Re Parkinson

IN THE MATTER OF:

The Market Integrity Rules of the
Investment Industry Regulatory Organization of Canada (IIROC)

and

The Universal Market Integrity Rules
and

David Charles Parkinson

2012 IIROC 18

Investment Industry Regulatory Organization of Canada
Hearing Panel (Alberta District Council)

Heard: February 6, 2012
Decision: March 14, 2012

Hearing Panel:
Hon. Roger P. Kerans (Chair), Donald Milligan, William J. Welton
Appearance:
Charles Corlett, Enforcement Counsel
Alexander Mosaico, Respondent's Counsel

DECISION AND REASONS

Decision as to Penalty

¶ 1 We order the following sanctions against the respondent, David Charles Parkinson:

a) a fine of $30,000 payable to IIROC;

b) the suspension of access to IIROC regulated marketplaces for 6 months; and,

c) the respondent pay $10,000 costs to IIROC.

¶ 2 We agree that the suspension is from June 2010, which was when the respondent's employment with the Canaccord Capital was terminated as a result of the affairs disclosed in this Order, and he ceased to be with an IIROC registrant, and has not since worked in the industry. We note with approval that the period of suspension has expired, and he is now free to find work.

¶ 3 We note that this settlement has arisen as a result of an offer of settlement made and accepted on this date. We are asked to approve it pursuant to Part 3.4 of UMIR Policy 10.8, and we do.

Background

¶ 4 The client of the respondent was trying to prop up stock, of which he had bought a considerable amount. The respondent was instructed on his behalf to buy small amounts of this stock a few moments before closing time, immediately re-list for a higher price, and then withdraw the sell offer the next morning. This was repeated several times. The obvious purpose was to hold interest in the stock, and, they hoped, hold its price.

This scheme failed, although not for lack of trying. The purchase orders were placed directly by the respondent on the telephone instructions of the client.

¶ 5 To quote Mr. Corlett, the stock was, "kind of a dog", and the client lost quite a bit of money despite the scheme.

¶ 6 Mr. Corlett also correctly said, "the form of artificial pricing activity here was tampering with the *bona fide* price information function of the marketplaces". Although there may have been no victims, and the pattern was quickly picked up by the stock exchange, this action is prohibited by the UMIR rules, as the respondent admitted in the settlement agreement. He also admitted that he should have known better, and had a duty not to attempt to undermine the stock market.

¶ 7 There was a delay here in the prosecution, but as Mr. Corlett conceded none of that can be placed at the door of the respondent.

Reasons

¶ 8 The first principle of disposition as expressed in the regulations is specific and general deterrence. As a result, there must be a penalty.

¶ 9 The panel's main concerns in determining appropriate sanctions were:

a) Protection of the investing public;

b) Protection of IIROC's membership;

c) Protection of the integrity of the IIROC process;

d) Protection of the integrity of the securities markets; and

e) Prevention of a repetition of conduct of the type under consideration.

¶ 10 The nearest comparable offence was *D'Ugo* 2010 IIROC No. 12, where the offender was ordered to pay $40,000. But he had made 26 trades in furtherance of a similar scheme.

¶ 11 We have taken into account in this case suggestions of counsel and all the UMIR disciplinary sanction guidelines.

DATED AT VANCOUVER, this 19th day of March, 2012.

The Hon. Roger P. Kerans, Chair

Donald Milligan

William J. Welton

OFFER OF SETTLEMENT

A. INTRODUCTION

1. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada and Market Regulation Services Inc. (RS). Pursuant to the *Administrative and Regulatory Services Agreement* between RS and IIROC, effective June 1, 2008, RS has retained IIROC to provide services for RS to carry out its regulatory functions.

2. The Enforcement Department Staff (Staff) of the Investment Industry Regulatory Organization of Canada (IIROC) has conducted an investigation (the Investigation) into the conduct of David Charles Parkinson (the Respondent).

3. The Investigation has disclosed matters for which IIROC seeks certain sanctions against the Respondent pursuant to Rule 10.5 of the Universal Market Integrity Rules (UMIR).

4. If this Offer of Settlement is accepted by the Respondent, the resulting settlement agreement (the

Settlement Agreement), which has been negotiated in accordance with Part 3 of UMIR Policy 10.8, is conditional upon the approval by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1 (the Hearing Panel).

5. The Respondent agrees to waive all rights under UMIR to a hearing or to an appeal or review if the Settlement Agreement is approved by the Hearing Panel.

6. The Respondent consents to be subject to the jurisdiction of IIROC and its relevant disciplinary process and rules in relation to this matter.

7. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.

B. AGREEMENT AS TO REQUIREMENTS CONTRAVENED

8. The Respondent agrees to the following contravention:

   (i) The Respondent, while a Registered Representative at CIBC World Markets Inc., entered orders and executed trades on the TSXV for the shares of Covalon Technologies Inc. in the period November 2007 to December 2007 and in March 2008 and for the shares of Digger Resources Ltd. in the period November 2007 to December 2007 that he ought reasonably to have known, would create, or could reasonably be expected to create, an artificial bid price and/or sale price for the securities contrary to UMIR 2.2(2)(b) and UMIR Policy 2.2, for which he is liable under UMIR 10.4(1);

C. ADMITTED FACTS

9. For the purposes of this Settlement Agreement, Staff and the Respondent agree with and rely upon the admitted facts and conclusions which are set out in the Statement of Allegations attached as Appendix "A" to this Settlement Agreement.

D. DISPOSITION

10. For the contravention in paragraph 8 above, Staff and the Respondent have agreed upon disposition as follows:

    (i) a fine of $30,000 payable by the Respondent to IIROC;

    (ii) a suspension from access to all IIROC-regulated marketplaces for a period of six (6) months, effective from June 2010 when the Respondent's employment was terminated by Canaccord Capital Corporation and he ceased to be a registrant with an IIROC-regulated firm.

    (iii) costs of $10,000 payable by the Respondent to IIROC.

11. If this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees to pay the amounts referred to in paragraph 10 within 30 days of such acceptance.

E. PROCEDURES FOR ACCEPTANCE OF OFFER OF SETTLEMENT AND APPROVAL OF SETTLEMENT AGREEMENT

12. This Settlement Agreement shall be presented to a Hearing Panel at a public hearing (the Approval Hearing) held for the purpose of approving the Settlement Agreement, in accordance with the procedures described in UMIR Policy 10.8 in addition to any other procedures as may be agreed upon between the parties. The Respondent acknowledges that IIROC shall notify the public and media of the Approval Hearing in such manner and by such media as IIROC sees fit.

13. Pursuant to Part 3.4 of UMIR Policy 10.8, the Hearing Panel may accept or reject this Settlement Agreement.

14. In the event the Settlement Agreement is accepted by a Hearing Panel, the matter becomes final, there can be no appeal or review of the matter, the disposition of the matter agreed upon in this Settlement

Agreement will be included in the permanent record of IIROC in respect of the Respondent and IIROC will publish a summary of the Requirements contravened, the facts, and the disposition agreed upon in the Settlement Agreement.

15. In the event the Hearing Panel rejects the Settlement Agreement, IIROC may proceed with a hearing of the matter before a differently constituted Hearing Panel pursuant to Part 3.7 of UMIR Policy 10.8 and this Settlement Agreement may not be referred to without the consent of both parties.

16. The Respondent agrees that, in the event he fails to comply with any of the terms of the Settlement Agreement, IIROC may enforce this settlement in any manner it deems appropriate and may, without limiting the generality of the foregoing, suspend the Respondent's access to marketplaces regulated by IIROC until IIROC determines that the Respondent is in full compliance with all terms of the Settlement Agreement.

17. The Respondent agrees that neither he, nor anyone on his behalf, will make a public statement inconsistent with this Settlement Agreement.

IN WITNESS WHEREOF the parties have signed this Settlement Agreement as of the dates noted below.

DATED at Edmonton, Alberta on the 6th day of February, 2012.

"David Parkinson"

Witness Signature

David Charles Parkinson

"Witness"

Name of Witness

Address of Witness

DATED at Vancouver, British Columbia on the 6th day of February, 2012.

Per: "Warren Funt"

Warren Funt

Vice President, Western Region

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

Suite 2800, 1055 West Georgia Street
Vancouver, British Columbia V6E 3R5

This foregoing Settlement Agreement is hereby approved this 6th day of February, 2012, by the following hearing panel constituted to review the terms thereof:

Per: "The Honourable Roger Kerans"

Panel Chair

Per: "Mr. Donald Milligan"
Panel Member

Per: "Mr. Brad Whyte"
Panel Member

STATEMENT OF ALLEGATIONS

I. REQUIREMENTS CONTRAVENED

1. IIROC Staff alleges that David Charles Parkinson (the "Respondent") has committed the following contravention:

    (i) The Respondent, while a Registered Representative at CIBC World Markets Inc., entered orders and executed trades on the TSXV for the shares of Covalon

Technologies Inc. in the period November 2007 to December 2007 and in March 2008 and for the shares of Digger Resources Ltd. in the period November 2007 to December 2007 that he ought reasonably to have known, would create, or could reasonably be expected to create, an artificial bid price and/or sale price for the securities contrary to UMIR 2.2(2)(b) and UMIR Policy 2.2, for which he is liable under UMIR 10.4(1).

2. The text of the relevant Requirements is set out in Schedule "A" hereto.

II. RELEVANT FACTS AND CONCLUSIONS

OVERVIEW

3. In the period November 2007 to December 2007 and in March 2008, (the "Relevant Covalon Period"), and November 2007 to December 2007 (the "Relevant Digger Period") (the two periods collectively being the "Relevant Periods"), the Respondent entered orders and executed trades in two client accounts that maintained and supported the price of Covalon Technologies Inc. ("Covalon") and Digger Resources Ltd. ("Digger") at a level predetermined by his client, and thereby created an artificial price for the securities. The two client accounts were controlled by the same person, Anthony Ianno (the "Client").

4. During the Relevant Periods, the Respondent entered closing trades and closing bids in both Covalon and Digger for the Client's accounts causing end of day upticks in sale price and bid price.

5. The trading on behalf of the Client had the effect of maintaining and supporting the value of the Client's positions in Covalon at CIBC World Markets Inc. (CIBC WM) and other Dealer Member firms and for Digger at other Dealer Member firms for margin purposes.

6. In a settlement agreement with the Ontario Securities Commission, the Client admitted that in the period between June 2007 and April 2008, he engaged in conduct contrary to the public interest. The Client admitted that between November 2007 and April 2008, he engaged in trading that had the effect of maintaining and/or increasing the closing price of Covalon shares. The purchases were made, and the accounts at brokerages were opened, at various points during this time, in 11 different accounts held at 8 different brokerages.

7. The Respondent knew or should have known of his gatekeeper obligation to be aware of, and alert to, manipulative and deceptive activity and potentially manipulative and deceptive activity. The Respondent knew, or ought reasonably to have known, that the orders and trades would create or could reasonably be expected to create an artificial price for the securities.

BACKGROUND

8. Covalon is a medical bio-systems company and a listed issuer, which trades on the TSX Venture Exchange (TSXV).

9. According to the TSXV Market Quality Department, during the Relevant Covalon Period, Covalon was considered a Tier 2 stock (less liquid stock).

10. Digger is an oil and gas exploration company, which trades on the TSXV. It was also an illiquid stock during the Relevant Digger Period.

11. CIBC WM is registered as an investment dealer, is a Participating Organization of the Toronto Stock Exchange (the TSX), a Member of the TSXV, and therefore, a Participant under UMIR.

12. The Respondent was employed in the industry since 1997. In September 2008, he was dismissed by CIBC WM. He subsequently was employed at Canaccord Capital Corporation but was dismissed in June 2010.

THE CLIENT

13. The Client resided in Toronto, Ontario during the Relevant Periods. The Client and the Respondent have known one another for over 20 years.

14. In April 2007, the Client began opening accounts with the Respondent in the Edmonton, Alberta branch of CIBC WM.

15. In total, the Client opened 3 accounts with the Respondent:

    (i) The Client's personal account was opened in April 2007 (assets transferred in from TD Waterhouse);

    (ii) A corporate account over which the Client had trading authorization (RC Corp) was opened in June 2007 (assets transferred in from CIBC Investors Edge); and

    (iii) A second corporate account over which the Client had trading authorization (OCI) was opened in April 2008. This account did not trade Covalon or Digger, but shares of Covalon were received into this account.

COVALON AND MARGIN

16. From January 2007 to early May 2007, Covalon traded between $0.60 and $2.75. Between May and October 2007, it traded around $3.00. It traded above $3.00 in November and December 2007 and just below $3.00 in March 2008.

17. The Respondent made requests for margin for Covalon on behalf of the Client and his accounts in November 2007. In making the request, the Respondent advised CIBC WM of the prospect of more business from the Client. The Respondent knew that the Client had multiple accounts at other Dealer Member firms, including an account at another Dealer Member firm that was providing margin on Covalon.

18. At the time of the Respondent's first request, CIBC WM was not granting margin for Covalon, since Covalon was listed on the TSXV. Margin was only granted for securities trading on the TSX.

19. The Client's accounts were subsequently granted 25% loan value on Covalon as of November 9, 2007.

20. During the Relevant Covalon Period, CIBC WM used a stock's closing bid price for margin/loan calculations for long positions. The normal policy at CIBC WM was that margin was available only for stocks listed on the TSX trading above $3, and CIBC WM made an exception to the policy in granting margin on Covalon. The Respondent knew that the $3 policy also applied to Covalon and, as required by CIBC WM, advised the Client of this policy.

TRADING IN COVALON DURING THE RELEVANT COVALON PERIOD

21. The Client had a pattern of entering multiple late day orders in Covalon with the Respondent.

22. The majority of the trading occurred after 15:45pm and, at times, the Client was the closing bid and/or the closing trade of the day.

23. During November and December 2007, the Client, through the Respondent, set the closing bid and/or closing trade on 5 days at or above $3.20.

24. In the first week of January 2008, the 25% loan value for Covalon in the RC Corp account and the Client's personal account was rescinded. On February 15, 2008 the RC Corp account was transferred out of CIBC WM.

25. On March 5, 2008, the Client, through the Respondent, set the closing bid at $3.00.

26. On April 9, 2008, the 25% loan value on Covalon was again extended to the Client's personal account, provided that the stock closed above $2.25.

27. As of May 7, 2008, the Client's personal account was restricted from buying any more shares of Covalon by CIBC WM.

TRADING IN DIGGER DURING THE RELEVANT DIGGER PERIOD

28. In late 2007, the Client had been granted margin on Digger at another Dealer Member firm, with 20% loan value if it traded over $1.50 and an increase to 50% loan value when trading at $2.00.

29. The Respondent did not know that margin value had been extended to the Client at the other Dealer Member firm but was aware that the Client held a position in Digger at the other firm.

30. During the Relevant Digger Period, the Client, through the Respondent, set the closing bid and/or closing trade on 6 days. The majority of the trades were executed on upticks.

31. The late day trading in Digger continued until December 2007. On December 20, 2007, the Dealer Member firm which had previously granted margin on Digger removed the margin value on Digger for the Client's accounts, mainly as a result of what it perceived to be suspicious trading.

32. As of May 7, 2008, the Client's personal account was restricted from buying any more shares of Digger by CIBC WM.

RESPONDENT'S KNOWLEDGE

33. The Respondent ought reasonably to have known that the orders entered on behalf of the Client would create, or could reasonably be expected to create, an artificial price for Covalon and Digger shares during the Relevant Periods.

34. The pattern and method of the Respondent's trading on behalf of the Client for the shares of Covalon and Digger demonstrates an intention to maintain and support the price of the securities at a predetermined price:

    (i) predominantly entering orders and executing trades late in the trading day (after 15:45 and often in the dying minutes);

    (ii) active orders of such a size so as to take out the entire offer and post a residual amount as the best bid;

    (iii) passive orders that increased the bid, expired at the end of the day unfilled, and were not subsequently re-entered the next morning;

    (iv) passive orders that upticked the bid but which could have been filled for a nominal amount from the posted offering; and

    (v) small board lot orders that upticked the bid at the end of the day and expired unfilled.

QUERIES BY CIBC WM

35. In February 2007, investment advisors at the Respondent's branch were advised that entering trades before the close could potentially up-tick the market. The investment advisors were told to be aware of frontrunning and upticking, and that their trades would be reviewed daily to check for the same.

36. The Respondent did not receive any queries during the Relevant Periods.

37. In April 2008, as a result of an inquiry by Market Regulation Services Inc., the Respondent was queried about the late day trading in Covalon and Digger, but was unable provide any adequate explanations for the pattern of late day trading on behalf of the Client.

III. CONCLUSION

38. The purpose of UMIR 2.2 and Policy 2.2 is to protect the marketplace from manipulative and deceptive trading activity and artificial pricing, which undermine the integrity of the marketplace and erode investor confidence.

39. The Respondent had a gatekeeper obligation to be aware of, and alert to, manipulative and deceptive activity or potentially manipulative and deceptive activity. The Respondent ought reasonably to have

known that the orders and trades on behalf of the Client would create or could reasonably be expected to create an artificial price for the securities.

February 6, 2012

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