were trading these issuers (OSE, GPI, SNL). She continued:

> "Upon further investigation into the trading being conducted through these accounts, as you and Susan pointed out, it doesn't make sense the accounts are being traded for little or no profit.
>
> (Ex.4/33/836)

¶ 66 Further, March had made the connection between T.P., S.P., T.P's brother, and other insiders and directors of the three companies including R.L. and S.P. March identified 12 accounts who were buying and selling the three securities since June 2008 (Ex.4/33/836).

¶ 67 The next day (October 21) March sent a lengthy email to Dunlop, Beaudet and Censale highlighting the fact that OSE, GPI and SNL all shared a number of common officers and directors, and that:

> "An analysis of the trading for the month seems to indicate that these 3 securities are being traded only by a small group of individuals that are somehow connected to the companies themselves and/or to the insiders of these companies." (Ex.4/33/847-850)

¶ 68 In response, Lowe by email attempted a lengthy "explanation"; Dunlop converted this into questions and answers, which he circulated. On October 27, 2008 an email from March to Lowe, copy to Dunlop, Beaudet, and DiGiovanni, stated:

> "The trading for OSE/GPI/SNL in the accounts mentioned below is rather concerning. The answers you provided are helpful but do not entirely eliminate the issue. There appears to be a small group of clients which include insiders and individuals who are "affiliated" to the insiders, trading these very thinly traded securities, between and amongst each other, for no or very little economic gain. …" (Ex. 4/33/863)

¶ 69 Although Lowe replied to March on the same day, two days later Beaudet raised concerns to Dunlop about trading in GPI and OSE and stated:

> "Andrew,

> Can you please review the trading for the RDL in Great Pacific Intl. Inc. and OSE for 10/28/2008 and maybe speak with Doreen if you feel you should.
>
> **I know we have asked about this before, but it keeps on happening.**" (Ex.4/33/872) *(emphasis added)*

¶ 70 Ms. Gerada had reviewed the statement of Andrew Dunlop taken by IIROC on June 10, 2010 (Ex.1/8) in which Dunlop stated that he had spoken to Lowe about concerns raised by himself, Beaudet and Compliance. Dunlop testified that he spoke to Lowe before he sent an email to her, to verify to Lowe everything that had come before, and explained to her that he wasn't going to allow the trading to continue. (Ex.1/8/117). Dunlop confirmed that a trader in the office (A.W.) had also come to him and said he didn't like Lowe's trading (Ex.1/8/117). Dunlop testified that it was his responsibility to prevent trading that he didn't understand, and that's why he took steps to stop trading in the accounts. (Ex.1/8/118).

¶ 71 On October 30, 2008 Dunlop sent an email to Lowe (copy to A.W., March, Censale, and Beaudet) and stated re OSE/GPI/SNL:

> "As discussed, effective tomorrow, October 31, 2008, Research Capital will ask you to decline any and all buy orders for OSE, GPI or SNL.
>
> Clients currently holding shares are welcome to make sales as and when they chose, but we decline to execute any further buy transactions in these securities." (Ex.4/33/879)

At the time Dunlop was Vice President, Trading.

¶ 72 On the same day Lowe by email complained to Research's Chief Compliance Officer, Censale and asked him to examine the situation. By email on November 3, Censale replied to Lowe and said he had spoken to Dunlop, and if she wished to discuss it with Dunlop, as she indicated last week, she should give him a call. Lowe told Censale she would call Dunlop. (Ex. 4/33/882). There is no evidence she did.

AHRENS LIFTS THE RESTRICTIONS

¶ 73 On December 2, 2008 Ahrens returned to Research Capital as Branch Manager. On December 3, 2008 DiGiovanni sent an email to Ahrens re OSE/GPI/SNL, for Ahrens' information, attaching a copy of Dunlop's October 30, 2008 email to Lowe in which he had instructed her to decline any and all buy orders for OSE, GPI, or SNL. There is no written response from Ahrens in evidence.

¶ 74 Ahrens, in his testimony, stated that he knew it was important to take notes and copy documentation in order to maintain a paper record and a paper trail on such matters. He testified that when he was addressing a situation that was of concern to him with an RR, he did it by email because it allowed him to track it. He testified:

> "…so an email response gives me time because it is obviously sitting there. A phone conversation or a verbal conversation I will log immediately while the person is either standing right there or on the phone or immediately thereafter…".
>
> "What if you go to her desk or his desk?"
>
> "That does happen. My inquiries, like I say, are to the best of my knowledge done email. I prefer email. It may – it does happen where I send an email. and walking through the office. that particular person calls me over to have that discussion. After the discussion is over to the best of my ability, I will go back and log it so that there is no – obviously so its coherent and clear and concise. Anything complex, I will request an email from my reps."
>
> (Transcript April 28, 2010, page 25-26)

¶ 75 There are no notes or emails to indicate that Ahrens took the necessary steps to inquire into and fully understand why Andrew Dunlop had imposed the restrictions on Lowe. In our view, if Ahrens had made thorough inquiries of the persons and circumstances involved in the placing of the restrictions on Lowe, he

would have made notes, and taken copies of any emails, and maintained a file. No such documents were produced.

¶ 76 On the afternoon of December 4, 2008 (3:29 Pacific Time) Ahrens sent an email to Censale, March and DiGiovanni, with a copy to Lowe, the subject of which was "OSE/GPI/SNL – Doreen Lowe". Ahrens said:

> "After speaking to Doreen, and yourself Mark, and after investigations surrounding these clients/accounts/stocks, I've decided to allow trading in these securities again by Doreen and her clients. Doreen is aware of the scrutiny encompassing these positions and these clients, and has agreed that necessary due diligence is required in this situation. **This includes, but is not limited to, taking notes surrounding conversations with clients and in taking orders, printing out news articles from the companies, not allowing large amounts of volume to be done by one client or a group of clients, that moving the market is not an option, and no orders in the last half hour of trading to minimize the potential of high closings.**
>
> I think we can all agree that this action is prudent in this situation, and Doreen is more than well aware of her role as gatekeeper in this situation. This should serve to limit all potential compliance and risk issues surrounding the situation." (Ex.4/33/887) *(emphasis added*)

¶ 77 Ms. Gerada testified that as part of her investigation she requested all evidence of supervision from the Vancouver branch for the December 2008 to March 2009 time period ("the material time"). She testified that there were no notes of Lowe conversations with clients during the material time. She was not provided with any news articles printed out by Lowe during the material time; however she did observe large volumes of trading being done by a group of Lowe's clients during the material time, and she did observe orders having been entered within the last half hour of trading. She did not see any emails, notes, memos or other written documentation indicating that Ahrens questioned Lowe about any of the issues set out in his December 4th email other than one brief inquiry noted in January, 2009.

¶ 78 Ahrens admitted in his sworn interview (of April 28, 2010) that Lowe provided no notes to him regarding conversations with clients, or in taking orders, or copies of news articles, after his direction of December 4, 2008 (Ex.1/6/40-41). In his June 21, 2011 sworn interview, regarding Lowe's notes of client conversations, he stated that he did not receive anything physically that he remembers cataloguing. He could not remember asking her about taking notes, and he could not recall if she had printed news articles (Ex. 1/7/95-96).

¶ 79 Further, Ms. Gerada did not find any written requests by Ahrens asking Lowe to produce any notes, or news articles. Further, there was no evidence that Ahrens made notes of any discussions with Censale, DiGiovanni or March during this time period (Ex.1/6/41).

¶ 80 Ms. Gerada obtained the Trades Orders and Quotes reports ("TOQ") from the TSX Venture Exchange for OSE. The TOQ records all trades, orders and quotes for all members. The time set out therein is Toronto time. Research Capital is organization number 83 in the TOQ reports.

¶ 81 Having examined the TOQ reports (Ex.6) Ms. Gerada testified that four orders were entered on behalf of Lowe clients during the last half hour of the trading day, contrary to Ahrens' direction:

(a) On December 4, 2008 at 3:59 p.m., a sell order for 7100 shares of OSE at $1.51 for T.P.;

(b) On January 27, 2009 at 3:31 p.m., a buy order and a sell order for 9000 shares of OSE at $1.30 were entered for P.S. and Confederation Capital, Lowe's clients;

(c) On February 5, 2009 at 3:37 p.m., a buy order for 25,000 shares of OSE at $1.35 was entered for Lowe's client T.P.

Ms. Gerada testified that two of the orders were day orders and were filled immediately after entry. Mr. Ahrens did not dispute these trades took place.

¶ 82 In cross examination, Mr. Ahrens testified that he discussed his restrictions with Lowe prior to sending his email to her, and she did not complain. However, as we have noted, he did not produce any notes, or any documentary evidence of any discussions with Lowe, or with Censale, March or DiGiovanni.

¶ 83 With respect to January 2009, as a result of her investigation Ms. Gerada noted that on January 21, 2009 there had been an inquiry by email from DiGiovanni to Ahrens about a F.L./R.P. cross in GPI. DiGiovanni noted the buy was solicited and directed Ahrens: "please determine the basis of that solicitation since the client's last transaction (in November) was a sell." Ahrens responded by email the same day and gave an explanation he'd apparently received from Lowe.

¶ 84 DiGiovanni sent a further email to Ahrens on March 11, 2009 involving Lowe clients V.P., T.P. and R.B. buying and selling OSE. DiGiovanni said:

> "Justin, I know this issue has come up before but I wanted to let you know that Doreen's clients did a lot of the buying and selling on OSE yesterday since this still looks unusual to me." (Ex.4/39/1003)

He then set out five trades by V.P., one by T.P. and five by R.B. There was significant volume in the transactions: 512,500 shares.

¶ 85 On Friday, March 13, 2009, Censale, Chief Compliance Officer, sent a lengthy email to Lowe, and copied Ahrens, and DiGiovanni, and two people in the credit department. Censale's email had as the "Subject" the T.P. accounts, and stated: "MUST Read – Needing Response to my Question Today". (Ex.5/1-2)

¶ 86 Censale's email said that the importance of the email was "High".

> "Doreen,
>
> I've been aware of some issues that need immediate resolution and response. I apologize for the direct nature of this email however the issues noted below and the risks incurred in my view for the firm and its supervisors is grave to say the least.
>
> Prior to March 12, 2009 our Credit Department had contacted you to indicate that there was a debit of approximately $100,000 to be resolved in (T.P.'s) account …below are the sequence of events after your knowledge of the margin call: …"

Censale then set out a very detailed sequence of events after Lowe's knowledge of the margin call, which involved T.P. requesting 400,000 OSE shares be sent to his wife's account as a "gift" which would clear up the debit in the account.

¶ 87 In his March 13 email Censale pointed out that on the same day Lowe allowed another purchase of 100,000 shares of OSE at $0.61, which caused the account to be under margined again. Censale then pointed out that although S.N.P. had received 400,000 shares of OSE from her husband's account, she then made a purchase of an additional 200,000 shares of OSE at $0.61, which caused her account to go into debit. He then noted that R.L's company (he's a director of OSE) sold 200,000 shares of OSE at $0.61, the same amount as SNP's purchase, and that was interesting because they knew that the three parties all knew each other very well. Censale then put a series of five questions to Lowe that he wanted answered that day. The questions were such as: why did Lowe knowingly put the S.N.P. account into further debit after Lowe knew that a margin call had already been issued on the account; etc. (Ex.5/1-2)

¶ 88 By email back, Lowe gave a long explanation to Censale, (Ex. 5/3-4) and he then sent her further inquiries (Ex.5/4-5). Ahrens was copied on all of these emails.

¶ 89 Censale in his email of March 13, 2009, copied to Ahrens, told Lowe:

> "…however the transactions of late are indeed suspect and are a model of red flags all of the authorities instruct us to look for (in this case limited number of accounts related to each other buying and selling the exact same stock; and having a relationship with a third seemingly unrelated account owner through a numbered company who is an insider of

the stocks (all of them); where the insider/director has elusive information with regards to his business address (Toronto hotel), his business telephone number (BC travel agent and XMC – who is an IR firm of which he is associated); whereby these three accounts seem to move stock across to and from each other at times, being on both sides of the market with the same number of stock, etc. etc.). Given that I will be meeting on Monday to discuss these accounts further. In the interim…we do need to address the questions above. Pls advise. Thx" (Ex.5/4)

¶ 90 Later on March 13th Censale sent an email to Ahrens re the T.P.'S accounts saying:

> "Can we limit any trade in this account to liquidating only? Only if you agree and only until end of day Monday as I am still confused and she hasn't really answered me…Let me know." (Ex.5/6)

¶ 91 We have in evidence emails from the credit department to Doreen Lowe, copied to Ahrens, about Doreen's delinquent accounts, which were very substantial, involving T.P, Confederation, P.S., etc. By an email dated March 17, 2009 Ahrens advised the credit department that Lowe's accounts had been restricted to sells only "as per Mark Censale and myself". (Ex.8/4) On March 23, 2009 the credit department sent an email to Lowe, copy to Ahrens, restricting Lowe's trading in OSE and GPI. Lowe was directed to start liquidating the accounts of T.P. and S.N.P. and R.B. (Ex.8/9)

¶ 92 Mr. Ahrens in his IIROC interview on April 28, 2010 (Ex.1/6) acknowledged that the Research Policy and Procedures Manual contained a section referencing the branch manager's responsibilities in respect of supervision. He acknowledged that he was responsible for daily supervision and he did not delegate that responsibility. Further, he stated that when he had a concern that he wanted to discuss with an RR, it was his practice to do so by email so that he could track his questions/queries/concerns, but that he may receive a response either verbally, by phone, or email. If a phone or verbal response he would log it immediately on the daily log (an Excel spreadsheet). He stated he preferred to make his inquiries by email, but if there was a verbal discussion subsequent to an email, he would go back and log it, "…so it's coherent and clear and concise." (Ex.1/6/26). He confirmed that it was his practice to write a note or an explanation on the physical blotter and that he used red ink. (Ex.1/6/26).

¶ 93 With respect to the Lowe clients, Ahrens did not recall when he was first made aware of credit issues. Significantly, he did not recall ever having an issue with the trading within Lowe's group of clients in GPI, OSE, or SNL. (Ex.1/6/32). Presumably if he had no issues with Lowe's trading, there was no need in his mind to actively supervise her by making further inquiries.

¶ 94 In the April 28th, 2010 IIROC interview Ahrens was asked about the restrictions he had put on Lowe. He stated that Lowe on receipt came to his office, and that he went with her back to her office to discuss his email. He confirmed he did not make any notes of this discussion.

¶ 95 Ahrens was specifically asked if there were any connections between any of Lowe's clients, and he said to his knowledge there were not. Further, he was asked whether any of Lowe's clients were related, or were referrals, or did he make any inquiries with respect to that subject, and he stated he did not. (Ex.1/6/51).

¶ 96 In the continuation of the IIROC interview on June 21, 2011 Ahrens was again referred to his December 4, 2008 email, and specifically his reference to "… after investigations surrounding these clients/accounts/stocks…". He was asked what was the result of his investigation as far as the clients were concerned: Ahrens stated that he had no recollection. Further, he was specifically asked if he had any recollection of what he learned about the clients T.P., S.N.P., S.P., V.P., R.B., and P.S.: he again stated he had no recollection. (Ex.1/7/92-93).

¶ 97 Further, in that interview Ahrens was asked, with reference to the issuers namely OSE, GPI and SNL, what his investigation revealed; he again stated he had no recollection. Further, he had no recollection of reviewing the aforesaid (para. 96) persons' accounts (Ex.1/7/92-93), however then clarified after further questioning that "based on this email, I would say, yes, I did look into the accounts" but that he did not recall

coming to any conclusion. (Ex.1/7/93).

¶ 98 In the continuation interview on June 21, 2011 Ahrens was asked, with respect to his email to Lowe wherein he imposed restrictions, whether he checked to see if Lowe entered orders within the last half hour from December 4, 2008 until trading was restricted in March, 2009. Ahrens had no recollection, and couldn't say whether he checked Lowe's trading. (Ex.1/7/99). There are no notes or documents in evidence to confirm he checked.

¶ 99 In the cross-examination of Ms. Gerada, Ahrens asked Ms. Gerada if she could define the term "high closing" and she answered that she was not sure that she could. However she said that she was aware of an industry-wide definition of "high closing", but she could not explain it because she had not worked in that area. Similarly, with respect to the uptick rule, she said she was familiar with the uptick rule in part (Transcript September 18, 2013, page 129-130).

¶ 100 In the cross-examination of Ms. Gerada, Ahrens asked Ms. Gerada if a time of execution of a trade prints on the daily blotter (also called commission sheets), referring to Ex 6/4/22 as an example, and she replied that it does not. He also asked her about the email with the date sent of "Thu, Dec 4, 2008 6:29 PM ET", (Ex 4/33/887) which is 3:29 pm Pacific time, and Ms. Gerada confirmed that would therefore be after market trading hours. Mr. Ahrens further, after reviewing the TOQ report with Ms. Gerada, pointed to the December 4 trade referenced in her analysis (Ex 6/4/ line 132) and Ms. Gerada agreed that this trade occurred before the December 4 email was sent.

¶ 101 In his June 2011 interview, Ahrens described that he would make sure that the trade desk would call him with anything unusual happening in the last hour, but that he could not recollect and did not know if this was something that he checked after December 4, 2008 (Ex.1/7/98-99). Ahrens, in his interview of April 2010, also describes trade supervision and what he looks for as coming down to whether there is price movement or not, and are clients trading enough to move the price (Ex.1/7/45), and that his concern specifically with the stocks (earlier referenced as OSE or GPI or SNL) was price movement (Ex.1/41/line 24). We infer from this that a trade within the context of the current market price (i.e.: trading without moving the price) would not generally cause him a concern.

¶ 102 In the interview Ahrens admitted that he did not keep any kind of file with respect to compliance matters. (Ex.1/7/100).

¶ 103 In the interview of June 21, 2011 Ahrens was asked to specify the reasons why he lifted the trading restrictions imposed by Dunlop on Lowe. Ahrens was unable to recall any specifics. (Ex.1/7/95). He stated that Mark Censale, the CCO, agreed with him that they did not really understand why the trading was restricted in the first place, and that it was his opinion that Censale was okay with the trading within Lowe's clients. (Ex.1/7/95). There were no notes or documents produced to confirm this communication.

¶ 104 In the interview June 21, 2011 Ahrens was asked with respect to his direction to Lowe to take notes surrounding conversations with clients, if he had followed up. He admitted he did not recall receiving any notes, and that he did not recall subsequently asking her about taking notes. Further, while he acknowledged Lowe was to print out news articles, he did not recall if she ever did. (Ex.1/7/96).

¶ 105 Ahrens stated in his April 2010 interview that he felt Lowe met all the requirements set out in the email of December 4, 2008 (Ex.1/6/p.54, line 20).

¶ 106 It is clear from the evidence adduced that Ahrens made only two notations on the Excel report during the material time (which documented both daily and monthly reviews) regarding supervisory inquiries of Lowe. One was regarding December 29, 2008 (Ex.4/43/1037); the other was regarding January 21, 2009 (Ex.4/44/1039). Neither annotation relates to the group of clients who were particularly active in these three issuers, but the January 21, 2009 notation relates to a different client and the issuer GPI. Other than these two notations, Ahrens (with initials JA) recorded "nothing to report" regarding Lowe's accounts in the period December 2008 to March 2009 (Ex. 4/43/1031).

¶ 107 On this point, Ms. Gerada testified that in July 2008, when Ahrens was responsible for supervising on a

daily basis, Lowe's accounts were very active in trading GPI, OSE and SNL, and for the most part there are no notations regarding Lowe, or it indicates "nothing to report." (Ex.4/43/1031).

¶ 108 Further, Ahrens did not send Lowe any written inquiries about her trading in December, 2008 or January, 2009. There was one written query in January 2009 in response to DiGiovanni's inquiry into GPI trading. (Ex.4/39/1002; Ex.4/44/1039).

¶ 109 Further, with respect to the monthly review requirement for accounts where commissions were greater than $1,500.00 in that month, Ms. Gerada testified that in January 2009 there were three such Lowe clients subject to this monthly review due to their commission levels generated, including the account of V.P. (Ex.2/18/446). The January 2009 monthly review is recorded on the Excel log as "nothing to report" (Ex.4/44/1038) with initials JA.

Analysis

¶ 110 Based on the evidence adduced in this case, it is clear that the branch manager's role is well defined in the Rules. It is clearly set out in Rules 1300.2 and 2500, as to the branch manager's responsibility for both daily reviews, and monthly reviews.

¶ 111 As the Panel said in Re Floyd & McDonald[6] , the daily/monthly review must attempt to detect, among other things, lack of suitability, undue concentration of securities, excessive trading activity, inappropriate/high risk trading strategies and quality downgrading of client holdings. Further, branch managers must inform themselves on other client related matters, such as complaints, undisclosed short sales and trading under margin. Mr. Ahrens was kept informed re: Lowe's clients and their debit status by the credit department, and there were frequent debits.

¶ 112 The Panel had the benefit of Mr. Ahrens testimony in-chief and in cross-examination. In our view he was not a credible witness. As can be seen, his recollection of significant events was for the most part lacking. Mr. Ahrens sought to deflect responsibility for his lack of adequate supervision by alleging that Ms. Lowe's trading patterns were difficult to recognize, and that although he was the branch manager, and responsible for supervision, he said it was up to Compliance to identify and deal with improper trading. Mr. Ahrens alleged that he did not receive sufficient information, either from Compliance or the credit department, in order to make a reasoned judgment. Further, he alleged the Compliance regime at Research was inadequate and deficient, and thus he did not receive proper assistance. He pointed to many others in the firm, who he stated were superior to him or worked in other areas, who also failed in their roles to prevent this problematic trading and debit issue of Lowe's in the material period. It is our view from Mr. Ahrens' testimony that he appears to have a selective memory. In fact he said he did not recall ever having an issue with the trading within this particular group of clients of Lowe's, specifically to the trading in the issuers of GPI, OSE and SNL. In our view this particular testimony speaks volumes with respect to Ahrens' supervisory actions, or lack thereof, during the material time.

¶ 113 Having considered all of the evidence that has been received in this case, in our view Mr. Ahrens did not take adequate supervisory steps, on either a daily or a monthly basis, that were reasonably required in light of numerous red flags, and significant information from Compliance, and others, including Credit, provided to him or available to him as branch manager.

¶ 114 We know from the evidence that, as of December 3, 2008 Ahrens knew the following:

(a) He had the October 30 email from DiGiovanni with the Dunlop restriction details set out, describing what the then-new restriction was;

(b) He had been copied on significant numbers of Credit emails to Lowe over time;

(c) He had been asked by Compliance by email on numerous occasions to ask Lowe about certain trades in these securities and these accounts;

(d) He knew Lowe had been investigated in the past and had been under some kind of supervisory

[6] *Re Floyd & McDonald,* 2013 IIROC 04

restriction (whether "close" or "strict" supervision).

¶ 115 We also know from the evidence that as of December 3, 2008, he either knew or could have known the following with various tools or resources at his disposal, including:

(a) KYC forms showing who referred the account (so he could have seen the referral relationship between certain accounts);

(b) KYC forms showing other dealer members where the client holds accounts (so he could have been alert to potential inappropriate trading across to other firms);

(c) Daily trading blotters (also called commission sheets) showing the other dealer member firms where the client holds accounts;

(d) KYC forms showing relationship as director, officer, insider, etc. of the issuer companies in question, or relationship by marriage or other family relationships or employer;

(e) Daily trading blotters showing that relationship if as director/officer/ insider, or other family relationship if it was in the RR comments field;

(f) Credit and cash delinquency reports available at all times electronically;

(g) Extensive history and information (about matters pertaining to this group of clients and issuers) within the Compliance department or other supervisors (whether March, Beaudet, Censale, etc.) particularly the extensive research that March had done and circulated by email on October 20, 2008 (Ex.4/33/836);

(h) Dunlop, the acting manager who instigated the October 2008 restriction, was still available at the Vancouver office;

(i) The branch office had a trade desk. A trade desk could provide the specific time of execution of any trades and which firm was the other side of the trade, whether the trades were of interest because they were late in the day or for any other reason

¶ 116 We also know from the evidence that, as of December 3, 2008, he was not involved with the following items concurrent with their happening, but could have discovered with some inquiry, including:

(a) Bank drafts from TD Bank (three differing issuing branches) being processed in the cage for settlement of V.P.'s account (Ex 2/19);

(b) Early settlement cheques outgoing (including out from T.P.'s account December 5, 2008 (Ex 2/16/405), and out from RL's corporate account on three dates in February 2009 (Ex 3/21/535)).

¶ 117 The combination of existing knowledge and available tools and resources at December 3, 2008 were sufficient in our view to at least enable a reasonable branch manager to conclude to:

(a) Leave the Dunlop restriction in place; or

(b) if removing that restriction, to employ alternative supervisory methods to ensure that the removal of the restriction did not risk harm to the firm, the clients, or the marketplace;

(c) these supervisory methods could have reasonably included follow-up supervision to ensure that Lowe was meeting revised expectations in full. Failure to meet them fully and promptly should result in an immediate reversal back to the Dunlop restriction.

¶ 118 This matter is not about what other people did or did not do in their performance of other aspects of supervision – it is about Mr. Ahrens in his role as branch manager. Our finding is that Mr. Ahrens, as branch manager, failed to adequately supervise one certain registered representative for a specific period of four months. We are not providing any comment on the adequacy of his supervision generally or as executed by others within the firm generally, regarding any other registered representatives or for any time outside this specific narrow period, and we trust our Decision is read to be dealing only with the specific facts in this matter.

¶ 119 In summary, having carefully considered all of the evidence tendered in this case, and the submissions of counsel for IIROC and by Mr. Ahrens, we find that the evidence before us is clear, cogent and compelling proof on a balance of probabilities that from December, 2008 to March, 2009, Robert Justin Ahrens, as branch manager, failed to adequately supervise Registered Representative Doreen Lowe, contrary to IIROC Dealer Member Rules 1300.2 and 2500.

¶ 120 In due course the National Hearing Coordinator may arrange with the parties and the Panel for a hearing on penalty.

Dated at Vancouver BC this 17th day of March, 2014.

These Reasons may be signed in counterpart.

Mr. Stephen D. Gill, Chair

Mr. Chris Lay

Ms. L. Karen Henderson