



British Columbia Securities Commission

Citation: 2013 BCSECCOM 143

## Settlement Agreement

**Scotia Capital Inc.**

***Securities Act, RSBC 1996, c. 418***

¶ 1 The Executive Director of the British Columbia Securities Commission (the ED) and Scotia Capital Inc. (Scotia) agree as follows:

### **Agreed Statement of Facts**

1. Scotia is registered as an investment dealer in British Columbia.
2. At various times, Scotia's online retail brokerage division operated through three different entities: Scotia McLeod Direct Investing, Scotia iTRADE (previously known as E\*TRADE Canada Securities Corporation, which Scotia acquired in 2008) (E\*TRADE)) and Trade Freedom Securities Inc., which Scotia acquired in 2007.

### ***Background***

3. The ED issued cease trade orders under section 164(1) of the Act or a halt trade order under section 89(1) of the Act against each of the following issuers on the stated dates:
  - (a) Flotek Industries Inc., on November 3, 1999 (the Flotek CTO);
  - (b) EYI Industries Inc., on January 20, 2009 (the EYI CTO);
  - (c) City Xpress Corp., on May 14, 2009 (the CXC CTO);
  - (d) Intelligent Living Corp., on October 1, 2009 (the ILC CTO);
  - (e) E-Debit Global Corporation, on December 23, 2010 (the EDebit CTO);
  - (f) International TME Resources Inc., on February 18, 1999 (the TME CTO);
  - (g) Empire Energy Corporation International, on June 10, 2003 (the Empire CTO);
  - (h) ePunk Inc., on August 11, 2011 (the ePunk CTO);
  - (i) MIV Therapeutics, Inc., on August 26, 2009 (the MIV CTO);



- (j) Nuvilex, Inc., on May 27, 2011 (the Nuvilex CTO);
  - (k) DigagogoVentures Corp., on August 10, 2011 (the Digagogo CTO);
  - (l) Americas Energy Company, on November 27, 2009 (the Aeco CTO);
  - (m) Silverado Gold Mines Ltd. on January 21, 2011 (the Silverado CTO)  
and
  - (n) Forum National Investments Ltd. on June 28, 2012 (the Forum HTO).
- (collectively the CTOs and HTO)

4. Scotia received timely notification that the ED issued the CTOs and HTO, via the Canadian Securities Administrators email blast alert.

***Breach of the CTOs and HTO***

5. Scotia (or its predecessor) failed to identify and block execution of trades, contrary to the CTOs and HTO as follows:
- (a) between March 10, 2010 and August 13, 2010, Scotia permitted 10 trades of Flotek for three BC client accounts, contrary to the Flotek CTO;
  - (b) on April 13, 2010 and May 18, 2010, Scotia permitted two trades of EYI for one BC client account, contrary to the EYI CTO;
  - (c) on December 16, 2009, Scotia permitted two trades of CXC for two BC client accounts, contrary to the CXC CTO;
  - (d) on December 17, 2009, Scotia permitted one trade of ILC for one BC client account, contrary to the ILC CTO;
  - (e) on December 29, 2010, Scotia permitted one trade of EDebit for one BC client account, contrary to the EDebit CTO;
  - (f) between August 2006 and December 2006, Scotia permitted five trades of TME for one BC client account, contrary to the TME CTO;
  - (g) on January 4, 2010, Scotia permitted one trade of Empire for one BC client account, contrary to the Empire CTO;



- (h) on August 15, 2011, Scotia permitted two trades of ePunk for one BC client account, contrary to the ePunk CTO;
- (i) on December 7, 2011, in order to clear up the debit position of in a BC client account, Scotia's credit department conducted one trade of MIV, contrary to the MIV CTO;
- (j) on December 22, 2011, Scotia permitted one trade in Nuvilex for a BC client account, contrary to the Nuvilex CTO;
- (k) on January 12, 2012, Scotia permitted one trade in Digagogo for a BC client account, contrary to the Digagogo CTO;
- (l) on February 7, 2012, Scotia permitted one trade in Aeco for a BC client account, contrary to the Aeco CTO;
- (m) on March 6, 2012, Scotia permitted two trades in Silverado for a BC client account, contrary to the Silverado CTO; and
- (n) on June 29, 2012, Scotia permitted one trade in Forum for a BC client account, contrary to the Forum HTO.

***Previous settlements***

6. Before Scotia acquired it, E\*TRADE reached settlements with the ED in December 2001 and December 2008 respecting its breaches of various CTOs.

***Mitigating factors***

7. Scotia reported many of the breaches, and cooperated with Commission staff in their review of Scotia's conduct.
8. Scotia represents that it has taken corrective action to prevent similar breaches from occurring in the future.
9. Scotia concedes that it permitted breaches of the CTOs and HTO, due to its back office conversion, technological error, human error and stock symbols/name changes.

**Undertaking**

- ¶ 2 Scotia undertakes to pay \$65,000 to the Commission, which is due and payable immediately without further demand.

**Order**



¶ 3 Under the *Securities Act*, RSBC 1996, c. 418 (Act) the Executive Director will issue an order that Scotia:

1. be reprimanded under section 161(1)(j), for its breaches of the CTOs and HTO;

**Consent to Reciprocal Orders**

¶ 4 Any securities regulator in Canada may rely on the facts admitted in this agreement solely for the purpose of making an order similar to the one contemplated above.

**Waiver**

¶ 5 Scotia waives any right they may have, under the Act or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to this settlement.



**Counterpart**

¶ 6 This Settlement Agreement may be executed in counterpart.

¶ 7 April 19, 2013

“Robert Grant” )  
Scotia Capital Inc.  
(Signing Authority)

Robert Grant )  
Print Signing Authority Name )

“Dan DiFranco” )  
Witness Signature )

Dan DiFranco )  
Witness Name (please print) )

1064 Mesa Cr )  
Address )

Mississauga, ON L5H 4C1 )

Senior Compliance Officer )  
Occupation )

¶ 8 April 25, 2013

¶ 9 “Paul Bourque”  
Paul C. Bourque, Q.C.  
Executive Director