THE MANITOBA SECURITIES COMMISSION

March 24, 2017

IN THE MATTER OF: **THE SECURITIES ACT**

- and -

RAVINDRA KUMAR SUPPAL

- and -

APPEAL OF DECISIONS OF THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

REASONS FOR DECISION
OF
THE MANITOBA SECURITIES COMMISSION

Panel:

Panel Chair:	Mr. J.W. Hedley
Member:	Mr. G.J. Lillies
Member:	Ms. D.L. Janovcik

Appearances:

S. Gingera	)	Counsel for Commission Staff
T. Godfrey		
A. Clark	)	On behalf of IIROC
R. Suppal	)	On his own behalf

Ravindra Suppal has appealed two Decisions made by a panel of the Investment Industry Regulatory Organization of Canada ("IIROC"). The first, the "liability decision" was the subject of written reasons issued by the IIROC panel on June 10, 2013, and the second, the "penalty decision", with written reasons issued on September 30, 2014.

Mr. Suppal's appeal is made under section 31.4(4) of The Securities Act (the "Act"), which provides:

> If the Commission considers it in the public interest to do so, it may make a decision in respect of
> a) an internal regulation or proposed internal regulation of a self-regulatory organization; or
> b) a direction, decision, order or ruling made under an internal regulation of the organization.

Liability and penalties.

The findings in the liability decision under review were that Mr. Suppal had contravened certain IIROC dealer member rules, as described in the counts (the "Counts") set forth in the IIROC Notice of Hearing, namely:

> Count 1: From June of 2005 until April of 2010, the Respondent failed to use due diligence to learn and remain informed of the essential facts relative to an account (the "Account") established for the Chemamawin First Nation Development Trust (the "Trust") contrary to IIROC Rule 1300.1A (" Know Your Client");
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> Count 2: From May of 2007 until April of 2010 the Respondent made unsuitable trades in the Account of the Trust contrary to IIROC Rule 1300.1Q ("unsuitable trades"); and
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> Count 3: From September of 2009 until April of 2010 the Respondent made unauthorized trades in the Account of the Trust contrary to IIROC Rule 29.1 ("unauthorized trades").

A separate penalty hearing, held after liability was determined, resulted in the following penalties:

1. a global fine in the amount of $150,000.00 in respect of all charges, inclusive of disgorgement of commissions earned in the amount of $127,000.00, payable upon such terms as IIROC may permit;

2. a one year suspension from registration with IIROC, provided that Mr. Suppal shall not thereafter be registered until successfully rewriting the Conduct and Practices Examination;

3. a three year period of close supervision upon becoming registered and returning to the industry following the expiration of the period of suspension, and during such three year period, Mr. Suppal shall not hold the position of Branch Manager or Compliance Manager with any Member Firm; and

4. costs in the amount of $20,000.00 to IIROC upon such terms as IIROC may permit.

In assessing penalties, the IIROC panel reviewed the "Key Considerations When Determining Sanctions" identified as relevant in assessing penalties in the Dealer Member Disciplinary Sanction Guidelines. Of the 14 key considerations, the following were applied against Mr. Suppal:

1. Harm to clients, employer and/or the securities market;
2. Blameworthiness;
3. Degree of participation;
4. Extent to which the Respondent was enriched by the misconduct;
5. Acceptance of responsibilities, acknowledgement of misconduct, remorse;
6. Voluntary rehabilitative efforts;
7. Reliance on the expertise of others;
8. Planning and organization;
9. Multiple incidents of misconduct over an extended period of time;
10. The vulnerability of the victim.

This Appeal

Mr. Suppal's Notice of Appeal cited errors by the IIROC panel in both the liability and penalty decisions in having applied incorrect principles, having overlooked material evidence and having misperceived the public interest in imposing the penalties described above.

As Mr. Suppal presented his appeal it was apparent that his grievances toward the IIROC decisions were related in great measure to the panel's findings as to his honesty and integrity. The panel made many observations and findings of fact about him and his conduct. We will be quoting liberally from the panel's reasons and hearing transcripts with a view to capturing, not only the basic findings of the IIROC panel in relation to the three Counts, but as well the language used in connection with these observations and findings of fact.

Mr. Suppal, who has been registered with IIROC (or its predecessor IDA) for approximately 30 years, is a well-educated individual with experience in both the investment and banking industries. He has no record of non-compliance with IIROC/IDA, but in this case the IIROC panel found "clear evidence of unbecoming business conduct which calls into question the character and business repute of the Respondent." In the penalty decision, the panel noted a "carefully orchestrated scheme….. in a manner that would avoid scrutiny and detection…. the intentional deception perpetuated by the Respondent…. continued throughout the years he handled the Account." The IIROC panel found that he "has admitted no wrongdoing, shown no remorse and accepted no responsibility for his actions." In coming to its conclusions relative to penalties, the panel found that Mr. Suppal's clients were vulnerable, that he had brought harm to them and that his actions were neither unintentional nor merely negligent. Further, "(t)he panel considers the conduct of the Respondent and the extensiveness of the infractions to be very serious and evidence of a complete disregard of the fundamental rules of IIROC by the Respondent."

Mr. Suppal was represented by legal counsel, Stephanie McManus, during the liability phase. Ms. McManus fell ill prior to the penalty hearing; Mr. Suppal has been self-represented since the conclusion of the liability hearing.

The Trust

The facts revolve around a monetary fund known as the First Nation Development Trust (the "Trust") belonging to the Chemamawin First Nation (the "First Nation" or "CFN"). The Trust was established by Trust Indenture in November of 1990 (the "Trust Indenture") for the purpose of supporting the future development of the First Nation and the First Nation members. It consisted of funds that were paid over by Manitoba Hydro to the First Nation in payment of damages and set up as a trust account governed by the Trust Indenture.

The Trust Indenture contained certain provisions which were central to the case against Mr. Suppal and to his appeal, including the following (with emphasis added):

4.01 Guiding Principles

In carrying out the powers, authorities and discretions howsoever available to the trustees, whether under statute or law or otherwise, the trustees shall be guided by the following principles:

1) The purpose of the Trust is to support the development of the First Nation and First Nation members, including its fishermen, trappers, hunters and other community resource users, in accordance with the Permitted Uses;

2) The trust fund, and in particular, the Initial Settlement Amount, is intended to be **preserved in perpetuity** to enable future generations to benefit from this Trust and, without limiting the generality of the foregoing the **Trusts investment policy must be dedicated to safety of the capital and perpetuity**;

3) The Trust must take advantage, where possible and reasonable in the circumstances, of all income tax exemptions and preferences or minimization available and. In particular, without limiting the generality of the foregoing, those income tax exemptions which are available to Indians and Bands;

4) The administration of the Trust must take place on a reserve as defined in the Indian Act.

4.02 Powers and Authorities

Subject to section 4.01 hereof, without in any way limiting or derogating from the powers, authorities and discretions otherwise howsoever available to the Trustees, whether under any statute or at law or otherwise, and without application to or approval by any Court, the Trustees hereunder, acting by a majority, **with the Corporate Trustee as one of the majority,** unless otherwise stated, or the Corporate Trustee, as the case may be, shall have

and be invested with the following powers, authorities and discretions and no person dealing with them shall be charged with any duty to enquire into the propriety of their action, except as set out herein, that is to say:

(1) Dealing with Trust Fund

Subject to any specific direction set forth in this Indenture concerning any of the property of the Trust Fund, to use their discretion in the realization of any such property and to sell and call in and convert into money any part of the Trust Fund not consisting of money at such time or times and in such manner and upon such terms, and either for cash or credit or for part cash and part credit, as the Trustees may decide upon, or to postpone such conversion of any of such property or any part or parts thereof for such length of time as they consider advisable. The Trustees may retain as an authorized investment of the Trust Fund for all purposes of this Trust for such length of time as the Trustees consider necessary or advisable any cash or other property originally transferred to the Trustees pursuant to this Indenture or hereafter assigned, transferred or appointed to the Trustees by the Settlor or any other person or persons.

(2) Investments

Subject to section 4.01 hereof:

(a) in the first five (5) years following the date of settlement, the Trustees shall be limited to investments in bonds, debentures, or other evidences of indebtedness:

(i) of or guaranteed by the Government of Canada or a Province of Canada; or

(ii) rated “R1-middle” or better by Dominion Bond Rating Service, provided that if Dominion Bond Rating Service or any successor shall not then be providing such a rating service, rated equivalent to an “R1-middle” or better by a recognized national or international rating service designated in writing by the Corporate Trustee.

(b) In the next five (5) years following the end of the first five (5) years referred to in paragraph (a) above, the Trustees shall be limited as to seventy-five (75%) percent of the realizable value of the investments in the Trust Fund, to investments referred to in paragraph (a) above and as to twenty-five (25%) percent of such realizable value, to investments that are permitted under the Pension Benefits Standards Act 1985 (Canada).

(c) **Following the ten (10) year period referred to in paragraphs (a) and (b) above, the Trustees shall be limited to investments authorized by law for Trustees.**

The “Corporate Trustee”, and the complainant in this matter, is Peace Hills Trust Company (“PHT”). The ”First Nation Trustees” were at all times members of the First Nation.

The “initial settlement amount” was $10,265,921.76, delivered to the Trust in 1990.

The NAAF

Mr. Suppal began his involvement with the Trust in June of 2005 when he met with three First Nation Trustees and opened a new account on behalf of his employer, First Financial Securities Inc. (“First Financial”). These individuals completed a new account application form dated June 8, 2005 (the “NAAF”), signed by the Chief of Chemamawin First Nation, Clarence Easter, and Mr. Suppal in his capacity as Branch Manager of First Financial and as its registered representative. The NAAF was not signed by the Corporate Trustee and neither the Corporate Trustee nor any of its representatives was specified as having trading authority. The form listed three First Nation Trustees as having trading authority and named Chief Easter as contact person. The Corporate Trustee was named as the bank and a notation appeared at the bottom of the first page of the NAAF that “Peace Hills Trust is the Corporate Trustee for this account. They require monthly statement copy (sic) .. (with the PHT address)...”.

The NAAF forms the foundation of IIROC’s case against Mr. Suppal on the Know Your Client and unauthorized trades issues.

The IIROC panel accepted IIROC’s position that the account opening forms were flawed in many respects, specifically:

a) The trading authorities were wrong. Only the three First Nation Trustees were named as individuals with trading authority over the account, when the Trust Indenture provided that all decisions of the Trust were to be made by a majority of the four Trustees which included the Corporate Trustee.

b) The account was opened without the involvement or the authorization of the Corporate Trustee. The documentation relied upon to open the account consisted of corporate resolutions of the First Nation authorizing the First Nation Trustees to open the account for the Trust. The Respondent did not obtain any evidence that the opening of the account by the three First Nation Trustees had been authorized or approved by the Trust or that the three First Nation Trustees were authorized or approved to give independent instructions on behalf of the Trust.

The IIROC panel was critical of the investment objectives and risk factors set out in the NAAF. In comparison to the Respondent’s position that there were “clerical errors” involved in the creation of the account, IIROC “suggested it demonstrated a fundamental misunderstanding of who could make decisions involving the Trust and went to the heart of the Respondent’s failure to know the client.”

We will also be referring in these Reasons to a document which updated certain information contained in the NAAF in the form of another new account application form dated November 27, 2009 (the "Updated NAAF").

Sale of the Coupon Bond

We will be making references in these Reasons to a coupon bond (the "Coupon Bond"), which was the subject of an amendment to the Trust Indenture in 2004. Certain funds belonging to the Trust had been invested in a Province of Manitoba Bond in the amount of $2,598,000.00 maturing September 5, 2014. The amendment prohibited the sale and reinvestment of the value of the Coupon Bond until the earlier of the maturity date of the Coupon Bond and the date on which the net value of the Trust Fund "equals or exceeds the Initial Settlement Amount (of the Trust)."

In December of 2009, Mr. Suppal sold the Coupon Bond. Prior to the sale, Georgina Villeneuve, who took over responsibility for the Trust on behalf of PHT in August of 2009, had written a letter to Mr. Suppal giving him notice of a meeting with the First Nation Trustees to discuss account authorizations. At the heart of this notice was the decision-making majority of the Trust with the Corporate Trustee as one of the majority. The letter stated: "Further, until such time all trading instructions will be authorized by the two aforementioned with the included authorization of the Corporate Trustee as one of the majority." The IIROC panel found that, upon receiving Ms. Villeneuve's letter, Mr. Suppal "knew or ought to have known that the Corporate Trustee was insisting that its consent be obtained before any further trading, including the sale of the Coupon Bond, took place on the account" and that he made the sale "without receiving any evidence of consent to that sale from the Corporate Trustee."

Preliminary motion

Before submitting his Notice of Appeal, Mr. Suppal brought a motion that, if successful, would have permitted him to present new oral and documentary evidence at his appeal hearing.

The oral evidence he proposed to present was in the form of the testimony of 16 individuals, including the Chief of CFN, Clarence Easter. Among the objectives he had for the proposed witnesses were to provide confirmation that permission had been obtained for all trades, to provide evidence regarding the nature of the relationship among the First Nation Trustees and the Corporate Trustee and to address the findings of credibility made by the IIROC panel.

The documentary evidence would have covered a broad range of subjects, including suitability and account approval.

The IIROC panel had drawn a negative inference from Mr. Suppal's failure to have Chief Easter testify before the IIROC panel:

> "The panel was also very concerned about the failure of the Respondent to produce the Chief at the hearing to give evidence in support of the representations made by the Respondent in his testimony to the effect that it

> was his understanding (and he assumed) that the Chief had discussed investment decisions with the Corporate Trustee and that, accordingly, instructions given by the three First Nation Trustees reflected a decision made by all the Trustees, including the Corporate Trustee… the Chief would have been a key witness and presumably would have been able to confirm investment decisions had been made by the First Nation Trustees with the consent of the Corporate Trustee and in compliance with the Trust Indenture."

The Commission panel decided not to allow any new evidence, with the exception of oral testimony by Chief Easter on the subject of penalty.

Regarding the penalty issue and Chief Easter's role on that particular subject, the following excerpts from the Commission's Reasons for Decision on the preliminary motion explain the position taken by the panel:

> "We believe that the evidence of Chief Easter, if it should take the form which Mr. Suppal expects it to and if believed, could realistically affect the nature and extent of the sanctions imposed by the IIROC panel….. The appeal panel regarded Mr. Suppal as a serial offender, acting essentially alone and in his own best interests. He clearly did not leave a good impression with the panel. Without dealing specifically with the penalties imposed, we find that there is a clear and plain opinion on the part of the panel that Mr. Suppal had an adverse relationship with the Trust as a whole. Chief Easter's failure to appear, from which the appeal panel expressly drew a "negative inference", obviously did nothing to dispel that opinion, if not reinforcing it. … The IIROC guidelines provide recommendations for sanctions where breaches of the rules of which Mr. Suppal has been found guilty, namely the Know Your Client, suitability and unauthorized trading sections of the IIROC Rules. We note here that the minimum fines recommended in respect of breaches in these areas are $10,000.00 for Know Your Client, $10,000.00 for suitability and $15,000.00 for unauthorized trading – or $35,000.00 cumulatively.
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> The recommendations further call for a period of suspension in the most "egregious cases". More particularly they call for a period of suspension, in the case of unsuitable trades, "involving elements of deception and misrepresentation" and, in the case of unauthorized trading, "involving a large number of large value trades" …. Perhaps, in the context of his suspension, his behavior could be seen as less egregious if new testimony refutes the presence of "deception and misrepresentation", at least as regards the First Nation Trustees. One can also realistically envision the testimony of Chief Easter tipping the aggravating/mitigating factor scale in the penalty decision."

As a result, there were two parts to Mr. Suppal's appeal: the new evidence of Chief Easter and the appeal itself based on Mr. Suppal's Notice of Appeal.

We will examine the evidence from the IIROC hearing and then review Chief Easter's testimony.

<u>IIROC Staff's Case</u>

The case before the IIROC panel consisted of two witnesses along with a large volume of documentary exhibits.

i) Gil Gauthier

The first witness was Gil Gauthier.

Mr. Gauthier is a Chartered Accountant and, at the time of his appearance, was the Manager of Investigations with IIROC, having been in that position for about 10 ½ years. Prior to joining IIROC, he conducted investigations for the Canadian Venture Exchange and the Vancouver Stock Exchange and was with the Alberta Securities Commission in the enforcement area. He had been conducting securities related investigations for roughly 20 years.

IIROC's investigation of Mr. Suppal's activity began in around March of 2010 when a complaint was received by IIROC from Peace Hills Trust. He referred the panel to the letter written by Georgina Villeneuve dated September 8, 2010 which indicated, among other things, that "(o)n September 17, 2009 clear trading instructions were forwarded to Mr. Ravi Suppal (by the letter to which we have referred) that no trading should occur without the authorization of the Corporate Trustee. Mr. Suppal acknowledged these instructions in the form of his signature and faxed same back to our attention September 18, 2009." The letter went on to indicate that Mr. Suppal had conducted trades including the sale of a bond in December of 2009 without the knowledge of Peace Hills Trust.

Mr. Gauthier acquainted the IIROC panel with the Trust Indenture. He described it as the "governing document that a registered representative needs to know, be intimately familiar with in order to understand the client and to understand the objectives of the fund." He provided the basics of the Trust document including the requirement that decisions are to be made by a majority of Trustees with the Corporate Trustee being one of the majority and dealt with section 4.01 of the Trust Indenture, "Guiding Principles". In discussing guiding principles, Mr. Gauthier expressed the opinion that, because the initial settlement amount of the Trust is intended to be preserved in perpetuity, "that would indicate that the funds must be invested in low risk investments."

a) The NAAF and Know Your Client

We note from the transcript of proceedings that Mr. Gauthier, whose evidence was found to be "clear and concise" by the IIROC hearing panel quoted liberally from an interview he had conducted with Mr. Suppal. Mr. Gauthier derived from that interview that Mr. Suppal wasn`t clear as to who the Trust was intended to benefit. He took the panel through various account opening documents which indicated Mr. Suppal`s errors in not prominently showing Peace Hills Trust as one of the Trustees or as a Trading Officer. The NAAF established a pattern on the part of Mr. Suppal, as seen by the IIROC panel, of omitting the Corporate Trustee from important activities carried on by the Trust. Portions of Mr. Suppal`s interview with Mr. Gauthier suggested a misunderstanding as to the nature of a "corporate resolution" in the context of the Trust and the First Nation. Many comments by Mr. Suppal in the interview suggested to Mr. Gauthier that Mr. Suppal thought his client was the Chemamawin First Nation, not the Chemamawin First Nation Development Trust.

Under cross-examination, Mr. Gauthier was asked the following questions and gave the following answers regarding the account forms:

Q You are dissatisfied with the forms that were used to convey their authority, but you don't, according to the Trust Indenture interpretation, have a difficulty with the actual authority of those Band members, ….to act in the capacity of Trustees and to take the actions they took?

A We were satisfied that the Trustees indicated on that form were the Trustees that were chosen or elected by the Band Council to be Trustees on this indenture.

Q … so it's a form difficulty … not a substance difficulty, is that a fair statement?

A Well I would describe it as a …. It's a corporate resolution. The Trust is not a corporation.

Q To your knowledge did Peace Hills ever object to any of those individuals …. Prior to September, 2009 did Peace Hills ever object to any one of those individuals acting in the capacity in which they acted?

A No they did not.

Q And is there anywhere in all of these documents a document that purports to or actually does request, represent a request by Peace Hills to become an authorized Trading Officer on the account prior to September, 2009?

A I have not seen such a document.

Mr. Gauthier was asked to interpret the following passage from a letter dated September 11, 2007 from Peace Hills Trust to Mr. Suppal excerpts from which are as follows: "Peace Hills Trust Company is not in agreement to further expanding the investments into another 28 mutual funds, however, should the Development Trust, Trustees and Investment Manager feel otherwise, we will not delay the Development Trust Trustees' decision to make further investments into same. We feel it is not necessary to execute the consent in order for the investment transaction to proceed." Mr. Gauthier first took the position that, notwithstanding the context of that letter it was still necessary for Peace Hills Trust to participate in the decision even though Peace Hills Trust said they did not have to do so and was asked by Mr. Suppal's counsel: "… they're deferring to the First Nation Trustees on the investment decision. Is that a fair statement?" Mr. Gauthier did not answer that question with a yes or no; he suggested that, by "Development Trust Trustees" the letter could be referring to all four of them, including the Corporate Trustee.

b) Suitability

Mr. Gauthier's evidence on the issue of suitability was fundamental to the IIROC panel's conclusions in that regard. Mr. Gauthier explained the purpose of the suitability rule as follows: "Every recommendation that a representative makes to a client has to be based on that client's particular circumstances, including their net worth, their level of sophistication and the amount of risk they wish to take on."

Having made that statement, he introduced the panel to a financial statement produced by the Corporate Trustee as at January 31, 2010 showing a market value of the Trust's holdings at First Financial of $7.9 million, invested in mutual funds. He then reviewed a financial statement as at March 31, 2010: "Most of the holdings in the account are equity mutual funds." and stated "These holdings are riskier and more aggressive than what's required under the Trust Indenture." He indicated that approximately 90% of the funds were equity funds.

Under cross-examination by Mr. Suppal's legal counsel, Mr. Gauthier was asked whether preservation of capital was the restriction that Mr. Suppal failed to follow in his investment recommendations. He answered that "there is a certain amount of risk in equity funds that exceeds what we consider the preservation of capital for those funds." Mr. Suppal's position was that capital could not be preserved without factoring in inflation. There was a discussion between Mr. Suppal's counsel and Mr. Gauthier regarding the effect of inflation on capital and Mr. Suppal's position that the way to counter inflation and achieve the desired profit was to "invest a little more than in bonds and GICs". These disagreements were never really solved between the two of them but it appeared clear that the two differed greatly as to their perspective on how to achieve the purpose of the trust fund.

c) Unauthorized Trades

Mr. Gauthier's testimony on the unauthorized trades Count began by his introducing a letter dated September 17, 2009 from Mr. Kinsella to Mr. Suppal. The letter called Mr. Suppal's attention to the fact that the Corporate Trustee must consent to the conduct of transactions. The key passage in that letter, as we have indicated, is: "Further, until such time as this conversation has occurred all trading authorizations will be authorized by the two aforementioned with the included authorization of the Corporate Trustee, as one of the majority." Also, "at no time shall money be released from the account without obtaining all four authorized trustee signatures." Mr. Suppal signed a duplicate form of that letter as he was requested to do by Mr. Kinsella.

Mr. Gauthier was asked about the significance of this letter and responded "the significance is that Peace Hills Trust is making it clear to Mr. Suppal that they are …. he has to seek their authorization for any trades or any transactions in the account at First Financial."

Following the receipt of this letter by Mr. Suppal, the account was updated at Mr. Suppal's direction in November of 2009. Mr. Suppal received a letter from Ms. Villeneuve alerting him to the fact that the updated account document did not conform with the requirements of the Trust. Ms. Villeneuve sent a further letter dated January 11, 2010: "Please consider this our second request for the account documents to be changed to reflect Peace Hills Trust, as nominee and signing authority." Those letters were introduced through Mr. Gauthier, as were other letters

from Peace Hills Trust expressing concerns about how the Corporate Trustee had been left out of the decision-making process.

The IIROC panel concluded that "(u)pon receipt by the Respondent of the September 17, 2009 letter of the Corporate Trustee, the Respondent knew or ought to have known that the Corporate Trustee was insisting that its consent be obtained before any further trading took place on the account." The panel also makes reference to the other letters introduced by Mr. Gauthier.

ii) Georgina Villeneuve

The other witness called by IIROC Staff was Georgina Villeneuve.

a) Know Your Client and Unauthorized Trades

As we have mentioned, Ms. Villeneuve assumed responsibility for the account of the Trust at Peace Hills Trust in August of 2009. She concluded around that time that the account with First Financial had not been opened properly. The Corporate Trustee was not named as "one of the persons whose consent had to be obtained to authorize trading in the account." Thus began her stormy relationship with Mr. Suppal. Her evidence introduced in no uncertain terms the acrimony that existed between the two of them.

She was clear in establishing that Mr. Suppal was difficult to deal with at the onset of her involvement in August, 2009. Her first conversation with Mr. Suppal featured the following: "At first Mr. Suppal was quite upset with me because he … I believe the reason that I upset him is because I had called his office to find him, to get a call back, and he berated me for failing to leave a message with his assistant. I wasn't sure at the time how to respond to that because there wasn't another number to call or a zero out option. So I just listened to him. …. I asked him also in that conversation about his qualifications. We never really clearly understood what his qualifications were from that conversation. …. He was very aggressive in his demeanor and his conversation with me and tried to convince me that he was the expert in that area and that he knew what he was doing …. And I tried to explain to Mr. Suppal that I worked with quite a number of institutional managers across Canada and I understood marketable securities and that I had a comfort level in it and that, you know, I would like to see kind of what his policy and what his vision was and what his understanding was."

The IIROC panel referred in its decision to her experience, including 50 First Nations Trusts and dealing with nine different investment management firms: "Ms. Villeneuve testified that she was surprised to see the account had been opened at FFS by the Respondent without the Corporate Trustee being named as a Trading Officer having trading authority. She indicated she had never seen that happen before in all her dealings with First Nations Trusts."

Her vision of the co-existence of the Corporate Trustee and the First Nation Trustees clearly differed from the status quo at the time of her taking over responsibility for the Trust. She explained what "normally" happens when First Nation Trust accounts are opened: "Normally our accounts are opened; we have a custodian … at all times we hold custody of the assets. The only time we wouldn't hold custody of the assets are

some managers have what we call proprietary assets …. but we still retain the custody in the name in our account."

She testified that the role of the Corporate Trustee should be fourfold: firstly to take part in meetings, secondly to take part in decisions, thirdly to report to the First Nation and other interested parties on the investments and fourthly to hold custody of the assets.

At some stages of her testimony Ms Villeneuve was called upon to give evidence on circumstances which existed before August 2009. On one hand, under cross-examination, she would not answer questions regarding the relationship between Mr. Suppal and Peace Hills Trust prior to August of 2009: "I can't answer it because you're asking me to speak for actions that occurred before my employment at Peace Hills Trust."

On the other hand, she testified under direct examination as follows:

"My understanding is that Peace Hills was not comfortable with First Financial Securities and they had had considerable challenges in the past and they had washed their hands. It's my understanding from the CEO, Mr. Kinsella, that Mr. Suppal would … he would say, no, we're not moving that money, no, you are not putting it in mutual funds, and Mr. Suppal would exasperate him to the point that he was also raising his voice, and then it was just easier to go along, rather than taking, you know, continuing with the pattern of aggression." She later said "my understanding is what would happen is Mr. Suppal was aware of when GICs were maturing, and when they were maturing, he got a Council Resolution from Chief and Council directing Peace Hills Trust to transfer it to First Financial. When Mr. Kinsella would refuse, that's when he would receive a call from Mr. Suppal which was extremely aggressive and unprofessional, I believe is the term Mr. Kinsella used for me. And so he just threw up his hands. It was easier just to transfer it than to take the abuse."

The IIROC panel heard quotes from letters in which the individual Trustees expressed support for Mr. Suppal and received documentary evidence that the Corporate Trustee had been consulted about and consented to certain transactions. Ms. Villeneuve was asked whether, prior to her involvement, Peace Hills Trust had effectively removed itself from instructing Mr. Suppal on investments while knowing that the account had been opened without PHT's listing as an authorized signatory: "But did they ever, ever in that four year period request to be added to the account, that you're aware of?", Ms. Villeneuve answered: "Not to my knowledge". Asked: "So yours is the first request to be added to the account?", she answered: "Yes".

She was asked by Mr. Suppal's counsel: "So at least on two occasions, possibly more,……we have got evidence that Peace Hills was, in fact, consulted before trades were undertaken by the First Nation, is that true?". She answered "It would appear on two occasions, yes".

Ms. Villeneuve was directed to an excerpt from an Affidavit sworn by Floyd George, a First Nation trustee who also later appeared as a witness, stating "We the Band Trustees did represent to Mr. Suppal that we were the authorized officers of the Trust

with the signing authority and Peace Hills Trust will only require the monthly statements. ….” In connection with that statement Mr. Suppal’s counsel asked: “Before your arrival in August of 2009, does the statement in this last paragraph accurately reflect what you understood the trading patterns or the authorization patterns in the account to be?” Ms. Villeneuve answered “Somewhat …. the Trustees … knew that Peace Hills was a party to the decisions and that, due to difficult relationships through the years, there was certain isolation of facts and understanding of how things should be.” Asked then “Are you saying that maybe the Band and, or the First Nation, Council in particular and the Trustees, and Peace Hills Trust didn’t see eye to eye necessarily all the time so that communication wasn’t very good?”, the answer was “At times, yes.”

Ms. Villeneuve also testified that her preference was for the investment affairs of the First Nations Trust to be placed in the hands of a discretionary money manager. Her evidence regarding the sophistication of Chief Easter and his fellow councilors was that they lacked sufficient understanding of the nature of equities and other essential issues.

b) Suitability

In questioning Ms. Villeneuve on the issue of suitability, Mr. Suppal’s counsel focused on the Trust Indenture, particularly the section, quoted previously in these Reasons, where the Trustees are limited to investments authorized by law for Trustees. Her interpretation of that restriction was that the “prudent person rule” should govern. Asked what that means, Ms. Villeneuve said: “It means investments that an ordinary person would invest in. I don’t know if I explained it right. I’m not an investment expert.” She was asked to define prudent person and stated: “I agree with you, it’s hard, the prudent person rule I find is hard because everybody is different. As a prudent person, I’m more …. for myself investing, I would invest in safe investments. … It really depends on the needs of the First Nation quite greatly. You know, you see some First Nations where they’ll have 80% fixed income and, you know, 20% equities. So I don’t want to say exactly. …. I have seen from the consultants that their practice is normally to implement a 50/50, 50% meaning fixed income, 50% meaning equities.”

<u>Mr. Suppal’s Case</u>

Mr. Suppal’s counsel set the framework for Mr. Suppal’s position in an opening statement, excerpts from which are as follows:

> “The Respondent’s case will...demonstrate that:
>
> At account opening the account was opened to the exclusion of Peace Hills Trust at the direction of Peace Hills Trust and of the Band Trustees, an action which both the Band Trustees and the Corporate Trustee were entitled to take on interpretation of the Trust Indenture. …. When the fund came to Mr. Suppal in 2005, it was below the original settlement amount. And the Band Trustees, the authorized trading officers on the account, directed him to fix this, fix this situation. We can’t afford to have this trust fund that’s for our Band keep losing money all the time. We’re going to show that at every juncture the Band Trustees acted in accordance with Manitoba trust law and

> the Trust Indenture and demonstrated the required standard of care in instructing the Respondent on trading. …. Trustees are responsible for the Trust, Trustees direct their investment adviser on how to invest the funds. And not only did Mr. Suppal follow those instructions, but we will further demonstrate that the Trustees themselves sought legal advice, sought appropriate advice, discussed the matters with Band Council, produced Band Council resolutions to confirm that they wanted the funds to be invested the way they were. Mr. Suppal just did what he was asked to do. … He always, always ensured that he was properly instructed to trade, especially in September 2009 when the acrimony between the Band Trustees and Peace Hills Trust went through the roof. He knew it was a dangerous situation but what could he do. …. He took instructions from the only people who he could take instructions from, the Band Trustees."

i) Ravi Suppal

Mr. Suppal's testified in his own behalf following the conclusion of IIROC staff's case.

a) The NAAF and Know Your Client

In describing the NAAF, he testified that he had spoken directly with Peace Hills Trust with regard to the account opening. His evidence was that his assistant had opened the account in the name of Chemamawin Cree Nation, "so Mr. Bender (of PHT) said, no it should be Chemamawin First Nation Development Trust." He said that no one at the time, even representatives of Peace Hills Trust, insisted on Peace Hills Trust being a signing authority on the account.

He described the errors in the account opening form as "a clerical error". Asked by his counsel "so even though this is not a corporate account and even though these are not corporate directors or officers, you treated it that way and that was the way the First Nation members understood it, is that what you're telling us?" His answer was "yes".

In describing the process of gradually investing in mutual funds over the course of his administration of the account, he indicated that, as GICs or other "low yielding investments" matured, requests were made over time to Peace Hills Trust to transmit the proceeds of those investments to First Financial. The process followed the following steps: a Band Council Resolution would be sent to Mr. Suppal requesting that the proceeds be invested as per Council's investment instructions; secondly, he would propose the manner in which those funds would be invested; thirdly, he would obtain the signatures of the First Nation parties and request of Peace Hills Trust that the funds be transferred, at which point Peace Hills Trust would make the transfer.

Mr. Suppal was asked whether Peace Hills Trust ever asked that they be "on the account", given that Peace Hills Trust was a party to the process of moving funds to Mr. Suppal. He responded "never".

b) Unauthorized Trades

In his testimony, Mr. Suppal attempted to demonstrate how he had complied with the account objectives prescribed for him by his clients.

He essentially described the portfolio as reasonably low risk although he conceded that a substantial component was “speculative”, according to the NAAF, an apparent contradiction in terms.

As to the motivation for the sale of the coupon bond Mr. Suppal described that his First Nation clients wanted to sell the coupon and borrow the money from the Trust in order to put it into what they considered to be a badly needed housing project. When Peace Hills refused, the strain in the relationship between the First Nation and Peace Hills Trust worsened. Another element of the First Nation’s desire to sell the coupon bond and borrow money from the Trust was what Mr. Suppal described as extremely high interest rates payable in connection with an overdraft with Peace Hills Trust. They would also take the resulting capital gain tax free in view of a previous loss sustained during a previous investment regime. Mr. Suppal was also convinced that the time to sell the coupon bond was at hand in view of the fact that interest rates were at a likely all time low and “as soon as it goes up, that $2 million portfolio, bond will fall like a rock.” However they had to wait until the whole portfolio achieved the initial investment amount in order to comply with the rules related to the coupon bond.

Mr. Suppal’s counsel then took him to the instructions he received from Ms. Villeneuve that trading instructions must come from, among others in the majority, Peace Hills Trust. Mr. Suppal stated that he took the letter received from Ms. Villeneuve to Chief Easter who said “don’t worry, I’ll handle it.” That of course is the fork in the road at which Mr. Suppal chose to proceed without the written and express consent of Peace Hills Trust and sell the coupon bond. Again, Mr. Suppal stressed that Chief Easter told him that he had the consent of Peace Hills Trust.

In any event, Mr. Suppal received written instructions from Chemamawin Cree Nation dated December 2, 2009 to sell the Coupon Bond and the letter to him was accompanied by a Band Council Resolution.

With his counsel's assistance, Mr. Suppal summarized his direct testimony as follows:

1. he opened the account on the understanding that the First Nation Trustees were the authorized signatories to the account;
2. until September, 2009 Peace Hills Trust never objected to that arrangement;
3. throughout the life of the account he exercised due diligence in the Know Your Client area and understanding the investment objectives according to the Trust Indenture and according to the circumstances of his clients;
4. he made a profit for his clients – something that had not occurred in the 20 years of the Trust’s existence;
5. he was not worried that the trade in the coupon bond was unauthorized because Chief Easter, having seen the letter from Peace Hills Trust prohibiting such a trade, told him that it would be taken care of and that he had no reason not to believe Chief Easter in that regard.

We note here that the exchanges between IIROC counsel and Mr. Suppal obviously played an important role in the finding by the IIROC panel that Mr. Suppal’s evidence

was not credible. The panel found, among other things, that Mr. Suppal's testimony during cross-examination was evasive.

ii) Floyd George

The evidence of Floyd George represented a clear contrast to the witnesses for IIROC staff in the sense that Mr. George was completely supportive of Mr. Suppal. His evidence in chief concluded with: "… I'd like to add Ravi did nothing wrong. He did good for us. He maintained all our trust with us and with him. I don't know why we're sitting here right now talking about Ravi. He made us money. Bottom line, he made us money. … That's all I have to say. Ravi's a good man."

We will review his evidence briefly, although it is noted that the IIROC panel said the following about his evidence: "The evidence given by Mr. George was not of particular relevance. Mr. George appeared to be an honest person who answered questions in a straight-forward manner. On the question of whether the First Nation Trustees ever consulted with the Corporate Trustee prior to making decisions and instructing the Respondent, he admitted that did not happen but he appeared sincere in his belief that the Chief had been in constant and regular contact with the Corporate Trustee. It is clear he relied on the Chief and did not question any directive given by the Chief."

Mr. George did, however, have some firsthand knowledge of some of the interactions among the First Nation Trustees and the Corporate Trustee. His observations tended to support some of the hearsay evidence given previously by Mr. Suppal.

Floyd George had been a Band Councilor with Chemamawin Cree Nation for approximately 25 years and was a Band Councilor when the Trust was settled in 1990. Although he was not a Trustee when the account was opened with First Financial, he became a Trustee later in 2007.

Much of his evidence was also in the nature of hearsay such as his testimony that Chief Easter talked to the Trustee "all the time … maybe two, three times a week he talked to them."

He confirmed that the First Nation Trustees had been considering the sale of the Coupon Bond because of troubles with housing on the First Nation. Peace Hills Trust was not in favour of the sale of the Coupon Bond.

Mr. George was present at the December 2, 2009 meeting. His evidence was that Peace Hills said they were going to opt out of the Trust and threatened to stop payments for elders in the process. On the subject of the relationship between the Band Council (as well as the First Nation Trustees) and Peace Hills Trust as represented by Ms. Villeneuve, Mr. George's comments differed from those of Chief Easter which we will discuss further.

There is little doubt, perhaps to state the obvious, that in 2009 a radical change occurred in the manner in which Peace Hills Trust treated Mr. Suppal's investment advice.

iii) Peter Glowacki

Mr. Suppal's next witness was Peter Glowacki, a senior lawyer with a large Winnipeg law firm. Following a *voir dire,* Mr. Glowacki was qualified as an expert in wills, estates and trust law in the Province of Manitoba.

Mr. Suppal's counsel advised the IIROC panel that one of the purposes of having Mr. Glowacki present his opinions as an expert witness was "if we can establish that the Trustees acted within their authority under Manitoba trust law in giving him direction, then it follows that he was acting properly in his Know Your Client duty under the Trust Indenture and in the suitability area."

Mr. Glowacki had prepared a written report based on certain assumptions which required clarification while Mr. Glowacki was on the witness stand. Some of the assumptions were not accurate. One such assumption was the following: "Pursuant to the instructions of the Band Trustees and the Corporate Trustee, Mr. Suppal did not include the Corporate Trustee as part of a documentary account opening process nor was the Corporate Trustee one of the persons authorized to give instructions on the account. However, Mr. Suppal was advised that decisions relating to investment recommendations would be carried out as set out in paragraph 6 below." Paragraph 6 contained the words "the Corporate Trustee participated in every meeting where investment recommendations and investment objectives were discussed and participated in the vote as to whether they should be followed." Mr. Suppal's counsel indicated: "I would change subparagraph (c) (the subparagraph just quoted) to say that the Corporate Trustee did not participate in every meeting where investment recommendations were discussed or investment objectives, nor did it participate in any votes relating to these things, but it was…consulted on all of these in some form, either in writing by Mr. Suppal or by the Chief directly, according to the evidence of Mr. Suppal and Mr. George."

Mr. Glowacki was asked: "….does section 6.03 of the Trust Deed operate to permit the opening of an investment account by the Band Trustees with the consent of the Corporate Trustee, but without the Corporate Trustee's signature or inclusion as an authorized person on the account?" He responded that "the execution of documents, agreements ….can be designated unanimously by the Trustees as to the persons who are authorized to execute contracts, documents, instruments, basically a list of the paper, if you will, on behalf of the Trust and without any further authorization or formality. … The Trustees can unanimously designate a person or more than one person to execute the documents on behalf of the Trust … which can include the documentation in conjunction with the investment account with Mr. Suppal."

The panel asked Mr. Glowacki whether he would feel it incumbent on a person in Mr. Suppal's position to determine whether the majority in question in connection with the Trust included "the party that had to be part of that majority", to which Mr. Glowacki answered that it would depend on the process that had been established, but concluded: "I would want to know most certainly I'd have to have been advised that that had occurred, that the majority, as required pursuant to the Trust Deed or whatever the document was, was met." In saying that, he was referring to a course of conduct which had already been established and in this context meant established prior to the opening of the account with First Financial.

iv) Chief Clarence Easter

Chief Easter appeared before this panel under subpoena on April 15, 2016. He was examined in direct by Mr. Suppal and cross-examined by IIROC counsel. Before he appeared, the panel was made aware of concerns raised by legal counsel identifying himself as the lawyer for Chief Easter and for Peace Hills Trust. Those concerns related to the manner in which the subpoena had been drafted, concerns which did not prove to be disruptive.

Against the backdrop of the difficult relationship among Peace Hills Trust and the First Nation Trustees to which we have referred previously, we had not expected to be advised that the same lawyer represented both Peace Hills Trust and Chief Easter. However, if there was any objection to be made over the lawyer's appearance, it would have been Chief Easter's objection to make. He appeared to be content to be represented by a lawyer who also represented Peace Hills Trust but the irony in the situation did not go unnoticed by this panel.

We also observed that Chief Easter was extremely careful or guarded in giving his evidence. He repeated many times that it was always his intention that the Corporate Trustee be included in decisions relative to the Trust. He was very clear in terms of his business relationship with Mr. Suppal, which we will examine in further detail; but the care he took in not offending Peace Hills Trust was obvious to this panel and reached a point where he made a denial about conflicts with Ms. Villeneuve which actually had been conceded by Ms. Villeneuve at the IIROC hearing. He clearly did not want to shed light on the apparent conflict between the First Nation and Peace Hills Trust even in the face of documentary evidence.

In the final analysis, unless the testimony of Chief Easter is considered to be completely unreliable, its influence on the penalty phase of Mr. Suppal's appeal is important. Unless we discount everything Chief Easter has said, which we do not, his appearance alone provided an advantage to us, which the IIROC panel was unable to enjoy. As a result, we will not reach our conclusions on the subject of penalty solely by deferring to the analysis and judgments on the part of the IIROC panel.

Chief Easter's evidence is summarized as follows.

Chief Easter has been Chief of the Chemamawin First Nation since 1994. He is one of the Trustees of the Trust, again since 1994. He has served as the Chairperson of the Trust for 22 years, normally chairing meetings. During the material time, between 2005 and 2010, Chief Easter, in his capacity as Chief, was the Chairperson of the Trustees as provided in the Trust Indenture and was their spokesperson.

a) The NAAF and Know Your Client

Chief Easter acknowledged that his position obligated him to ensure that the Trust operated in accordance with the terms and provisions of the Trust Indenture.

Chief Easter answered "yes" to the following questions: "Were you involved with (the) decision of buying and selling of securities like stocks, bonds, mutual funds?" and "(the) Corporate Trustee was involved?"

He was asked some questions regarding the state of affairs prior to Mr. Suppal's involvement in 2005. In that regard, he was shown a monthly statement for the Trust as of September 30, 2004 prepared by Peace Hills Trust. The following appeared at the bottom of the statement: "Peace Hills Trust Company does not participate in the decision of buying and selling investments under the category "other investments"." Chief Easter's explanation of the Corporate Trustee's involvement was: "They don't participate in the buying and selling, but they've been informed before it's bought or sold. Jory Capital (the investment adviser engaged by the Trust prior to Mr. Suppal) would always go to Peace Hills and explain what they were going to buy and what they were going to do before an actual sale or buy happens."

It was established that when the account was transferred from Jory to Mr. Suppal's firm the only signatory with apparent authority was Chief Easter and possibly another individual Trustee and, although it was not entirely clear, it appears unlikely that a document was signed by a representative of Peace Hills Trust.

Chief Easter did not know if Peace Hills Trust was a signing officer on the Jory account. Some objections arose as to the relevance of the manner in which the account was handled prior to 2005. Mr. Suppal argued "the relevance of what I was trying to establish was that things were done (the) same way …." Chief Easter was not able to shed a great deal of light on that issue but it was clear that Mr. Suppal was attempting to obtain evidence as to what form of consent had been provided by the Corporate Trustee during the time leading up to Mr. Suppal's involvement.

Chief Easter was then asked: "Is it fair to say that you manage several millions' worth of budget for the First Nation?" The answer was "yes … average around 20 million dollars". That amount, of course, related not solely to the contents of the Trust but as well to other investments involving the First Nation. Chief Easter indicated as well that some of the investments to which he referred were in mutual funds prior to Mr. Suppal's involvement.

Chief Easter was shown the NAAF and acknowledged the inclusion of the following statement at the bottom of the first page: "Peace Hills Trust is the Corporate Trustee for this account. They require monthly statement copy sent to Mr. Bender at 244 Portage Avenue address (sic)". Mr. Suppal asked Chief Easter: "At that time did they need anything else, other than the monthly statement and transaction report?", to which Chief Easter answered "no".

Mr. Suppal then introduced the Updated NAAF. On the second page of that document under "Investment Information" Chief Easter again was shown as Trading Officer and his investment knowledge shown as "sophisticated". To that Chief Easter said: "At the time I thought I was an expert." Asked "Is it correct to say that I dealt with you for four years and I saw you dealing with big numbers, big visionary projects …." Chief Easter answered "yes". Chief Easter wanted to be sure that his observations as to sophistication were meant to be what he thought during the timeframe between 2005 and 2009, as opposed to whether he thinks now that he was sophisticated at the time; however, we note he did think he was sophisticated at the time and apparently at least partially based on some considerable experience dealing with an obviously large amount of money for the benefit of his First Nation.

The Updated NAAF contained the same statement as the NAAF to the effect that Peace Hills Trust requires monthly statements. Chief Easter stated: “I insisted on it” and further acknowledged that there was never any complaint from the Corporate Trustee that monthly statements had not been provided to the Corporate Trustee.

Mr. Suppal and Chief Easter then went through how Mr. Suppal had been introduced to the First Nation. Chief Easter acknowledged that he had not been happy with the performance of the investments administered by Jory Capital prior to 2005. Chief Easter was introduced to Mr. Suppal by one of the First Nation’s consultants who said “I know a manager that can make you money.” Chief Easter acknowledged that the Trust had been losing money prior to 2005. At this point in his testimony he acknowledged disappointment with the Corporate Trustee’s management of the Trust fund and agreed that the First Nation’s Trustees considered Peace Hills Trust to be in a conflict of interest position because, as suggested by Mr. Suppal, “they were a lender to you, as well as they were investment manager”.

Mr. Suppal then touched again on the express requirements of the Corporate Trustee when the account was opened by asking the following question: “Did the Corporate Trustee express desire to be included on account opening documents at the time of opening the account? Did they express any interest or request that we should be on the account at that time?” Chief Easter replied “no”.

Chief Easter was of course not able to speculate as to whether the Corporate Trustee was satisfied with not being in a position to sign all the documentation being signed by the individual trustees, suggesting that Peace Hills Trust might not have been sure of what was being signed during this process because they were simply receiving monthly lists of investments. This apparently did not concern the Corporate Trustee at the time, although Chief Easter indicated that, although the mutual funds were “acceptable investments …. there was just too many buying and selling”.

There was some back and forth about why the Corporate Trustee had not been named as a Trading Officer on the account opening documents but it does appear clear that the Corporate Trustee did not insist on it and Chief Easter’s principal concern was that the Corporate Trustee be informed from time to time as to how trust funds were being invested.

On the issue of Mr. Suppal's honesty, he asked Chief Easter: “Did you ever feel that I was trying to deceive Corporate Trustee by not making them Trading Officer, so that I can do any trade I want without their permission?”; and “you didn’t feel that I was being dishonest with you or with Corporate Trustee in dealing with the Trust?” Chief Easter replied that he did not feel that way.

Chief Easter was referred to a letter dated June 1, 2007 over the signature of Brian Bender, Assistant Vice-President, Manitoba Region of Peace Hills Trust. Attached to the letter was a cheque in the sum of $727,000.00 payable to First Financial Services Inc. This letter and a similar series of letters further in these Reasons deal with the ongoing flow of funds from the Corporate Trustee to Mr. Suppal’s firm along with the understandings concerning those funds and the trust conditions imposed on them.

Chief Easter testified to the effect that the Corporate Trustee acknowledged the necessity of a certain threshold of profit from the Trust investments in order to meet the obligations of the First Nation and the objectives of the Trust Indenture. Chief Easter said: “Actually it was Peace Hills Trust that was, brought that forward as an issue, investing more money towards mutual funds and bonds, whatever, because we may not be able to meet our monthly obligations to the community. And I then instructed First Financial that we needed to make sure that the monthly obligations to the community are there to be met with.”

In general, Chief Easter agreed with Mr. Suppal’s suggestions regarding the standard process involved in making investments on behalf of the Trust although he took the opportunity persistently to add that Peace Hills had to be notified.

The process could be summarized as:

1. Mr. Suppal’s recommendation;
2. acceptance of his recommendation by the individual trustees;
3. consultation with Peace Hills Trust (but not every time);
4. a Band Council Resolution;
5. Chief Easter’s signature on a form prepared by First Financial Securities;
6. processing of the order;
7. confirming to Chief Easter via phone or in person that the order has been processed.

b) Suitability

On the second page of the NAAF under the heading “Investment Knowledge”, the indication for Chief Easter was “average”, to which Chief Easter stated: “At that time, I thought I knew everything about investments.”

Turning to page 4, under the heading “Investment objectives for this account” Chief Easter indicated that he agreed with the following apportionment: capital preservation – 30%, income – 30%, long term growth – 20%, speculation – 20%.

There was some discussion about the meaning of “Trading Officer” and although, Chief Easter did not consider “Trading Officer” to be an accurate description of his role in the operation of the Trust, the effect of his testimony was that, during the period between June, 2005 and September, 2009 the Corporate Trustee did not expressly demand that Peace Hills Trust be added as a Trading Officer. He said that, when Peace Hills Trust expressed a concern about what was being bought and sold during that period: “(m)y response is that First Financial has to provide reports to the Corporate Trustee on a monthly basis.” That was the essence of his instructions to Mr. Suppal.

The Updated NAAF involved an important adjustment on page 4 of “Investment objectives for this account”. The entry here was long term growth – 80% and speculation – 20%, to which Chief Easter made the following comments: “I was looking for best return for our money. You provided us with these options. This is information you provided to us and we agreed with it, because these were … First

Financial said that they would be the best way to make money out of our investments …. Because I always said I wanted more than 10%.

Chief Easter went on to say that, although the Corporate Trustee indicated that 10% would not be possible at current interest rates, “they initially agreed that we would invest in mutual funds, back in 2005. We both agreed that we would invest in mutual funds.”

At this juncture, Mr. Suppal’s contention was that Chief Easter had confirmed two elements of the investment strategy which had been agreed upon, not only among the First Nation Trustees, but also by the Corporate Trustee: firstly, to get better performance from their investments and secondly, that they could invest in mutual funds.

Referring again to Investment Objectives, Chief Easter agreed that he directed Mr. Suppal to the target of more than 10% return and further agreed with the diversification described in the account opening document: 80% long term growth and 20% speculative.

Along with the acknowledged threshold of 4% for the purpose of meeting expenses, the topic of inflation was addressed in Chief Easter’s direct testimony: “I remember discussions about inflation and I remember that we had to make money to keep up with the inflation. So our investments had to be making money. That’s what I understand. First Financial was there to do that. They said that they would make money.”

c) Unauthorized Trades

Chief Easter’s testimony in direct concluded with a discussion concerning evidence of events happening from 2009 on. IIROC counsel objected to any testimony by Chief Easter on matters during this period of time citing the Decision rendered by this panel following Mr. Suppal’s motion for new evidence. The position taken by IIROC counsel in support of their objection was that the instructions given to Mr. Suppal by the Corporate Trustee were in writing and in the paper world of IIROC that is where the matter ends: “So I think these questions of deception and manipulation are not appropriate because those are not considerations in that period of time.” The panel agreed with IIROC counsel and disallowed any further questions to Chief Easter covering that time period, including evidence of Mr. Suppal’s intent, good or otherwise, and malice or lack thereof.

We did allow some exploration of the motivation by the Trust to sell the Coupon Bond. At this juncture Chief Easter became adamant that the proposal to sell the Coupon Bond was Mr. Suppal’s, not Chief Easter’s, and stressed that the Corporate Trustee had to be part of the decision-making process in that regard.

As mentioned earlier, his resistance to the notion that there was a conflict between the Chief and his councilors and Peace Hills Trust on the subject of the sale of the Coupon Bond reached the point where he mistakenly indicated that Peace Hills Trust did not resign, if only temporarily, from its position as Corporate Trustee.

He denied having requested Peace Hills Trust to resign, at which point he was shown a letter which appeared to contradict Chief Easter in that regard. It was a letter from Michael Jerch, a lawyer who had been retained and consulted by Chemamawin Cree Nation. Excerpts from that letter include the following: "A number of concerns have been raised to our attention, including that the Chemamawin Cree Nation and the Chemamawin First Nation Trustees wish to replace the services being provided by Peace Hills as Corporate Trustee. …. There is a conflict, or at least the appearance of a conflict of interest between the paramount duties of Peace Hills as Corporate Trustee and its subsequent and subordinate roles as investment broker and as financial institution to the Cree Nation … the arrangement preferred by my client is for Peace Hills to resign as Corporate Trustee and to assist with the transfer of investments responsibility to a new brokerage to be determined."

That letter is dated January 18, 2008 and, despite its clear language, Chief Easter denied that the letter was intended to request that Peace Hills Trust resign as Corporate Trustee.

Chief Easter concluded his testimony with an acknowledgment that Mr. Suppal did not ever do anything that was not authorized by Chief Easter and that he received legal advice that the investments administered by Mr. Suppal "were made …. in accordance with the Trust."

Under cross-examination, Chief Easter testified that it was Mr. Suppal who selected percentages between capital preservation, income, long term growth, speculation and decided on the degree of risk although he did allow that "he provided me with an explanation of what those meant and I agreed". He also confirmed that he and his council members agreed with the income portion of the account at 80% and speculation at 20%.

Although he was careful to add under cross-examination that he "always insisted Peace Hills had to be notified, make sure that we were following the parameters of our Trust", he did provide information on the manner in which Peace Hills was involved with investments at the beginning of the relationship between the Trust and Mr. Suppal:

> "Initially when we first moved money to First Financial, First Financial provided a list of items….where the money could be invested, and then made sure that they're followed within that, within the parameters of our agreement. And it was sent to Peace Hills Trust, and Peace Hills also approved them and said its okay to invest in those investments. And that's how initially how we got started."

Analysis

a) Standard of review and relevant case law

Appeals to this Commission from Decisions by Self-Regulatory Organizations (SROs) such as IIROC will invariably involve discussions of the appropriate standard of review.

Mr. Suppal submits that the working description of the appropriate standard of review is to be found in *Re Jory Capital Inc. and Patrick Michael Cooney* (October 10, 2007, Manitoba Securities Commission unreported) in which this Commission found that "in exercising its powers under subsection 31.1(4)(b) the securities commission may overturn an IIROC Decision where it concludes that: (a) the IIROC panel proceeded on an incorrect principle; (b) the IIROC panel erred in law; (c) the IIROC panel overlooked some material evidence; (d) new and compelling evidence is presented to the Commission that was not presented to the IIROC panel; or (e) the IIROC panel's perception of the public interest conflicts with that of the Commission.

He has submitted that the IIROC panel erred in many respects but has suggested that the Commission's overriding role in applying the public interest as the essential frame of reference sets matters such as this appeal apart from appeals which are framed strictly within ordinary judicial standards of review. Mr. Suppal referred to his "recognized record of competence and value to his community" as one reason to invoke the statements contained in *Jory*.

In previous appeals from IIROC Decisions, this Commission has issued comments on the application of public interest to these appeals. We have also made statements on the subject of the public's interest in the existence of SROs and in their role in important matters of enforcement. In another *Jory Capital Inc. and IIROC* case (November 27, 2012, Manitoba Securities Commission, unreported), the panel stated: "The public has a strong interest in the existence of SROs such as IIROC and that interest demands that we support such organizations and their efforts to enforce matters not only in the direct financial interests of investors but also in matters of compliance. The latter issues may not appear to have a direct influence on the rights and interests of investors but they ultimately do. On the other hand, this Commission has on more than one occasion invoked its analysis of another aspect of the public interest in the local marketplace. We quote from a previous Commission Decision dated October 10, 2007:

> We agree with IDA (now IIROC) panels that Cooney has shown too little concern with honouring the Association's financial compliance rules. We also agree that the public interest requires that there be some significant sanctions imposed. The public interest, however, can be served without incurring the reasonably foreseeable risk of putting a local dealer out of business. In this area the Commission's perception of public interest differs from that expressed by the IDA panels."

Mr. Suppal argues that the above-quoted passage applies to his appeal and to his role as an advisor within this Commission's jurisdiction.

Aside from the *Jory Capital* case and other Securities Commission's Decisions cited by Mr. Suppal where IIROC Decisions had been varied or contradicted, there appears to be no debate over the applicable standard of review which has evolved in recent years. We will quote from cases cited for us by IIROC counsel in an effort to express the applicable standard of review, some from the Supreme Court of Canada.

First, in *Re Northern Securities Inc.* ((2014) 37 OSCB 161, Ontario Securities Commission), the Commission panel observed as follows: "While the Commission has broad discretion under section 21.7 of the (Ontario Securities) Act to intervene in

a decision of an SRO, in practice the Commission has taken a more restrained view of that discretion." The panel then went on to say: "The principle question on the application is whether the IIROC panel proceeded on an incorrect principle or erred in law. … It is only in rare circumstances that the Commission will intervene in an SRO Decision. To do so, the Commission must be satisfied that the applicant has met the "heavy burden and high threshold of demonstrating that its case fits within at least one of the five grounds for intervention…."

IIROC counsel cited additional cases from other provincial jurisdictions in which the "restrained approach" was described and applied. As well, the standard of reasonableness as opposed to correctness was consistently applied; there was no debate before us as to the applicability of the reasonableness standard of review.

It would still be useful to quote from McLean *v. British Columbia (Securities Commission*) (2013 SCC 67), the most recent of the Supreme Court of Canada cases on point:

> Since *Dunsmuir v. New Brunswick*, (2008 SCR 9) this Court has repeatedly underscored that "(d)eference will usually result where a tribunal is interpreting its own statute or statutes closely connected to its function, with which it will have particular familiarity." Recently, in an attempt to further simplify matters, this Court held that an administrative decision maker's interpretation of its home or closely connected statutes "should be presumed to be a question of statutory interpretation subject to deference on judicial review" (*Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association* (2011 SCC 61)).

That case focuses on the reasonableness standard of review but also on the practical advantage enjoyed by the authority appealed from owing to its "particular familiarity" with the evidence and "home statute".

In the case of *Re Steinhoff* (2013 LNBCSC 233), a British Columbia Securities Commission case from 2013, the panel commented on the penalties imposed on the Respondent by an IIROC panel:

- One year suspension
- Strict supervision for another year
- Prohibition from acting as a director or a senior officer of an IIROC member for five years
- Ineligible for reinstatement until rewriting examination
- Fine of $100,000.00, costs of $20,000.00 and disgorgement of commissions of $6,008.13

The panel made several observations which are on point with Mr. Suppal's case, largely because similar issues are addressed in his and the *Steinhoff* cases.

For example, on the issue of credibility, the panel in Steinhoff observed:

> "As a review tribunal, we are well aware of the importance of giving deference to the original tribunal's assessment of credibility, that tribunal having had the

> opportunity to observe the demeanor of witnesses while testifying, and therefore being in a better position to assess their credibility.
>
> However, the IIROC panel, having assessed the respective credibility of CK and Steinhoff, apparently then relied on that assessment to accept everything CK said and reject everything Steinhoff said, on more or less a blanket basis."

The panel went on to analyze and express some doubts as to the respective findings of credibility made by the IIROC panel.

Another example from *Steinhoff* is in regard to the reasonableness of the penalties imposed by the IIROC panel and general observations as to the respondent's character:

> "Although the Liability Decision generally describes her conduct as a failure to meet her suitability obligations, the Penalty Decision describes her conduct as manipulative and deceptive and as a planned and deliberate scheme facilitated by making misrepresentations. The panel also describes her actions, not as an isolated event, but as a "pattern of misconduct". ….
>
> The new characterizations of Steinhoff's conduct in the Penalty Decision are not supported by the evidence. In our view, the panel grossly exaggerated the seriousness of Steinhoff's conduct and unnecessarily impugned her character in the process. … The panel found that the NCAF form contained errors, but there is no evidence that Steinhoff made the errors with any manipulative or deception intent toward the Ks.
>
> Neither is there any evidence that there was any "scheme", or that Steinhoff planned a deliberate course of action to bring harm to the Ks.
>
> …. Steinhoff had been a broker for about 24 years when the penalty hearing was held. There was no evidence before the IIROC panel of dishonest conduct on her part to that point in time. Nor is there any evidence, in our opinion, that Steinhoff acted dishonestly in this case. Yes, she contravened the suitability requirements, a serious error, but we see no evidence in the record of a fundamentally dishonest person, which is what the IIROC panel would have people believe."

In *Steinhoff*, the Commission panel found that the IIROC panel erred in law because its characterization of Steinhoff's conduct was not supported by the evidence. The Commission panel set aside the IIROC's Penalty Decision other than its orders relating to disgorgement and costs and invited the parties to make further submissions on penalty. After those submissions had taken place, the panel ordered that a suspension was not warranted and imposed a fine.

b) Decisions as to liability

i) Counts 1 and 3

In our view, the Know Your Client and unauthorized trades Counts against Mr. Suppal are uncomplicated and were thoroughly prosecuted by IIROC staff through their two witnesses. We agree with the IIROC panel when it observed, in respect of the NAAF and sale of the bond coupon respectively:

1. The Respondent failed to use adequate due diligence to learn and remain informed of the essential facts relative to the Trust in connection with the establishment and operation of the account … ;

2. Upon receipt by the Respondent of the September 17, 2009 letter of the Corporate Trustee, the Respondent knew or ought to have known that the Corporate Trustee was insisting that its consent be obtained before any further trading took place on the account … The failure of the Respondent to have the consent of the Corporate Trustee for the sale of the coupon bond or for the purchase or sale of any securities on behalf of the Trust after September 10, 2009 and in particular after December 10, 2009 constituted unauthorized trading on behalf of the Trust.

The panel would not have been expected to change its opinion of the NAAF as a result of Mr. Glowacki's expert testimony. Mr. Suppal did not exercise the due diligence called for in the circumstances; he had no good reason to assume that the trustees were unanimously in favour of the trading authorities and other terms set out in the NAAF's.

Accordingly, we will not disturb the panel's finding that Mr. Suppal was in breach under counts 1 and 3 of the Notice of Hearing dated June 26, 2012. There is no need to discuss the applicable of standard of review in connection with these Counts. The decisions were correct.

ii) Count 2

The unsuitable trades Count is less straight-forward but stands as a good example of the applicability of the "home or closely connected statute" standard described by the Supreme Court of Canada in *McLean*. The suitability issue is more challenging on appeal partly because the IIROC panel reached its decision on the issue of suitability without the benefit of any expert evidence. Essentially, the evidence provided was that of Gil Gauthier, an IIROC investigator. Ms. Villeneuve offered some thoughts on the suitability of trades made by Mr. Suppal but acknowledged that she was not in a position to provide an opinion. The IIROC panel did observe that she "confirmed that in the course of administering other Trusts with similar investment objectives regarding the preservation of capital, she has seen portfolio managers recommend a 50/50 split for equities and fixed income investments."

The only exhibits shown to the IIROC panel on the subject of suitability by Mr. Gauthier were the two financial statements for the periods ending January 31, 2010 and March 31, 2010 respectively. The IIROC panel noted that IIROC counsel relied on his evidence as a "clear indication that the investments recommended by the Respondent were not suitable for the Trust." The IIROC panel noted, based on Mr. Gauthier's evidence and the presentation of those two financial statements, that

there was no balance in the portfolio of the Trust and the panel's conclusion reads as follows:

> Having reviewed the considerable documentary evidence before us, and in particular the various mutual funds comprising the investments of the fund as at January 31, 2010, and after having heard the testimony of the various witnesses and after considering the submission of IIROC counsel and counsel to the Respondent, it is our conclusion that the Respondent failed to ensure the recommendations he made to the Trust were suitable for the Trust and by doing so he breached Rule 1300.1Q. Disposing of the coupon bond and investing the entire portfolio of the Trust in 123 mutual funds (a significant number of which, in our view, were extremely high risk), which were further encumbered by deferred sales charges, leaves us with no doubt whatsoever that the recommendations of the Respondent were extremely inappropriate and the investments unsuitable.

The absence of expert evidence has not influenced other Commission panels not to defer to IIROC panels on the issue of suitability. In the *Steinhoff* case cited previously, the panel observed that: "Steinhoff suggested that there ought to have been expert evidence to assist the IIROC panel on the issue of suitability. We disagree. IIROC is the primary regulator of investment dealers and their registered representatives. It is the creator of suitability rules and standards and is therefore highly qualified to determine whether a given portfolio recommendation is suitable for the client in accordance with those rules and standards. The Commission is also recognized as an expert tribunal in securities regulation and is similarly qualified to assess suitability issues. The IIROC panel's Liability Decision is reasonable in finding that Steinhoff's recommendations were clearly unsuitable." That excerpt is an example of several cases in which a Securities Commission panel has deferred to an IIROC panel on the issue of suitability and in the case of *Steinhoff* there is a specific reference to the lack of expert evidence, which is the case here.

There are other factors which make suitability a difficult matter to define. The criteria of suitability in the case of the Trust Indenture were altered over the course of time by the wording of the Indenture, as shown in the excerpt quoted at the outset of these Reasons. Mr. Suppal had argued without success that the progressive nature of the Trust Indenture in restricting investments in the first ten years to a prescribed mix of low risk debt instruments and thereafter to investments "permitted" by The Trustee Act of Manitoba opened the door to a higher risk rating for the Trust.

Although investment restrictions were expressly loosened over the course of the existence of the Trust, the stated intent to preserve the initial settlement amount in perpetuity remained unchanged. The challenge of course was to reconcile the two apparently contradictory directions. Mr. Suppal and the First Nation Trustees preferred one direction and PHT and the IIROC panel another, the difference being, in general terms, liberal versus conservative interpretations of suitability within the framework of the Indenture.

Mr. Gauthier and Ms. Villeneuve both gave evidence that the investment structure of the Trust was not what they have experienced. Both were more familiar with structures where a portfolio manager carried on discretionary trading. Mr. Gauthier gave evidence that in his opinion the investments were risky. His evidence was that

“approximately 90 percent of the funds are equity, essentially equity funds, the balance being balanced funds that would hold a mix of equities and bonds”. These investments “represent roughly 80 percent of the total assets of the trust”.

The panel concluded that, because there was no balance in the portfolio of the Trust as of December, 2009 the argument put forward by Mr. Suppal that the tenets of “Modern Portfolio Management” were neither relevant nor applicable to an analysis of suitability.

The dilemma facing Mr. Suppal, as his counsel argued before the IIROC panel, was not with the instructions he was receiving from the First Nation Trustees but whether he interpreted the guiding principles and the Trust Indenture properly. Mr. Suppal argued that the investments he made on behalf of the Trust were permissible under trust law. He also had to convince the panel that they were in keeping with the provisions of the Trust Indenture. Having recognized that the core goal of preservation of capital seemed to be gaining more favour from the IIROC panel than the goal of growth within a portfolio, he argued that being tied down by the notion that capital must be preserved and thereby restricting investments to bonds and GICs was the result of an archaic interpretation of a 22 year old document. He argued that the document itself, the Trust Indenture, should be interpreted “broadly and freely” by the IIROC panel.

The IIROC panel disagreed and not unreasonably so. In our opinion, Mr. Suppal completed the investment objectives in the original NAAF based on how his new clients might want to invest, not on how they should invest according to their risk tolerance and the framework of the Trust Indenture.

Mr. Suppal’s counsel stated to the IIROC panel during her cross-examination of Mr. Gauthier: “Our case turns on the notion that the only way he could preserve capital, buying power with inflation and the expenses they were encroaching on the fund, was to invest a little more than in bonds and GICs.”

The stricter interpretation of the Trust Indenture suggested by Mr. Gauthier was preferred by the IIROC panel.

We have concluded that the IIROC panel was reasonable in reaching the conclusion that Mr. Suppal made unsuitable trades. The fact that there could be conflicting interpretations of the Trust Indenture is challenging but we defer to the panel’s decision on this Count and concur that Mr. Suppal is liable as alleged. Even if there is room for debate over the meaning of “permissible” or “investments authorized by law for Trustees”, this panel is in agreement with the IIROC panel that the portfolio lacked the level of balance, particularly in the latter part of 2009, to be considered appropriate for a trust fund such as the fund at hand.

c) Decision as to penalties and other findings

As we have indicated, the arguably contradictory language of the First Nation Development Trust presented a challenge to Mr. Suppal in his position as advisor. The purpose of the Trust was to “support the development of the First Nation and First Nation members, including its fishermen, trappers, hunters and other

community resource users ….” The fund was expressly required to be preserved in perpetuity. In effect Mr. Suppal’s clients were those fishermen, trappers and hunters whose representatives prevailed on him to use the Fund to generate needed funds for the beneficiaries of the Trust.

The beneficiaries of the Trust were represented by Trustees acting by a majority, with the Corporate Trustee as one of the majority. Yet the irony is that the only real illustration of the democratic process in action among the Trustees took place between 2005 and 2009 when all Trustees at least appeared to act in concert, albeit with the Corporate Trustee's participation being mostly by inference. From 2009 on the decision-making process was fractious; the First Nation Trustees appeared to act together but were at odds with the Corporate Trustee. The decision to initiate formal proceedings against Mr. Suppal in December 2009 was not a decision of the majority. This was done by the Corporate Trustee alone.

The IIROC panel suggests that the Corporate Trustee was forced to do so unilaterally because of Mr. Suppal’s concerted efforts to thwart the involvement of the Corporate Trustee in the decision-making process and that he did so out of his own self- interest. However, the evidence is clear that the First Nation Trustees were bringing as much or more resistance to bear against the Corporate Trustee as was Mr. Suppal. He may have had some personal differences with Ms. Villeneuve but there is no indication that he was leading attempts to have PHT removed as Corporate Trustee.

In assessing the penalties imposed by the IIROC panel, we repeat that we had the benefit of additional evidence in the form of Chief Easter’s appearance on the witness stand. We do take issue with many of the findings of fact made by the IIROC panel and ultimately with some of their decisions as to penalties. We say this with a deferential standard of review and the useful aspects of Chief Easter’s evidence in mind.

For example, in respect of the Know Your Client Count, the panel simply concluded that Mr. Suppal “failed to use adequate due diligence to learn and remain informed of the essential facts relative to the Trust …” Then, in the Penalty Decision Reasons, the panel stated: “That failure increased the vulnerability of the client by excluding the Corporate Trustee from participating in the investment decision process”, adding: “His failure to properly comply with the Know Your Client Rule was calculated and deliberate and a further aggravating factor.”

The IIROC panel reached its decision on liability after a thorough and exhaustive review of the evidence and of the party’s arguments. As we have said, we do not quarrel with those decisions. However, the panel also reached conclusions, as exemplified by the above excerpts and the following further examples, on the severity of Mr. Suppal’s culpability and of his motivations which, in our opinion, do not withstand the reasonableness test. We find, as we will explain, that the panel reached some of their conclusions without a basis in the evidence at hand.

Ms. Villeneuve has provided evidence to the effect that Peace Hills Trust challenged Mr. Suppal in the latter part of September, 2009 on his failure to adhere to the rules of the Trust Indenture. As to the period prior to that, the panel heard no oral evidence, at least as far as IIROC staff’s case was concerned, as to whether Mr.

Suppal was communicating with the First Nation Trustees, receiving and acting upon their instructions and making at least some informal determination that the Corporate Trustee was not about to veto his investments. To the contrary, the Corporate Trustee, over the course of these years, transferred funds to Mr. Suppal in the knowledge that he was going to invest in mutual funds on behalf of the Trust.

Whether her evidence sheds any light on the relationship between Mr. Suppal and the Corporate Trustee before August, 2009 is questionable although the IIROC panel seemed to accept her opinion on the nature of that relationship: “She indicated that the Corporate Trustee had complied with his requests for funds in the past rather than deal with his aggression because it was easier to transfer the funds than take abuse from the Respondent.”

We have noted in Ms. Villeneuve’s testimony, aside from evidence regarding her negative impression of Mr. Suppal personally, a total absence of evidence of “a carefully orchestrated scheme to open the Account in a manner that would avoid scrutiny and detection of the overriding effect the Trust Indenture had over the manner in which the account was opened and the manner in which funds of the Trust were to be invested.” (from the Penalty Decision Reasons of the IIROC panel)

Granted, Mr. Suppal’s testimony did little to support his position. His credibility was doubted, apparently to the extent that the IIROC panel disregarded everything he had to say. Yet we know from hearing Chief Easter that Chief Easter agreed with several of Mr. Suppal’s claims, including the claim that he did not act deceitfully.

Mr. Suppal’s witness, Floyd George, a senior member of the band council and for a time a First Nation Trustee, also testified in praise of Mr. Suppal’s competence and work ethic and clearly disagreed with the charges against him.

Mr. George’s evidence did not impress the IIROC panel but Ms. Villeneuve’s apparently did:: “Ms. Villeneuve said she found the Respondent to be uncooperative and aggressive, often raising his voice in conversations.” As mentioned, she believed that PHT acquiesced to Mr. Suppal’s actions rather than taking his abuse. Although that should not have been be considered as much more than a working hypothesis on the part of Ms. Villeneuve, her opinions appeared to have been assigned sufficient weight to evidence whether or not the Corporate Trustee participated in decisions, even by acquiescing to them. The implication clearly is that, prior to August 2009, the Corporate Trustee was bullied into allowing Mr. Suppal to have his way and reluctantly stood aside while Mr. Suppal executed his schemes, although there is no evidence to support this.

The evidence does show that it might have been reasonable for Mr. Suppal to assume that the work he was doing for the Trust was approved by the Corporate Trustee, even if not in strict conformance with the Trust Indenture. There is nothing in the evidence to indicate deceit regarding the trades made before December of 2009.

It is clear that the IIROC panel determined that Mr. Suppal was motivated by self-interest, while his clients were vulnerable to his actions: “The Respondent’s misconduct generated significant economic benefits to him while exposing a vulnerable client to a significant potential harm.” As to the vulnerability of the First Nation Trustees, Chief Easter’s evidence, which of course was not available to the

IIROC panel, plainly indicates that all of the investments made by Mr. Suppal followed transparent and thorough discussions with Chief Easter and his Band Councilors. Further, there is clear evidence coming from Chief Easter that he has experience in administering very large monetary accounts and that he took that role seriously in connection with his duties to the First Nation which he led, and still leads, as its Chief. Declarations that the clients were "vulnerable" were unfounded and contrary to the evidence.

We have concluded that the IIROC panel erred by failing to base its conclusions as to penalties on the evidence. The appearance by Chief Easter is an important factor in our conclusions even though we have considered some of his evidence, particularly regarding the relationship between the First Nation and Peace Hills Trust, to be unreliable. As we have said, Chief Easter clearly did not want to leave the impression that Mr. Suppal found himself in the middle of a conflict between the First Nation and Peace Hills Trust. His evidence did contradict some of the findings of the IIROC panel which called Mr. Suppal's character and honesty into question

The evidence does suggest that Mr. Suppal allowed his allegiances to the First Nation Trustees to overcome common sense during the period between August 2009 on. He clearly should not have proceeded to make trades on behalf of the Trust when he had been expressly prohibited from doing so even if is true that Chief Easter assured him that Peace Hills Trust was in agreement. Mr. Suppal felt that the Coupon Bond should be sold. Chief Easter and his fellow First Nation Trustees agreed and at the time Mr. Suppal was working within a climate of less than ideal relations among the trustees. To impute anything other than a failure in judgment on the part of Mr. Suppal cannot be based on any evidence we have seen. We will touch on these factors further when we briefly discuss the "14 Key Considerations" to which we have referred previously.

The foregoing discussion prefaces the conclusions which follow on the penalties assessed against Mr. Suppal. Were they proportional to the nature and severity of his breaches of the IIROC Code? We turn to the 14 Key Considerations contained in the Dealer Member Disciplinary Sanction Guidelines. We will only comment on the considerations which were found by the IIROC panel to be aggravating factors:

i) Harm to clients, employer and/or the securities market

The IIROC panel acknowledged that the Trust suffered no actual financial loss but commented that the "high level of exposure to the client" represented harm to the Trust and of course to the beneficiaries thereof.

Regarding the nature of harm to the Trust, we assume that the IIROC panel meant to say "potential for harm". The fact that there was no actual financial loss to the client does not excuse the fact that investments were unsuitable. It could have been the reverse for the beneficiaries of the Trust and we agree that the potential for harm existed in this case.

The IIROC panel went into a discussion about the integrity of the capital markets and noted that Mr. Suppal's failure to maintain proper records and failure to open the account properly made it difficult to properly audit the account, "thereby harming the integrity of the capital markets." That is an observation which we should not disturb in

keeping with the principle of deference but the "harm" consideration does not, in our view, seriously aggravate this situation.

ii) Blameworthiness and degree of participation

As noted by the IIROC panel, "the guidelines provide that non-intentional or negligent conduct should be distinguished from manipulative, fraudulent or deceptive conduct and that isolated incidents should be distinguished from "repeated, pervasive or systemic contravention of the rules."

The IIROC panel has found that Mr. Suppal entered into "a carefully orchestrated scheme to open the account in a manner that would avoid scrutiny …and represented an attempt by the Respondent to justify not having to secure the approval of the Corporate Trustee for any trading instructions." As we have indicated, these comments required some form of evidence as to the conduct of the parties prior to September of 2009. There was virtually none of that aside from Ms. Villeneuve's speculations.

The IIROC panel commented that "the Respondent proceeded with unauthorized trades throughout, knowing full well that the Trust Indenture required decisions of the Trust to be authorized by the Trustee." If that comment was to the effect that he proceeded to make unauthorized trades after September of 2009, we do not disagree. However to say, as the IIROC panel does, that "there are no extenuating circumstances or mitigating factors which affected the Respondents blameworthiness" is not reasonable. Chief Easter's evidence as to his role in the relationship among the Corporate Trustee, the First Nation Trustees and Mr. Suppal is, in our view, an important mitigating factor. This evidence, as we have mentioned, was unavailable to the IIROC panel, in part because of IIROC's inability to compel witnesses. The resulting negative inference drawn by the IIROC panel, whatever its effect on the IIROC panel's conclusions as to penalties, certainly contributed to the panel's perception that there were no extenuating circumstances or mitigating factors.

iii) Extent to which the Respondent was enriched by the misconduct

Over the period in question, Mr. Suppal earned $137,000.00 in commissions. The IIROC panel found that "there is no question he was enriched to a very considerable extent as a result of his misconduct." In our view, the evidence fails to support a finding of persistent and egregious misconduct throughout the period in question and the amount of commission described does not seem to us to be "very considerable". We have concluded that only the degree to which Mr. Suppal was "enriched" in the latter part of 2009 should be considered under this heading.

iv) Acceptance of responsibilities, acknowledgement of misconduct, remorse

The IIROC panel concluded that Mr. Suppal "has admitted no wrongdoing, shown no remorse and accepted no responsibility for his actions." This appears to be true. However, it did occur to us that Mr. Suppal's perception was that he was fighting for his reputation, if nothing else, and there is no doubt to us that his reputation had been seriously affected by the findings and comments of the IIROC panel. The fact that he is self-represented during this hearing and during the penalty phase of the

IIROC hearing also must be considered under this heading. That said, we has plainly resisted the fact that the Corporate Trustee had an effective right of veto according to the Trust Indenture and appears to have little or no regret over his failure to appreciate PHT's role as Trustee, particularly in 2009.

We recognize that Mr. Suppal might be expected to disagree with the IIROC panel over the severity of his misconduct prior to Ms. Villeneuve's taking over the First Nation account for PHT, particularly having had the benefit of Chief Easter's appearance. During his argument, he stated: "What has happened is just the one officer came at the end. She had no clue what was happening, what is the history of the thing. She just got upset. That's the whole case." That is clearly not a statement of remorse and acknowledgment of misconduct but there are some facts which support this argument. On balance, although we are prepared to recognize his version of the facts on this issue, his lack of remorse is evident and troubling. Mr. Suppal must take this as a statement that he has shown a notable lack of insight into those of his actions which have been found to be in breach of his duties.

v) Voluntary rehabilitative efforts

Mr. Suppal advised the IIROC panel that he had taken some courses since the complaint against him had been lodged but the panel discounted the rehabilitative effect of the course in view of his lack of remorse.

vi) Reliance on the expertise of others

Mr. Suppal did maintain that he had "regularly sought guidance from his firm's compliance people." The panel had reservations about Mr. Suppal's testimony in that regard because it had found a deliberate attempt to misconstrue the client and his having prepared misleading account opening documentation and found that "orchestrated concurrence can hardly be seen as a bona fide reliance on the expertise of others". That observation, of course, is based on the panel's findings on Mr. Suppal's conduct prior to September, 2009. Given the lack of supporting evidence, this consideration cannot be considered to be an aggravating factor in a material way. That is not to say that Mr. Suppal does not have to obtain input in the nature of compliance expertise in the future. Clearly he does.

vii) Planning and organization

The IIROC panel "found that the NAAF and the supporting documentation prepared by the Respondent constituted misleading disclosure concerning the client and in essence was an attempt to justify not having to secure the approval of the Corporate Trustee for the trading instructions." The panel further concluded that Mr. Suppal's actions "were not inadvertent, innocent or negligent, but rather indicative of a continuing pattern of deception. Overall, the conduct of the Respondent demonstrated careful planning and organization and constituted a *major* aggravating factor. (our emphasis)" We have discussed this finding by the IIROC panel and its relation to the evidence. This consideration, in view of the evidence and in view of Chief Easter's testimony, cannot be considered a major aggravating factor.

viii) Multiple incidents of misconduct over an extended period of time

In the opinion of the IIROC panel, Mr. Suppal repeatedly failed to obtain "clear, unequivocal consent of the Corporate Trustee to the various trades made on behalf of the Trust". However, the Corporate Trustee's participation, or lack thereof, in the investment activities of the Trust until September, 2009 was not controversial. At the risk of being repetitive, we agree that the NAAF's should have been completed properly but the Corporate Trustee had several opportunities before the appointment of Ms. Villeneuve to make any objections known to Mr. Suppal or to the First Nation Trustees. They did not and, Ms. Villeneuve's explanation aside, Mr. Suppal appeared to believe that all parties, including the Corporate Trustee, were adequately engaged in the Trust's investment strategies. The evidence indicates, in our opinion, less than "multiple incidents of misconduct".

ix) Vulnerability of the victim

We have made some comments on this issue. IIROC staff has argued that the intention of the Trust Indenture in establishing Peace Hills Trust as a mandatory "one of the majority" was to protect the First Nation. The IIROC panel found that the ultimate beneficiaries, namely the members of Chemamawin First Nation, were left particularly vulnerable by Mr. Suppal's actions. The First Nation, represented by Chief Easter and council, disagreed with the role of Peace Hills Trust as perceived by IIROC staff to the point of demanding through legal counsel that the Corporate Trustee withdraw due to conflict of interest. Although Chief Easter did not confirm that this conflict was taking place in the latter part of 2009, there is ample evidence of it in the form of letters and the testimony of Ms. Villeneuve. The point here is that it seems inconsistent that the IIROC panel would find that Peace Hills Trust was there to protect the First Nation when the First Nation's leadership, with some considerable financial sophistication in its background and with the benefit of legal advice, disagreed. Vulnerability of the First Nation Trustees should not in our opinion have been considered a major aggravating factor.

d) The Sanction Guidelines

The Dealer Member Disciplinary Sanction Guidelines provide guidance in the matter of sanctions which the IIROC panel addressed in reaching its conclusions as to penalties.

Dealing with the matter of suspension, the guidelines state as follows:

> 4.2.1 Suspension
> A suspension may be appropriate where:
> - there have been numerous serious transgressions;
> - there has been a pattern of misconduct;
> - the Respondent has a discipline history;
> - the misconduct has an element of criminal or quasi criminal activity; or
> - the misconduct in question has caused some measure of harm to the integrity of the securities industry as a whole.

The IIROC panel found that "suspension is warranted only in egregious cases and that a permanent ban is reserved for the worst cases and the worst offenders; cases

where there is reason to believe the Respondent could not be trusted to act in an honest and fair manner in all dealings with the public, his client, and the securities industry as a whole.". The panel referred to the calculated and deliberate manner in which Mr. Suppal went about his business beginning in 2005 and stated in no uncertain terms that his conduct was egregious. We have doubted many of these findings; we have found them to be outside the bounds of reasonability.

There has also been some "time served" by Mr. Suppal during the substantial intervening time between Ms. Villeneuve's complaint and the hearing of his appeal. During that time his business activities have obviously been in a state of flux and, since the rendering of the initial IIROC Decision, he has been living under the cloud of serious recriminations.

We have taken into consideration the evidence, together with our reading of Section 4.2.1 of the Sanction Guidelines (above), and have concluded that a suspension is not warranted. However, for reasons which are stated below, the suspension ordered by the IIROC panel will take effect on the date of this Decision; that is the Commission Order whereby the IIROC suspension was temporarily stayed is terminated.

As to the remaining penalties, we find that the imposition of $150,000.00 fine is disproportionate to the severity of his misconduct. The fine is hereby reduced to $50,000.00. This is allocated among the three Counts as follows:

a) Know Your Client $10,000.00
b) unsuitability $10,000.00
c) unauthorized trading $30,000.00

Payment is to be made on such terms as Commission staff shall determine.

The award of costs of $20,000.00 is reasonable, again payable on terms to be determined by Commission staff.

Regarding the three year period of close supervision, we note again that this has effectively taken place and can be considered as "time served". We have noted Mr. Suppal has been engaged in various courses and upgrades since he appeared before the IIROC panel. That is a factor in our decision in that regard.

We agree that Mr. Suppal should rewrite the Conduct and Practices Examination. Upon doing so successfully, his suspension shall immediately expire. Mr. Suppal shall be permitted to take the examination without delay.

Given that Mr. Suppal's appeal has been successful in part, we do not award costs in this cause in favour of either party.

"J.W. Hedley"
J.W. Hedley
Hearing Chair

"G.J. Lillies"
G.J. Lillies
Member

"D.L. Janovcik"
D.L. Janovcik
Member