Canadian Securities Law News

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ARE YOU READY FOR ENVIRONMENTALLY RESPONSIBLE DISCLOSURE?

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On August 1, 2019, staff of the Canadian Securities Administrators (CSA) issued a public notice on the principles and rules governing the disclosure of information concerning climate change-related risks (CSA Staff Notice 51-358—*Reporting of Climate Change-related Risks*) (Notice 51-358).

Much like the general population, more and more Canadian investors are taking an interest in the effects of climate change on their investments. This is of particular concern to institutional investors, who often have longer investment time horizons.

Notice 51-358 does not create any new legal requirements or modify existing ones. Rather, it reinforces and expands upon the guidance provided in CSA Staff Notice 51-333—*Environmental Reporting Guidance* published in 2010.

Notice 51-358 specifies that climate change-related risks differ from many other business risks because their impacts may be uncertain and are expected to develop over time. The CSA believes that, despite the potential uncertainties and longer time horizon associated with these risks, a reporting issuer's board and management should take appropriate steps to understand and assess the materiality of these risks to their business.

Notice 51-358 provides examples of relevant questions boards and managements should ask about climate change-related risks. It lists specific considerations for boards and managements when determining the materiality of climate change-related risk, which involves several adjustments such as considering the longer time horizon associated with these types of risks, effectively determining risks and quantifying them. For instance, a climate change-related matter that is likely to influence an investor's decision and that may only materialize over the medium or long term should still be disclosed.

The issuer must also disclose the financial and operational impacts of new environmental protection requirements, such as the effect of the carbon tax, in the current fiscal year and the expected impacts in future years.

Notice 51-358 informs us that climate change-related risks can be grouped into two categories: physical and transition risks. Acute physical risks include risks resulting from extreme weather events, such as cyclones, hurricanes, floods. Chronic physical risks include longer-term shifts in climate patterns, such as sustained higher temperatures that may cause sea level rise. Transition risks are divided into six sub-categories: reputational, market, regulatory, policy, legal and technology risks.

Notice 51-358 also recalls that issuers' efforts to mitigate climate change, such as resource efficiency and cost savings, the adoption of low-emission energy sources and the development of new products and services, must also be disclosed.

The CSA reminds us that issuers must disclose material information concerning climate change-related risks in their regulatory filings (primarily in their annual information form and annual and interim MD&A). Issuers wishing to voluntarily disclose information on climate change in their sustainability reports, on their website or through social media, must ensure that there are no misrepresentations. Notice 51-358 recommends that boards and managements have a robust process for reviewing this information prior to its public release to ensure that it is reliable and accurate.

Issuers must also consider the forward-looking nature of some information in their disclosure of climate change-related risks (for instance, disclosing a target to reduce GHG emissions or the projected use of proceeds in the establishment of a green bond program) and comply with the requirements set out in National Instrument 51-102—*Continuous Disclosure Obligations*.

Scientists worldwide have been sounding the alarm on climate change for more than a decade. Climate change carries very real risks for issuers. Many investors now have an environmentally responsible investment approach and assess issuers' sustainable development practices to quantify the risks of investing in them. Notice 51-358 helps issuers meet investors' demand for environmental information.

CBCA DIVERSITY DISCLOSURE REQUIREMENTS EFFECTIVE FOR 2020 PROXY SEASON

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For the upcoming 2020 proxy season, new disclosure requirements will be effective for publicly-listed corporations incorporated under the *Canada Business Corporations Act* (CBCA). They mandate additional diversity disclosure in connection with an annual meeting of shareholders held on or after January 1, 2020. Notably, the new regulations align with the "comply or explain" regime adopted under Canadian securities laws, which prescribe disclosure regarding gender diversity on boards and in senior management. But the regulations also go beyond these requirements by (i) expanding the scope to include diversity disclosure with respect to a broader range of "designated groups",[1] and (ii) requiring such disclosure from "venture" issuers in addition to "non-venture" issuers (i.e., issuers listed on the Toronto Stock Exchange (TSX), TSX Venture Exchange (TSX-V) and Canadian Securities Exchange (CSE)).

The CBCA amendments implement parts of Bill C-25, *An Act to amend the Canada Business Corporations Act*, *the Canada Cooperatives Act*, *the Canada Not-for-profit Corporations Act and the Competition Act*, which received assent on May 1, 2018 (available here), and the corresponding *Regulations Amending the Canada Business Corporations Regulations*, 2001: SOR/2019-258 (available here).

Details of Required Disclosure

Commencing with their 2020 annual shareholder meetings, publicly-listed CBCA corporations will need to disclose in their management information circulars the following information:

1. *Term Limits*. Whether the corporation has adopted term limits or other mechanisms of board renewal and either a description of those term limits or mechanisms or the reasons why it has not adopted them.
2. *Written Policies*. Whether the corporation has a written policy relating to the identification and nomination of directors from the designated groups and, where it does not have a policy, the reasons for not adopting one or, where it has a policy, the following information:
   i. a short summary of the policy's objectives and key provisions;
   ii. a description of the measures taken to ensure effective implementation;

[1] For the purposes of the requirements, "designated groups" is defined with reference to the federal Employment Equity Act, and includes women, Aboriginal peoples, persons with disabilities and members of visible minorities. Corporations may rely on self-identification by members of the designated groups (e.g., by including voluntary questions in the annual questionnaire) for disclosure purposes.

iii. a description of the annual and cumulative progress in achieving the objectives of the policy; and

iv. whether the effectiveness of the policy is measured and, if so, a description of how it is measured.

3. *Level of Representation*. Whether the level of representation of the designated groups is considered when nominating individuals as directors and when appointing members of senior management[2] and a description of how that level is considered or, if not considered, the reasons why not.
4. *Targets*. Whether there are targets for representation on the board and among senior management for each of the designated groups and, if so, a description of the progress made in achieving the targets and, for each group with a target, the annual and cumulative progress in achieving that target or, if there is no target, the reasons for not adopting a target.
5. *Statistics*. The number and proportion (in percentage terms) of members from each of the designated groups on the board and in senior management.

Other CBCA Amendments

Other amendments to the CBCA related to annual shareholder meetings have been passed, but are not yet in force. Such amendments include reforms with respect to majority voting requirements, say-on-pay, clawback policies, disclosure related to well-being, director elections, shareholder proposals and notice-and-access. We will provide an additional update and guidance when these amendments come into force.

CANADIAN SECURITIES ADMINISTRATORS

CSA Staff Notice 31-355

CSA Staff Notice 31-355 *OBSI Joint Regulators Committee Annual Report for 2018,* dated August 15, 2019, was issued. For more information, please see CSA Staff Notice 31-355, which will be reproduced in Volume 1 of the *Canadian Securities Law Reporter* at ¶ 3185.

CSA Staff Notice 31-356

CSA Staff Notice 31-356 *Guidance on Compliance Consultants Engaged by Firms Following a Regulatory Decision,* dated August 22, 2019, was issued. For more information, please see CSA Staff Notice 31-356, which will be reproduced in Volume 1 of the *Canadian Securities Law Reporter* at ¶ 3186.

CSA Staff Notice 95-301

CSA Staff Notice 95-301 *Margin and Collateral Requirements for Non-Centrally Cleared Derivatives,* dated August 22, 2019, was issued. For more information, please see CSA Staff Notice 95-301, which will be reproduced in Volume 1B of the *Canadian Securities Law Reporter* at ¶ 9450.

[2] For the purposes of the requirements, "senior management" is defined to include the chair and vice-chair of the board of directors, president, chief executive officer, chief financial officer, vice-presidents in charge of a principal business unit, division or function, and individuals performing a policymaking function in respect of the corporation.

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

Dealer Member Rules Amended

The amendments to the Rules have been incorporated in Volume 1 of the *Canadian Stock Exchanges Manual* at ¶ 650-174.

MONTREAL EXCHANGE

List of Fees Amended

The amendments to the 2019 List of Fees will be incorporated in Volume 2 of the *Canadian Stock Exchanges Manual* at ¶ 3500-501.

PROVINCIAL UPDATES

Ontario

OSC Staff Notice 11-787

OSC Staff Notice 11-787 *Improving Fee Disclosure Through Behavioural Insights,* dated August 19, 2019, was issued. For more information, please see OSC Staff Notice 11-787, which will be reproduced in Volume 3A of the *Canadian Securities Law Reporter* at ¶ 490-129ae.

OSC Staff Notice 33-750

OSC Staff Notice 33-750 *Compliance and Registrant Regulation Summary Report for Dealers, Advisers and Investment Fund Managers,* dated August 8, 2019, was issued. For more information, please see OSC Staff Notice 33-750, which will be reproduced in Volume 3A of the *Canadian Securities Law Reporter* at ¶ 490-387o.

RECENT CASES

Sanctions for Fraud

Alberta Securities Commission, June 24, 2019

Vernon Ray Fauth (the "Respondent") had a background in insurance sales and financial planning, and during the relevant period he was not registered with the Alberta Securities Commission (the "Commission"). The Respondent founded Fauth Financial Group Ltd. ("Fauth Financial"), which offered financial and estate planning service and investment advice. The Respondent was also the CEO of FairWest Energy Corporation ("FairWest"), and the founder and sole director, officer, and voting shareholder of Espoir Capital Corporation ("Espoir"), which was used to raise funds that were to be invested for returns. Investors were told, among other things, that their funds were secured by mortgages and were safe. Over a period of approximately 10 years, Espoir raised over $15.5 million from investors who either purchased three-year debentures or advanced loans under promissory notes. An investigation by Commission Staff revealed that the investors' funds were, among other things, loaned to FairWest, Fauth Financial, and the Respondent's family members, or used to repay principle or interest to other investors in the manner of a Ponzi scheme. The majority of the investors' funds were not secured, and at the end of 2014, Espoir owed investors over $12.3 million with little prospect of repayment. In a decision dated November 13, 2018, a Commission Panel found that the Respondent had breached sections 75, 92(4.1), and 93(1)(*b*) of the Alberta *Securities Act*, RSA 2000, c. S-4 (the "Act"), by: engaging in unregistered dealing; making representations about Espoir securities that he knew or reasonably ought to have known were materially misleading and which would reasonably be expected to have a significant effect on the value of Espoir securities; and perpetuating a fraud on Espoir investors (see *Re Fauth*, 2018 ABASC 175). Commission Staff sought various orders against the Respondent, including: permanently prohibiting him from participating in the capital market; permanently prohibiting him from acting as a director or officer of any issuer, or acting in a management or consultative capacity in connection with activities in the capital market; requiring him to disgorge $2,585,414.87 (the sum of the payments from Espoir to non-arm's length parties during the relevant period); and requiring the payment of an administrative penalty of $750,000.

Various sanctions were ordered. The Panel began its analysis by noting, among other things, that: the purpose of orders under sections 198 and 199 of the Act was not to punish respondents, but instead to protect Alberta investors and the market and to deter future misconduct (see *Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission),* 2001 SCC 37); while a panel had discretion to determine what orders were in the public interest, sanctions had to be "proportionate and reasonable" (see *Walton v. Alberta (Securities Commission),* 2014 ABCA 273); and *Re Homerun International Inc.*, 2016 ABASC 95, provided the refined factors to consider when fashioning sanctions. The key findings by the Panel included that: the misconduct was serious, as the deception took place over a long period of time, and investors suffered "devastating" harm; the Respondent's history of capital market experience suggested a need for specific deterrence; there were no mitigating circumstances, and it was an aggravating factor that a repaid investor was a company controlled by the Respondent; and, in similar cases (involving fraud with similar magnitudes of funds raised), significant sanctions were ordered including permanent market bans as well as administrative penalties and disgorgement. Given the foregoing, the Panel found it appropriate to order permanent market participation bans with no carve outs. Turning to the order for disgorgement, the Panel adopted the two-step test set out in *Poonian v. British Columbia Securities Commission*, 2017 BCCA 207, with the first step being for an adjudicator to determine if the respondent, directly or indirectly, obtained amounts arising from his contraventions, and second, for the adjudicator to determine whether it was in the public interest to order disgorgement, also considering specific and general deterrence. Other considerations included that: Staff had to prove on a balance of probabilities the amount obtained as a result of the misconduct, and the burden then shifted to the Respondent to disprove the reasonableness of the amount; it did not matter if the amounts obtained were not retained when determining the amount to be disgorged, otherwise wrongdoers would have incentive to spend funds raised as soon as they were received; and repayments to investors could be deducted from the amount ordered to be disgorged. In this case, the Panel was satisfied that Staff had met its burden in submitting that $2,585,414.87 was an appropriate amount to be disgorged, and the Respondent failed to disprove this amount, arguing only that he was impecunious. The Panel also found it was in the public interest to order disgorgement to deter others from similar misconduct. Finally, on the administrative penalty, the Panel noted, among other things, that: administrative penalties were also intended to deter wrongdoing by imposing a direct burden on the wrongdoer for his breach of the Act; subsection 199(1) provides for a maximum $1 million penalty for each contravention of the Act, but panels typically considered "contraventions on a global basis rather than individually"; subsection 199(2) of the Act provides that an administrative penalty can be imposed even if other monetary penalties are also ordered; the penalty should be large enough to be a deterrent but still be proportionate; and, in reviewing comparable case law, higher penalties were given where disgorgement was not ordered and vice versa. In this case, the Panel concluded that an administrative penalty of $400,000 was proportionate and appropriately ordered.

Re Fauth, 2019 CSLR ¶ 900-793

Hearing and Review of Commission Decision

British Columbia Securities Commission, July 22, 2019

On December 12, 2017, a panel of the British Columbia Securities Commission (the "Commission") found that Paul Se Hui Oei ("Oei"), Canadian Manu Immigration & Financial Services Inc. ("Manu"), 0863220 B.C. Ltd., and 0905701 B.C. Ltd. (together, the "Applicants") had engaged in fraud, contrary to paragraph 57(*b*) of the British Columbia *Securities Act*, RSBC 1996, c. 418 (the "Act"). The Commission Panel determined that Oei told investors he was raising capital to fund two start-up companies, but he diverted over $5 million towards other purposes, including the payment of personal expenses (the "Merits Decision"; see *Re Oei*, 2017 BCSECCOM 365). The Panel subsequently found it appropriate to order, among other things, that the Applicants be permanently banned from participating in the capital market and from acting as a director or officer of any issuer, registrant, investor relations, or securities promotor. It also ordered Oei to pay an administrative penalty of $4.5 million and Manu to pay $1 million, and for Oei and Manu to disgorge $3,087,977.41 on a joint and several basis (the "Sanctions Decision"; see 2018 CSLR ¶ 900-752). An application was made under section 171 of the Act for a hearing and review of the Merits and Sanctions Decisions. The Applicants argued that there was new and compelling evidence to consider as well as changes in circumstances, including: new evidence that established that the Panel erred in concluding the Applicants had the *mens rea* for fraud; evidence that the Panel erred in not considering certain payments when determining the amount for disgorgement; evidence that demonstrated that several witnesses were not credible; and that Oei's personal financial circumstances had changed and the sanctions imposed should be changed accordingly.

The application was dismissed. The Panel began its analysis by noting, among other things, that: section 171 of the Act sets out that the Commission may revoke or vary a previous decision if it "considers that to do so would not be prejudicial to the public interest"; the section is not an appeals mechanism, as appeals were to be made to the British Columbia Court of Appeal; and Commission Policy 15-601 *Hearings* and decisions from previous section 171 decisions demonstrated that an applicant must establish "new and compelling evidence" exists or that there has been a change in circumstances such that it would not be "prejudicial to the public interest for the Commission to revoke or vary its previous decision." The Panel noted that a central finding in this matter was that the Applicants represented to investors that their funds would be used for start-up business expenses, but the majority was instead diverted to other uses. In general, the Panel found that none of the "new" evidence had any impact on this finding nor was it unavailable at the time of the hearings. Some of the specific findings included that: the witnesses' credibility had already been considered during the Merits Hearing, and the transcripts and documents put forward by the Applicants did not have any bearing on the key findings; the Applicants attempted to re-raise the defence of negligent legal advice to establish they did not have the requisite *mens rea* for fraud, but as was the case in the Merits hearing, the Applicants did not establish the connection between the legal advice given and the disclosure to investors about the use of their funds; and none of the evidence relating to the quantum of the *actus reus* of the fraud was unavailable at the time of the Merits or Sanctions hearings. On the change in circumstances, Oei testified that as a result of the proceedings against him, his reputation had suffered, and he was unemployed. The Panel found this was a change in circumstances, however, this was insufficient grounds to vary the orders against the Applicants. In the Panel's view, the change in circumstance was not a surprising consequence, but it would be prejudicial to the public interest to amend the orders given the significant misconduct.

Re Oei, 2019 CSLR ¶ 900-794

Sanctions for Unregistered Trading

British Columbia Securities Commission, July 4, 2019

Chien-Hua Liu ("Liu") was a British Columbia resident and insurance agent who was formerly registered under the British Columbia *Securities Act*, RSBC 1996, c. 418 (the "Act") to sell mutual funds. Liu was a director of CPFS Professional Services Inc. ("CPFS"), a British Columbia insurance company, and NuWealth Financial Group Inc. ("NuWealth"; together with Liu and CPFS, the "Respondents"), a British Columbia company that was not registered in any capacity under the Act. The Respondents had entered into referral arrangements with W, an exempt market dealer, and GB, an early stage real estate developer in Alberta. Among other things, Liu referred investors (sourced from his insurance business clientele) to representatives of W and GB, occasionally set up meetings, and received commissions from referrals that resulted in investments. In a decision dated November 23, 2018, a panel of the British Columbia Securities Commission (the "Commission") found that the Respondents had breached paragraph 34(*a*) of the Act by acting in furtherance of trades without registration. Further, since Liu authorized, permitted, or acquiesced in the corporate Respondents' contraventions by virtue of section 168.2, he was also found to have breached paragraph 34(*a*) (the "Liability Decision"; see 2019 CSLR ¶ 900-764). In particular, the panel found that the referrals constituted "acts in furtherance" of trades based on the proximity of the referrals to the actual trades, the commissions were based on the amounts invested, the securities offered were limited, and the relationship between the Respondents and investors increased the risk that the referrals were implicit recommendations. The Executive Director requested various sanctions, including: market prohibitions of three years for Liu, two years for NuWealth, and one year for CPFS; administrative penalties of $75,000 against Liu, $80,000 against NuWealth, and $30,000 against CPFS; and disgorgement of $129,802.37 by Liu and $315,063.49 by

NuWealth. The Respondents argued that no orders were required to be made in the public interest, or in the alternative, that carve outs be permitted to, among other things, allow Liu to trade in his own personal accounts and act as director of companies where he and his family are the only shareholders.

Various sanctions were ordered. The Panel began its analysis by noting that orders under sections 161(1) and 162 of the Act were protective and preventative, and meant to prevent future harm (see *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission),* 2001 SCC 37). Further, the list of non-exhaustive factors for a panel to consider included: the seriousness of the misconduct; harm to investors and the integrity of the market; the respondent's enrichment; any mitigating factors and the respondent's past conduct; the risk to investors should the respondent continue to participate; specific and general deterrence; and orders made in similar circumstances in the past. Key findings by the Panel included that: the misconduct was serious, as registration ensured proficiency which advanced investor protection, a significant sum was invested, and Liu was a former registrant who should have sought advice on his obligations; there were investor losses but it was not clear how directly it was linked to the Respondents' activities (i.e., some investors would have dealt with W, who was a registrant); the Respondents were enriched by the commissions; none of the Respondents had a history of securities misconduct, but it was not reasonable for Liu to rely on "mistake of law" (i.e., that he genuinely believed he did not need to be registered for his activities), as he was a former registrant engaged in a regulated industry, and should have sought legal advice about his obligations; and there were no directly comparable cases. The Panel concluded that while there was limited specific deterrence needed, sanctions were needed to deter others from similar conduct. Accordingly, it ordered market prohibitions of two years against Liu and NuWealth, and one year against CPFS, with the carve-out requested by Liu. On the issue of disgorgement, the Panel referred to the two-step test set out in *Poonian v. British Columbia Securities Commission,* 2017 BCCA 207, with the first step being "to determine whether a respondent, directly or indirectly, obtained amounts arising from his or her contraventions of the Act", and the second being to determine if it was in the public interest to make the order, with consideration of specific and general deterrence. Other key principles included that: the purpose of disgorgement is to remove the incentive to contravene; disgorgement is not meant to punish the wrongdoer or compensate victims as there were other means; "amount obtained" is not limited to profit and does not require deductions for expenses; and joint and several orders can be made in certain cases (i.e., where the corporation was the alter ego of the individual). In this case, the Panel found it could order disgorgement of $206,682.07 by NuWealth and $119,380.79 against Liu, and, further, that it was in the public interest to do so as, among other things, there was a need to deter others and to remove the incentive for wrongdoing. Since the wrongdoing was not as serious as submitted by the Executive Director, the Panel ordered administrative penalties of $40,000 to be paid by Liu and NuWealth, and $20,000 by CPFS.

Vice-Chair Cave dissented on the issue of disgorgement, concluding it was not in the public interest to order it and it was disproportionate to the misconduct since: the Respondents did not earn the commissions as a result of not being registered; investors knew that commissions were being earned by the Respondents; there was potentially some confusion about whether the Canadian Securities Administrators considered referral agreements "trading" as per the Companion Policy to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations;* and the Respondents' role was limited to referrals and some of the investors had been referred to a registrant.

Re Liu, 2019 CSLR ¶900-795

Review of an SRO decision

Ontario Securities Commission, July 9, 2019

Andrew Paul Rudensky (the "Applicant") was a registered representative with Richardson GMP ("RGMP") and was regulated by the Investment Industry Regulatory Organization of Canada ("IIROC"), a self-regulatory organization ("SRO"). The Applicant held personal trading accounts at RGMP, including a margin account and an account in the name of his holding company, Dark Horse Financial Corp. ("Dark Horse"). RGMP permitted its employees to buy shares of bought deals that were not fully subscribed at a discount ("Pro Eligible"), and the employees would short the securities for the same number of shares being acquired in the offering to make a profit equal to the spread. In 2013, the Applicant met RS, a client of RGMP, at a social event; he learned that RS ran a lending business and provided customized loans and made early stage investments. In April 2015, RGMP was involved in a bought deal offering of Brookfield Asset Management Inc. Class A Limited ("BAM.A") shares that became Pro Eligible, and RS loaned the Applicant $3 million which was reflected in a promissory note between RS and Dark Horse executed on April 21, 2015. RS was to be paid 70 per cent of any profit made by RS, and the two had discussed a mortgage on the Applicant's condo should the loan remain outstanding beyond a few days. On April 27, 2015, the Applicant repaid RS the amount loaned and US$44,076, which was 70 per cent of the gross profit from the BAM.A transaction. RGMP's chief compliance officer inquired into the funding of the Applicant's transaction, and the Applicant told his branch manager that the funds were a loan collateralized against his condo. IIROC Staff commenced an investigation in May 2016. In a decision dated July 23, 2018 (the "Merits Decision"), an IIROC hearing panel (the "Panel") found that the Applicant had breached the IIROC Dealer Member Rules (the "Rules"), by: engaging in personal financial dealings with a client of RGMP, contrary to Rule 43; and making a false and misleading representation to RGMP, contrary to Rule 29.1 In a decision dated October 17, 2018 (the "Sanctions and Costs Decision"), the IIROC Panel ordered: suspension of the Applicant's registration for two years; payment of a $5,000 fine for contravening Rule 43 and a $25,000 fine for contravening Rule 29.1; disgorgement of $25,923, representing the net profits of the personal dealings with a client; that the Applicant rewrite and pass the Conduct and Practices Handbook Course prior to any registration with IIROC; and payment of costs of $24,500. The Applicant applied under section 21.7 of the Ontario *Securities Act*, RSO 1990, c. S.5 (the "Act"), for a hearing and review of the Merits and Sanctions and Costs Decisions. The Applicant's key arguments included that the IIROC Panel made various errors in law that required the Ontario Securities Commission (the "Commission")'s interference.

The application was dismissed. The key issues before the Panel were whether the Applicant had established any of the grounds on which the Commission should intervene in the Merits and Sanctions and Costs Decisions, and if there were such grounds, what the appropriate dispositions were. The Panel began its analysis by noting that: subsections 8(3) and 21.7(2) of the Act permit applications to be made by a person or company directly affected by an SRO decision for a review of the decision, and the Commission can confirm the decision or make another it considers proper; in practice, the Commission takes a "restrained approach" to interfering with SRO decisions in acknowledgment of an SRO's specialized expertise; and, as per *Canada Malting Co (Re)*, (1986) 9 OSCB 3565, a Commission will only interfere where it was satisfied that the SRO proceeded on an incorrect principle, the SRO erred in law, the SRO overlooked material evidence, new and compelling evidence is available that was not before the SRO, or the SRO's and Commission's perception of the public interest conflict. The Panel's general conclusion in response to the Applicant's arguments was that the IIROC Panel had properly considered the evidence before it and applied its specialized knowledge and expertise in reaching its conclusions. Some of the Panel's conclusions included that: the IIROC Panel did not err in finding that the Applicant knew RS was a client as they relied on a variety of evidence to reach that conclusion; the IIROC Panel did not err in finding the Applicant had misled RGMP; the IIROC Panel did not err in ordering disgorgement, as the breach of Rule 43 included the loan and profit sharing agreement and disgorgement was to remove the financial benefit of the misconduct; the IIROC Panel properly considered IIROC Sanction Guidelines and caselaw in ordering the suspension; and the IIROC Panel did not err in concluding that the Applicant's conduct had harmed the market's integrity and reputation. The Applicant had also argued that Rule 29.1 was repealed as of September 1, 2016, as part of IIROC's implementation of consolidated enforcement, examination, and approval rules. On this issue, the Panel found that the IIROC Panel had erred in law as it failed to explain why Rule 29.1 remained in effect. However, in applying its own analysis of the transition rule, the Panel concluded that 29.1 was in effect, since to find otherwise "would result in an absurd outcome."

Re Rudensky, 2019 CSLR ¶900-796

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