

# Re Acadian Securities Incorporated

IN THE MATTER OF:

THE BY-LAWS OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA

AND

THE DEALER MEMBER RULES OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA ("IIROC")

AND

ACADIAN SECURITIES INCORPORATED ("ACADIAN")

2009 IIROC 8

Investment Dealers Association of Canada  
Hearing Panel (Nova Scotia District Council)

Heard: January 16, 2009  
Decision: February 12, 2009  
(7 paras.)

## Hearing Panel:

A. Douglas Tupper, Panel Chair  
Per Humle, Panel Member  
Stephen Bishop, Panel Member

---

## REASONS FOR APPROVAL OF SETTLEMENT AGREEMENT

---

1. On January 16, 2009, after submissions by counsel for Acadian, and IIROC, the Settlement Panel ("Panel") in this matter accepted and approved the proposed settlement set forth in the Settlement Agreement, with one minor amendment.
2. At page 6 of the Settlement Agreement, under Mitigating Factors, the Panel requested, and Acadian and IIROC agreed to, the deletion of bullet point four, and the substitution of the following:  

"The Respondent has no prior discipline history, and the IIROC's investigation and standard audit procedures uncovered no evidence that non-compliance has had a negative impact on any clients or their accounts."
3. The Panel recognized the importance of IIROC taking steps to ensure compliance by its members with the IIROC Rules, Guidelines, By-laws, Regulations and Policies, and in particular the need to ensure that members put in place systems that implemented proper controls to ensure identification of related or connected issuers, disclosure of related and connected issuers to the client base, and written monitoring of outside business activities of certain registered representatives, officers and directors.
4. The Panel understood that Acadian had in the interim been sold, and accepted IIROC counsel's

submission that there was no need for continued supervision of Acadian to ensure future compliance, given the new purchasers systems, and its past record of proper controls and compliance.

5. The Panel accepted IIROC counsel's submission that the failures to comply had occurred over a period of time, and a monetary sanction of \$100,000 was appropriate in the circumstances, consistent with sanctions in similar cases, and necessary to underscore the need for member companies to take appropriate steps to ensure implementation of controls to ensure the required compliance and necessary to protect the integrity of the industry, and to protect clients.
6. The Panel recognized there were mitigating factors:
  1. Acadian cooperated throughout the investigation, and retained, in good faith, a consultant to give it advice to implement appropriate controls for sales compliance.
  2. By agreeing to an early resolution, Acadian had enabled IIROC staff to devote resources to other matters.
  3. Acadian had no prior discipline history, and there was no evidence uncovered by standard audit procedures that non-compliance had had a negative impact on any clients or their accounts.
7. After reviewing the proposed Agreement, and after hearing the joint submissions, the Panel accepted the Settlement Agreement and approved it, as proposed, with the minor amendment referred to.

Signed this 12th day of February, 2009 by the following Settlement Panel.

A. Douglas Tupper, Panel Chair  
Per Humle, Panel Member  
Stephen Bishop, Panel Member

\* \* \* \* \*

## SETTLEMENT AGREEMENT

### I. INTRODUCTION

1. The Enforcement Department Staff (“Staff”) of the Investment Industry Regulatory Organization of Canada (“IIROC”) has conducted an investigation (the “Investigation”) into the conduct of Acadian Securities Inc. (“Acadian” or 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, of the Dealer Member Rules, Transition Rule No. 1, 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 (the “Effective Date”).
8. The Settlement Agreement will be presented to the Hearing Panel at a hearing (the “Settlement Hearing”) for approval. Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.
9. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his/her/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) Acknowledgement**

14. Staff and the Respondent agree with the facts set out in this Section III and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts.

#### **(ii) Factual Background**

##### **(a) General Background**

15. The Respondent was incorporated on July 6, 1994 and was approved by the IDA on April 21, 1995. The Respondent’s head office is in Halifax, Nova Scotia.
16. On December 1, 2006, the Respondent replaced its management.
17. On June 1, 2008, the Respondent became a regulated entity of IIROC.
18. From April 21, 1995 to the date of this Settlement Agreement (the “Relevant Period”), the Respondent has been bound by the IDA By-laws, Rules, Regulations and Policies and the Transition Rule No. 1.
19. During the Relevant Period, IDA By-laws 29.1, 40.12, 17.2 and 17.2A and Regulation 200.1 provided,

in part, as follows:

29.1 Members and each partner, director, officer, sales manager, branch manager, assistant or co-branch manager, registered representative, investment representative and employee of a Member (i) shall observe high standards of ethics and conduct in the transaction of their business, (ii) shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest, and (iii) shall be of such character and business repute and have such experience and training as is consistent with the standards described in clauses (i) and (ii) or as may be prescribed by the Board of Directors.

For the purposes of disciplinary proceedings pursuant to the By-laws, each Member shall be responsible for all acts and omissions of each partner, director, officer, sales manager, branch manager, assistant or co-branch manager, registered representative, investment representative and employee of a Member; and each of the foregoing individuals shall comply with all By-laws, Regulations and Policies required to be complied with by the Member.

40.12 (i) Each Member must make reasonable efforts to ensure that information submitted in any submission through NRD [National Registration Database] is true and complete. . .

17.2 Every Member shall keep and maintain at all times a proper system of books and records.

17.2A Every Member shall establish and maintain adequate internal controls in accordance with internal control policy statements in Policy 3.

Regulation 200.1 As required under By-law 17.2 every Member shall make and keep current books and records necessary to record properly its business transactions and financial charts, . . .

20. The Investigation and enforcement matters resulted from ongoing non-compliance of the Respondent with its sales compliance system and failure to implement proper controls to ensure identification of related or connected issuers, disclosure of those related and connected issuers to the client base, monitoring outside business activities and updating the Respondent's NRD.

21. The non-compliance with its sales compliance system and failure to implement proper controls were:

- failure to address the "Significant" items identified in the 2006 "Strategic Scope" Sales Compliance Review.
- failure to keep a complete list of all related or connected relationships as defined in the relevant securities legislation.
- failure to prepare and conduct annual questionnaires or surveys regarding outside business activities of its employees.
- failure to identify and disclose outside business activities of certain registered representatives, directors and officers.
- failure to keep a complete current list of pro accounts.
- failure to maintain a complete current list of insider accounts.

- failure to keep a complete list of all grey or restricted list securities.

**(b) 2006 “Strategic Scope” Sales Compliance Review**

22. The Sales Compliance Staff (“SC Staff”) conducted Sales Compliance Reviews of Acadian’s Head Office in the years 1998, 1999, 2000, 2002, 2003, and a “Strategic Scope” Sales Compliance Review in 2006.

23. The purpose of a SCR is to identify any problems or concerns related to a Member’s Sales Compliance systems or the implementation or operation of those systems.

24. The procedure generally involves a review of any previous SCR reports followed by an on-site review, inspection of related documentation, and interviews with individual officers and employees of the firm.

25. If a SCR identifies deficiencies, SC Staff will set out requirements to effect changes necessary for a Member to become compliant with the IIROC requirements, in an SCR report. SC Staff will also make recommendations for improvements that are not mandatory. The SCR is provided to the Member, first in draft form, and later in a final form. SC Staff often has a dialogue with a Member to resolve the issues and concerns identified in an SCR report.

26. The 2006 SCR Report described, in detail, instances of problems in several areas of the Sales Compliance function at the Respondent and characterized a few of these items as “Significant”.

27. Upon receipt of the 2006 SCR Report, the Respondent and the IIROC exchanged correspondence and participated in discussions regarding the items identified in the 2006 SCR.

**(c) Engaging a Consultant**

28. In order to address the items identified by the IIROC, the Respondent and Staff agreed that a consultant who is well versed in compliance issues, practices and procedures and who is acceptable to the IIROC should be engaged to conduct a thorough and complete review of the policies and procedures in place at the Respondent and assist the Respondent in ensuring that the items in the 2006 SCR Report were all resolved and the proper sales compliance policies, practices and procedures are implemented and followed by the Respondent and its staff.

29. Acadian has appointed Mr. John Carson as the consultant (the “Consultant”). The Consultant was acceptable to the IIROC.

30. The Consultant was tasked with reviewing and evaluating the Respondent’s policies and procedures, making recommendations to the Respondent, and overseeing the implementation of all recommendations approved by the Respondent. The Consultant made a report to the Respondent on the findings and the recommendations to the Respondent. The Consultant has confirmed to the Respondent and the IIROC that the Consultant has overseen the implementation of all recommendations approved by the Respondent. [NTD: confirm prior to signing]

31. After the implementation of the recommendations, as confirmed above, the Consultant shall attend at the Respondent’s offices two times in the next year to perform a review and ensure that the Respondent’s implementation of the recommendations has been completed and same are being followed by the Respondent and its staff. The Consultant shall provide a review report to the Respondent and the IIROC. The Respondent has also voluntarily retained the Consultant to attend at the Respondent’s offices from time to time as a resource to review and ensure that the Respondent’s implementation of the recommendations have been completed and

same are being followed by the Respondent and its staff. This ongoing review will continue for up to one year for such period of time as the Respondent and the Consultant consider appropriate acting reasonably.

32. All costs associated with retaining the Consultant, implementing the recommendations, overseeing and testing implementation and preparing reports are to be carried solely by the Respondent.

#### **IV. CONTRAVENTIONS**

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

#1

During the Relevant Period, the Respondent failed pursuant to its sales compliance system to implement proper controls to ensure complete identification of any related or connected issuers, disclosure of those related and connected issuers to the client base, monitoring of outside business activities of certain registered representatives, officers and directors, and updating Acadian's NRD to the required standards of the IIROC in non-compliance with IDA By-laws 29.1, 40.12, 17.2, 17.2A and Regulation 200.1.

#### **V. MITIGATING FACTORS**

34. Staff and the Respondent acknowledge and agree that the penalty agreed to in the Settlement Agreement would have been significantly higher except for the following factors:

- subsequent to the delivery of the 2006 SCR Report, the Respondent, in consultation with the Association, retained in good faith the Consultant, an expert in the field of Sales Compliance.
- the Respondent cooperated with Staff in their investigation of the matters giving rise to this Settlement Agreement;
- by agreeing to an early resolution of these matters, the Respondent enabled Staff to devote resources to other matters;
- the Respondent has no prior disciplinary history; and
- there is no evidence that the non-compliance has had a negative impact on any clients or their accounts.

#### **VI. TERMS OF SETTLEMENT**

35. The Respondent and IIROC have agreed to the following terms of settlement:

##### **Penalties**

- a) The Respondent has engaged a Consultant, acceptable to the IIROC, to review and evaluate the Respondent's policies and procedures, make recommendations to the Board of the Respondent, and oversee the implementation of all recommendations approved by the Board. The Consultant shall make a report to the Respondent and the IIROC on the findings and the recommendations made to the Respondent's Board. The Respondent's Board shall take into consideration the

recommendations and provide the IIROC with a listing of those recommendations approved for implementation and any that it rejects and the rationale for the rejection thereof. After the implementation of the recommendations approved by the Respondent's Board, the Consultant shall attend at the Respondent's offices two times in the next year (2 visits) to perform a review and ensure that the Respondent's implementation of the recommendations has been completed and same are being followed by the Respondent and its staff. The Consultant shall provide a review report to the Respondent and the IIROC. The Respondent has also retained the Consultant to attend at the Respondent's offices from time to time as a resource to review and ensure that the Respondent's implementation of the recommendations have been completed and same are being followed by the Respondent and its staff. This ongoing review will continue for up to one year for such period of time as the Respondent and the Consultant consider appropriate acting reasonably.

b) The Respondent will pay a global fine in the amount of \$150,000.

**Costs**

i) The Respondent shall pay the full costs of engaging the Consultant, as described above in (a).

36. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the Effective Date of the Settlement Agreement.

37. Unless otherwise stated, any other terms of the Settlement Agreement shall commence on the Effective Date of the Settlement Agreement.

38. AGREED TO by the Respondent at the City of Halifax, in the Province of Nova Scotia, this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Witness: **Acadian Securities Inc.**

AGREED TO by Staff at the City of Toronto, in the province of Ontario, this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Witness: **Enforcement Counsel on behalf of Staff  
of the Investment Industry Regulatory  
Organization of Canada**

Accepted this \_\_\_\_ day of \_\_\_\_\_, 2008 by the following Hearing Panel:

A. Douglas Tupper, Panel Chair  
Per Humle, Panel Member  
Stephen Bishop, Panel Member

*Copyright © 2009 Investment Industry Regulatory Organization of Canada. All Rights Reserved.*