

Re Jacob

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Sasha Jacob

2017 IIROC 17

Investment Industry Regulatory Organization of Canada
Hearing Panel (Ontario District)

Heard: March 6, 2017

Decision: March 6, 2017

Written Reasons: March 31, 2017

Hearing Panel:

Martin L. Friedland, C.C., Q.C. (Chair), C. Stuart Livingston and Nick M. Savona

Appearances:

Natalija Popovic, Senior Enforcement Counsel, IIROC

Jeremy Devereux, Counsel for the Respondent

REASONS FOR DECISION

INTRODUCTION

¶ 1 Staff of the Investment Industry Regulatory Organization of Canada (“IIROC”) and the Respondent, Sasha Jacob (“Jacob” or “the Respondent”), entered into the attached Settlement Agreement, dated March 1, 2017.

¶ 2 The Settlement Agreement was presented to the Hearing Panel for acceptance on March 6, 2017. The Respondent’s Counsel and Staff of IIROC jointly recommended that the Hearing Panel accept the Settlement Agreement. The Respondent did not appear at the hearing.

¶ 3 After hearing counsel for IIROC and the Respondent and considering the material filed, the Hearing Panel issued an order accepting the Settlement Agreement. These are our reasons for making that order.

¶ 4 The Respondent founded a company, Jacob Securities Inc. (“Jacob Securities”) in 2009. Jacob Securities, a Dealer Member with IIROC, was a Type 2 Introducing Broker with National Bank Correspondent Network as its Carrying Broker. The Respondent was Jacob Securities’ Chairman, Chief Executive Officer, sole director, and, until the suspension of the firm’s membership with IIROC in December 2015, Ultimate Designated Person, charged with the primary responsibility for Jacob Securities’ compliance system. He had previously worked in a registered capacity at Dundee Securities Corporation, an IIROC Dealer Member firm, from 2002-2006. He was not registered with IIROC from 2006-2009.

¶ 5 Between 2013 and 2015, Jacob Securities had only one office, located in Toronto, and it employed no more than 25 employees at any one time.

¶ 6 Following an Expedited Hearing held on December 17, 2015, an IIROC Hearing Panel (not the present Panel) concluded that Jacob Securities had failed to meet basic requirements to supervise the activities of the

employees at the firm. Pursuant to the Order of that Hearing Panel, Jacob Securities' membership in IIROC was suspended and the firm was required, among other things, to immediately cease dealing with the public. The reasons for the earlier Panel's decision are set out in *Re Jacob Securities* 2016 IIROC 03.

¶ 7 In its reasons for its decision to suspend Jacob Securities membership, the earlier Hearing Panel noted, in part, Jacob Securities' numerous deficiencies and its prolonged and pervasive inability to meet basic compliance and regulatory standards; and its inability to appreciate or to remedy its numerous problems as the company continued to be in serious financial and operating difficulty.

¶ 8 The Respondent was not a party to the Expedited Hearing and the Hearing Panel made no direct findings with respect to his conduct. The present Settlement Hearing relates to the Respondent's conduct.

SETTLEMENT AGREEMENT

¶ 9 In the Settlement Agreement, the Respondent admits (paragraph 122) to the following contravention of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:

From November 2013 to December 2015 the Respondent as Ultimate Designated Person failed to supervise the activities of Jacob Securities and individuals acting on its behalf in order to ensure compliance with IIROC Rules, and failed to promote compliance with IIROC Rules by Jacobs Securities and those acting on its behalf, contrary to IIROC Rules 38 and 2500.

¶ 10 Staff and the Respondent agreed to a Settlement in which the Respondent would pay a global fine of \$100,000, be suspended from acting as an Ultimate Designated Person for three years from the acceptance of the Agreement, and pay costs to IIROC in the sum of \$10,000.

¶ 11 IIROC Rule 38.5 requires a Dealer Member to appoint a person as an Ultimate Designated Person ("UDP"), who must:

- (c) (i) supervise the activities of the Dealer Member that are directed towards ensuring compliance with the Corporation's Dealer Member rules and applicable securities law requirements by the firm and each individual acting on the Dealer Member's behalf, and
- (ii) promote compliance by the Dealer Member, and individuals acting on its behalf, with the Corporation's Dealer Member rules and applicable securities laws.

¶ 12 Paragraphs 41 to 43 of the Settlement Agreement state:

41. Jacob as UDP bore ultimate responsibility for establishing, maintaining, and promoting a culture of compliance and ethical behaviour with Jacobs Securities,

42. Jacob's failures as UDP were compounded by the fact that he was not only the UDP, but also the CEO, Chairman, and sole member of the Board of Directors. He bore responsibility for ensuring that the firm adopted and implemented appropriate policies, procedures and practices to ensure compliance with IIROC Rules.

43. Jacob was responsible in particular for the conduct of Jacobs Securities and the supervision of its employees.

¶ 13 IIROC Rule 2500 sets out in detail the "Minimum Standards for Retail Customer Account Supervision." The Rule states, for example, under the heading "Account Supervision Generally":

Rule 38.1 requires a Dealer Member to implement systems of supervision and control to ensure that [it] is reasonably designed to achieve compliance with the Rules and Rulings of the Corporation and all other laws, regulations and policies applicable to the Dealer Member's securities and commodity futures business. This section provides guidance on the means used by Dealer Members to meet that requirement with respect to retail customer accounts.

AGREED FACTS

¶ 14 Paragraph 3 of the Settlement Agreement states: “For the purposes of this Settlement Agreement, the Respondent agrees with the facts as set out in Part III of this Settlement Agreement.”

¶ 15 It is not necessary to set out here in our reasons the facts detailed in Part III of the Settlement Agreement, which is attached to these reasons. The Settlement Agreement provides the following brief overview in paragraphs 5 and 6:

5. IROC Staff identified a series of supervisory failures on the part of Jacob Securities in consecutive IROC compliance reviews of the firm. In some cases the failures were ongoing since 2013.

6. The Respondent failed in his supervisory responsibilities in respect of these failures. In particular the failures included: lack of supervision of retail and institutional account trading, of timely registrations filings, and of identification and rectification of conflicts of interest.

¶ 16 Paragraphs 18 to 39 of the Settlement Agreement set out the various compliance examinations conducted by IROC Staff between 2014 and 2015 and the deficiencies found. In paragraph 25, for example, the Settlement Agreement states: “The 2014 Business Conduct Compliance (“BCC”) Report identified 11 issues of concern...four of which were categorized by BCC Staff as ‘Repeat Significant’ items from the previous examination held in 2013.”

¶ 17 Paragraph 30 of the Settlement Agreement, to pick another example, states: “The 2015 Integrated Compliance Examination Report identified 40 issues of concern to Compliance Staff, seven of which were categorized by Compliance Staff as ‘Repeat Significant’ items from the 2014 examination...”

¶ 18 There were a wide range of problems relating to a number of areas, such as supervision of trading activity, outside business activities, corporate governance, conflicts of interest, and corporate finance reporting and compliance. There were also problems with Risk Adjusted Capital, which resulted in an Early Warning Level 2 designation

¶ 19 Paragraphs 45 to 119 give further details of specific issues, such as insufficient evidence of daily and monthly supervision of retail accounts, insufficient evidence of trading conduct supervision/testing, failure to make timely reports on the National Registration Database, failure to fully comply with anti-money laundering requirements, failure to maintain adequate corporate finance records, and failure to identify, address, and consistently disclose potential conflicts of interest.

STANDARD FOR REVIEWING A SETTLEMENT AGREEMENT

¶ 20 A Hearing Panel can either accept or reject a Settlement Agreement. It cannot modify it. The standard for reviewing a Settlement Agreement was well-stated in a Pacific District hearing, *Re Johnson* (2012 IROC 19), where the panel stated:

“The test applicable to a decision whether to accept or reject a settlement is well-known. Simply put, a panel should accept such an agreement unless it considers the penalty provided for clearly to fall outside a reasonable range of appropriateness.”

¶ 21 There are many similar statements. See, for example, *Re Taggart* (2013 IROC 24); *Re Scotia Capital* (2013 IROC 38); *Re Jiwa and Hoffar* (2012 IROC 9); *Re Rotstein and Zackheim* (2012 IROC 27); *Re Portfolio Strategies Securities Inc.* (2012 IROC 36), and *Re Ast* (2012 IROC 38), all stemming from *Re Milewski* ([1999] I.D.A.C.D. no. 17), where the panel stated:

“A District Council considering a settlement agreement will tend not to alter a penalty that it considers to be within a reasonable range, taking into account the settlement process and the fact that the parties have agreed. It will not reject a settlement unless it views the penalty as clearly falling outside a reasonable range of appropriateness. Put another way, the District Council will reflect the public interest benefits of the settlement process in its consideration of specific settlements.”

¶ 22 A recent IROC Panel, *Re Donnelly* (2016 IROC 23), rightly observed in accepting a Settlement Agreement (paragraphs 7 and 8):

“It is usually in the public interest that matters be settled where possible rather than be determined through contested hearings. The reasons for this are often that an earlier determination of a dispute is better than a later determination. Settlements are usually less expensive than contested litigation, and there is less congestion in the dispute settling system when matters are taken out of the system through settlements. Finally where both parties agree, the result is often more palatable to the parties and society than in a contested hearing where the winner takes all.

For these reasons, a panel considering the acceptance of a settlement agreement will try to reach a determination of acceptance. It will recognize that settlements are often hotly debated with much compromise and give-and-take between the parties in order to reach an acceptable position agreeable to both parties. Furthermore, the panel will recognize that it is not privy to all the facts and the motivations and considerations that each of the parties have in coming to a solution of the dispute that is agreeable to them.”

¶ 23 The Panel in *Re Donnelly* went on to say in paragraph 29: “Where both parties to a settlement agreement are represented by counsel, and have the means to undergo a contested hearing, but have reached a settlement, it is unlikely that a panel would ever conclude that the settlement was unfair and not reasonable.” In the present case both sides were represented by counsel and there were extensive negotiations.

THOUGHTS ON SUPREME COURT OF CANADA CASE: *R. v. ANTHONY-COOK*

¶ 24 Counsel for IIROC included in the Book of Authorities a unanimous 2016 Supreme Court of Canada case, *R. v. Anthony-Cook* [2016] S.C.J. No. 43, which severely restricts a trial judge’s ability in criminal matters to deviate from a negotiated agreement between the Crown and defence. The test that was adopted by the Supreme Court (paragraph 34) was that a rejection by a trial judge of a joint submission would occur only when it is in the public interest in the sense that the proposed submission is “so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system has broken down.” The court went on to say: “This is an undeniably high threshold.”

¶ 25 That test may well be appropriate in the criminal law context, but is it the right test for an IIROC Panel? Unlike the procedure under the Criminal Code, there is a detailed procedure for Settlement Agreements outlined in the IIROC Rule 8215. A Panel, for example, cannot vary a Settlement Agreement, but must either accept or reject it. If it is rejected, the Settlement Agreement can come before another Panel. It is arguable that the process permits Panels more scope for rejecting Settlement Agreements than appears possible under the *Anthony-Cook* test.

¶ 26 Few Settlement Agreements are, in fact, rejected by IIROC or MFDA Panels, but the possibility of doing so tends to put some pressure on the parties to come up with reasonable settlements in the eyes of the members of the Panel and, in particular, in the eyes of the two experienced industry members on each Panel. Industry expectations are important for a self-regulatory body and are, in fact, specifically mentioned in the recently revised IIROC Sanction Guidelines (February 2, 2015), which state, citing the well known case of *Re Mills* [2001] I.D.A.C.D No. 7 at page 3:

“General deterrence can be achieved if a sanction strikes an appropriate balance by addressing a Regulated Person’s specific misconduct but is also in line with industry expectations. Any sanction imposed must be proportionate to the conduct at issue and should be similar to sanctions imposed on respondents for similar contraventions in similar circumstances.”

It is not surprising that comparable cases are routinely set out by counsel for IIROC in Settlement Agreement hearings.

¶ 27 So the *Milewski* test may be a better test in the IIROC context than the *Anthony-Cook* test because it helps bring about reasonable settlements. A recent IIROC decision, *Re Cavalaris* 2017 IIROC 04, which relied

heavily on the *Anthony-Cook* case, was also included in the material. We have not included it in our reasons because we believe it is unnecessary in Settlement Agreement hearings and might create problems if relied on as the test. It is unnecessary because for almost 20 years the *Milewski* jurisprudence has been relied on by IIROC and MFDA Panels, without serious difficulties. If the *Milewski* test is unsatisfactory, it can easily be clarified or changed by the regulatory body. To introduce the *Anthony-Cook* test might create needless problems. Supreme Court decisions in criminal matters are often difficult to interpret and frequently require further elaboration by the courts. So the test would require Panels – not normally very knowledgeable about criminal law issues – to understand and keep up with the evolving criminal law jurisprudence. And it would necessitate determining whether the new test was the same or stricter than the *Milewski* test.

¶ 28 Moreover, the contexts with respect to the regulatory process and the criminal process are different. The Supreme Court of Canada was trying to solve a serious and difficult problem of congested courts and unreasonable delay in the criminal justice system, which can and does result in the dismissal of charges under the Charter of Rights and Freedoms. The issue has proven to be hard to solve legislatively or administratively, in part because of the many participants in various levels of government that have an interest in the process. The Supreme Court’s recent case of *R v. Jordan* 2016 SCC 27, dealing with time limits for trials, can be seen as a companion attempt to deal effectively with the issue of congestion and delay in the criminal justice system in Canada.

¶ 29 Those same issues are not being faced to the same extent by the regulatory process in the field of securities regulation. Moreover, there are significant differences between the regulatory process and the criminal process, such as the potential penalties, the quantum and burden of proof, the right to be protected from self incrimination, the right to counsel, the use of closed hearings, the use of sanction guidelines, and the use of industry representatives on the Panels, to mention some of the differences.

¶ 30 It seems wise to stick with the *Milewski* test, which has stood to test of time.

WHY THE PANEL APPROVED THE SETTLEMENT AGREEMENT

¶ 31 Although the Respondent’s misconduct was serious, we did not view the penalty as “clearly falling outside a reasonable range of appropriateness.”

¶ 32 We have also taken into account the importance of the settlement process, the give-and-take of Settlement Hearings and the fact that in the present case both sides were represented by counsel.

¶ 33 Further, there was no evidence presented that any clients were harmed by the lack of adequate supervision.

¶ 34 The Respondent has not previously been disciplined by IIROC.

¶ 35 The IIROC Sanction Guidelines state: “The primary purpose of IIROC disciplinary proceedings is to maintain high standards of conduct in the securities industry and to protect market integrity.” The penalty of \$100,000 is a significant sum that will help achieve that purpose, will provide general and specific deterrence, and will send a clear message to Ultimate Designated Persons, Supervisors and others that they have to take their responsibilities seriously.

¶ 36 The Respondent did not appear to have acted maliciously.

¶ 37 We have also taken into account in the Respondent’s favour paragraphs 119, 120 and 121 of the Settlement Agreement, which state:

119. The Respondent represented to IIROC that he relied upon legal advice in relation to the preparation of the Marketing Materials and Subscription Agreements.

120. Prior to becoming the Ultimate Designated Person of Jacob Securities, the Respondent had never been registered as an Ultimate Designated Person. He had also never been registered with IIROC as a Chief Compliance Officer or Chief Financial Officer of a Dealer Member.

121. The Respondent hired individuals to serve as Chief Compliance Officer and Chief Financial Officer and represented to IIROC that he believed them to be competent, that he trusted those individuals to diligently carry out the responsibilities assigned to them, and that he believed that they were doing so.

¶ 38 The penalty imposed in this case is not out of line with the cases involving Ultimate Designated Persons cited to us by Counsel for IIROC.

¶ 39 For the above reasons, we accepted the Settlement Agreement.

Dated at Toronto this 31st day of March 2017

Martin L. Friedland

C. Stuart Livingston

Nick M. Savona

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Investment Industry Regulatory Organization of Canada (“IIROC”) will issue a Notice of Application to announce that it will hold a settlement hearing to consider whether, pursuant to Section 8215 of the Consolidated Enforcement, Examination and Approval Rules of IIROC, a hearing panel (“Hearing Panel”) should accept the settlement agreement (“Settlement Agreement”) entered into between the staff of IIROC (“Staff”) and Sasha Jacob (“Respondent”).

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement in accordance with the terms and conditions set out below.

PART III – AGREED FACTS

3. For the purposes of this Settlement Agreement, the Respondent agrees with the facts as set out in Part III of this Settlement Agreement.

A. Overview

4. Jacob was responsible as the Ultimate Designated Person (“UDP”) to supervise the activities of Jacob Securities Inc. (“JSI”) and its employees and to ensure compliance with IIROC Rules.
5. IIROC Staff identified a series of supervisory failures on the part of JSI in consecutive IIROC compliance reviews of the firm. In some cases the failures were ongoing since 2013.
6. Jacob failed in his supervisory responsibilities in respect of these failures. In particular the failures included: lack of supervision of retail and institutional account trading, of timely registrations filings, and of identification and rectification of conflicts of interest.
7. As a result of the supervisory failures and related compliance deficiencies at JSI, the firm was suspended from IIROC membership in December 2015.

B. Registration History

8. Jacob worked in a registered capacity at Dundee Securities Corporation, an IIROC Dealer Member firm, from 2002-2006; he was not registered with IIROC from 2006-2009.
9. Jacob founded JSI in 2009 and was its Chairman, Chief Executive Officer (“CEO”), and was UDP until the suspension of the firm’s membership with IIROC in December 2015.

C. IIROC Expedited Hearing re JSI

10. Following an Expedited Hearing held on December 17, 2015 an IIROC Hearing Panel concluded that JSI had failed to meet basic requirements to supervise the activities of the employees at the firm.
11. The Hearing Panel's conclusion was based on numerous significant compliance deficiencies as identified by IIROC examinations of JSI, several of which were repeat findings from previous year's examinations, as detailed below.
12. Pursuant to the December 17, 2015 Order of the Hearing Panel ("Order") JSI's membership in IIROC was suspended and it was required, among other things, to immediately cease dealing with the public.
13. Jacob was not a party to the Expedited Hearing and as such the Hearing Panel made no direct findings with respect to Jacob's conduct.
14. In its reasons for the decision to suspend JSI's membership the Hearing Panel noted, in part JSI's numerous deficiencies and its prolonged and pervasive inability to meet basic compliance and regulatory standards; and its inability to appreciate or to remedy its numerous problems as it continued to be in serious financial and operating difficulty.

D. Management Structure at JSI

15. JSI was a Dealer Member of IIROC from 2009 until December 2015. Between 2013 and 2015 JSI only had one office, located in Toronto, Ontario and it employed no more than 25 employees at any one time.
16. The management structure at JSI included an Executive Management Committee composed of Jacob, Christopher Rutledge ("Rutledge") who was the Chief Compliance Officer ("CCO"), and Gurterath Buttar ("Buttar") who was the CFO at JSI from May 2013 until his resignation, effective December 16, 2015, one day prior to the suspension of JSI's membership with IIROC.
17. Jacob as the CEO and UDP reported to the Executive Management Committee. Rutledge as CCO reported to Jacob and to the Executive Management Committee. Jacob was the sole Director of JSI.

E. IIROC Compliance Examinations

18. IIROC compliance Staff ("Compliance Staff") routinely conducts examinations of IIROC Dealer Member firms to ensure compliance with regulatory requirements.
19. The purpose of these examinations is to determine whether a Dealer Member has implemented policies, procedures and controls in compliance with regulatory requirements, including IIROC Rules and all applicable securities laws.
20. At the conclusion of an examination Compliance Staff meets with representatives of the Dealer Member ("Exit Interview") to review the findings of the field examination and to provide the Dealer Member an opportunity to respond to any issues raised.
21. After the Exit Interview, Compliance Staff finalizes its findings in a formal report and delivers it to the UDP and other relevant officers of the firm. The report identifies any regulatory deficiencies and outlines necessary steps for the Dealer Member to take in order to ensure regulatory compliance in the future.

F. Compliance Examinations and Reports re JSI

2014

22. In March 2014 IIROC Business Conduct Compliance Staff ("BCC Staff") commenced a business conduct compliance examination of JSI, which was completed in May 2014.
23. Though Rutledge was the primary JSI contact during this compliance review BCC Staff's findings and concerns were conveyed to Jacob and Rutledge during the Exit Interview held in July 2014.

24. BCC Staff issued its final report (“2014 BCC Report”) in September, 2014; it was addressed to Jacob as well as to Rutledge. Rutledge delivered JSI’s response to this report to IIROC in November 2014.
 25. The 2014 BCC Report identified 11 issues of concern to BCC, four of which were categorized by BCC Staff as “Repeat Significant” items from the previous examination held in 2013, as follows:
 - Supervision of trading activity;
 - Outside Business Activities (“OBAs”) and National Registration Database (“NRD”) filings;
 - Institutional Accounts; and
 - JSI Employee Accounts held with other Dealer Members.
 26. Additional items categorized as “Significant” by BCC Staff in the 2014 BCC Report included those related to: Corporate Finance, books and records, managed accounts, and JSI policies and procedures.
- 2015
27. In June 2015 Compliance Staff conducted another review of JSI. This review was in the form of an integrated compliance examination (“ICE”) involving three IIROC compliance departments; namely BCC, Financial and Operations, and Trade Conduct Compliance (“TCC”).
 28. Though Rutledge was the primary JSI contact during this compliance review, Jacob was copied on a number of Compliance Staff’s inquiries and requests for information. Compliance Staff’s findings and concerns were conveyed to Jacob and Rutledge at an Exit Interview held in October, 2015.
 29. The ICE report (“2015 ICE Report”) was delivered to the firm in November 2015 and was addressed to Jacob and Rutledge.
 30. The 2015 ICE Report identified 40 issues of concern to Compliance Staff, seven of which were categorized by Compliance Staff as “Repeat Significant” items from the 2014 examination, as follows:
 - Supervision of Trading Activity – Retail and Institutional
 - OBAs
 - Employee Accounts held with other Dealer Members
 - Institutional Accounts
 - Supervision of the Grey and Restricted Lists
 - Corporate Governance, and
 - Conflicts of Interest.
 31. Additional items categorized as “Significant” by Compliance Staff in the 2015 ICE Report included: anti-money laundering procedures, prospectus distributions and expressions of interest, and corporate finance reporting and compliance.
 32. In November 2015 five senior members of IIROC Compliance Staff met with Jacob and Rutledge and conveyed Staff’s views as the repeat significant deficiencies in the 2015 ICE Report.
 33. Jacob and Rutledge did not have any plan to address these regulatory concerns.
 34. JSI also had difficulties with its Risk Adjusted Capital (“RAC”) in 2014 and 2015.
 35. In particular, as early as May 2013 JSI was designated in Early Warning Level 2 (“EWL2”) due to low RAC and remained in EWL2 continuously through to December 2015.
 36. The EWL2 designation was a result of volatility in the firm’s profitability and low financial statement capital relative to its losses.

37. In May 2014 JSI's failure to meet margin requirements for one of its corporate finance deals resulted in it becoming capital deficient.
38. JSI failed to report the 2014 capital deficiency and Compliance Staff only became aware of it as a result of the 2015 review. This capital deficiency was rectified.
39. However, on November 6, 2015, JSI once again became capital deficient. This capital deficiency was also rectified
40. As noted above, in December 2015 as a result of the Order of the Hearing Panel JSI's membership with IIROC was suspended.

G. Jacob's Responsibilities as UDP

41. Jacob as UDP bore ultimate responsibility for establishing, maintaining, and promoting a culture of compliance and ethical behaviour within JSI.
42. Jacob's failures as UDP were compounded by the fact that he was not only the UDP, but also the CEO, Chairman, and sole member of the Board of Directors. He bore responsibility for ensuring that the firm adopted and implemented appropriate policies, procedures and practices to ensure compliance with IIROC Rules.

H. Jacob Responsible for Supervision

43. Jacob was responsible in particular for the conduct of JSI and the supervision of its employees.
44. Jacob failed in these duties of supervision as detailed below.

I. Jacob as UDP Ultimate Responsible for Supervisory Failures November 2013 to December 2015

45. Notwithstanding the fact that Rutledge had initial responsibility for certain specific supervisory functions, Jacob as UDP is ultimately responsible for supervision.

a) Insufficient Evidence of Daily & Monthly Supervision of Retail Accounts

46. According to JSI's Policies and Procedures Manual ("P&P") for the period reviewed during the 2014 BCC review Rutledge as CCO was responsible for daily supervision of retail client accounts.
47. However, Rutledge failed to evidence that he had conducted any such daily supervisory reviews of retail accounts; including for example, failing to evidence any queries, or to record how he had tracked and resolved exceptions on supervision reports.
48. Rutledge was also responsible for monthly supervision of retail accounts. However, over the same period of time, while certain JSI monthly retail supervision reports were signed by Rutledge, none were dated. Rutledge therefore failed to ensure that this supervision was adequately completed on a timely basis, and properly documented.
49. Compliance Staff had brought their concerns about daily and monthly supervisory failures to Jacob and Rutledge's attention as early as 2013.

b) No Supervision of Rutledge's Activity as RR for Retail Accounts

50. In March 2015 during the course of the ICE review Rutledge represented to Compliance Staff that his RR retail sales code had no client accounts assigned to it.
51. However, Rutledge was in fact servicing at least six client accounts in the capacity of RR under this retail sales code from at least October 2014. The code was shared with an Investment Representative (IR). Both the IR and Rutledge's names were reflected on these clients' account statements.
52. Jacob was responsible as UDP to ensure that Rutledge's activities as RR were properly supervised; however though he acknowledges that he ought to have been aware of the activities within his firm, he was ultimately not aware of Rutledge's servicing of these accounts and as a result failed to ensure that

an alternate supervisor reviewed Rutledge's trading in these accounts.

c) Insufficient Evidence of Supervision of Institutional Accounts

53. Rutledge failed to maintain evidence of periodic institutional account reviews throughout November 2013 to December 2015. While Rutledge logged on to the JSI systems for online review of institutional trading, he failed to document that he had in fact conducted such reviews.

54. For example, in at least one instance in February 2015 Rutledge failed to detect and supervise trading activity that occurred in an institutional client account that should not have been permitted to trade.

d) Rutledge Fails to Take Corrective Measures re Institutional Account Supervision

55. In response to concerns about institutional account supervision raised by Compliance Staff in 2013 Rutledge advised that JSI's P&P would be changed. He advised that the new P&P would require that both the CFO and CCO perform the daily trade reviews for institutional accounts and that time stamped reports would be initiated.

56. Although JSI's P&P were amended in this regard by March 2015 Rutledge failed to ensure that the reviews were in fact performed for the balance of 2015.

e) Insufficient Evidence of Trading Conduct Supervision / Testing

57. As part of the ICE review TCC Staff conducted the field examination and review of JSI's supervision and testing of trading conduct in compliance with the IIROC Universal Market Integrity Rules ("UMIR").

58. However, Rutledge was unable to provide TCC Staff with evidence that internal supervision and testing as required under UMIR was being adequately conducted for any of the institutional or retail trading executed by or on behalf of JSI.

59. The failure to conduct appropriate and timely supervision and testing for institutional trading had also been identified in the previous TCC examination of JSI in 2012.

60. Reviews by Enforcement Staff of trading between November 2014 and August 2015 revealed that Rutledge had failed to create and retain adequate evidence of supervision of the trading in JSI's client accounts. Examples of deficiencies in evidencing supervision include:

- Several Monthly Trade Review ("MTR") reports evidenced only a hand-written date but had no initials, or date and time stamps;
- In other cases, the initials "CR" appeared on certain pages of MTR reports; however there was no evidence of a date to indicate when the materials were reviewed;
- The initials "CR" appeared on MTR reports for trades in equity derivatives – a class of securities for which JSI was not registered to trade at the time; and
- There was insufficient evidence to establish whether any queries had been made regarding anomalous events such as potentially manipulative behavior in a stock's trading pattern.

f) New Line of Business Announced Prior to Regulatory Approval

61. In mid-October 2015, Rutledge brought to Enforcement Staff's attention the fact that JSI was planning a new line of business in relation to a fund investing in cannabis production (the "Cannabis Fund"). JSI had not yet sought or received regulatory approval from IIROC to engage in this type of business, although it was preparing to do so.

62. On or about October 30 2015 Rutledge provided Enforcement Staff with a draft of an Offering Memorandum ("OM") for the Cannabis Fund.

63. The draft OM for the Cannabis Fund identified Deloitte LLP ("Deloitte") as the auditor, and Jacob

Capital Management Inc. (“JCM”) as the investment manager of the Cannabis Fund.

64. Jacob was the President of JCM which was his personal investment company; however at no time was JCM a member of IIROC.
65. On November 10, 2015, the following events occurred:
- JSI issued a press release announcing the launch of the Cannabis Fund and indicated that JSI was involved with the financing of the fund;
 - Jacob posted a comment on his Twitter account noting “Jacob Securities Launches the Jacob Management Cannabis Fund” and attached a link to the above noted press release; and
 - The JSI Twitter account posted a similar comment, indicating that the Cannabis Fund had “arrived” with a link to the same press release.
66. In a November 20, 2015 email to Jacob, among others, Rutledge indicated:
- That he had received a call from two individuals at Deloitte concerned that the draft OM for the Cannabis Fund identified Deloitte as the audit firm for the fund when it had not been formally engaged as auditor, noting that this was a possible misrepresentation; and
 - That neither he, nor Buttar, had previous knowledge of the existence of the draft OM for the Cannabis Fund, nor of who had authored it.
67. Jacob allowed JSI to publicly announce this new line of business prior to obtaining the required regulatory approval, and thereby failed to supervise the activities of the firm and its employees.

g) Failure to Make Timely Reports on NRD

68. Rutledge failed to report certain OBAs of JSI employees to IIROC on NRD in a timely fashion, as detailed below.

i. Jacob

69. As at January 2014 Jacob owned approximately 40% of a company called Omifin Solutions and was responsible for “directing financing solutions for Omifin projects”.
70. However, as of December 2015 this OBA had not been reported on NRD.
71. Further, Jacob was a member of the Board of Directors of two charitable organizations as early as 2011. However, as of December 2015 these OBAs had not been reported on NRD.

ii. Buttar

72. In May 2013, Buttar became the full-time CFO at JSI.
73. At this time in addition to his duties as CFO at JSI, at Jacob’s request Buttar assumed the role of interim CFO for an issuer called Plumbago Advisors Inc. (“Plumbago”).
74. Though this OBA was known to Jacob as of May 2013 and known to Rutledge as of December 2013, it was not reported on NRD until August 2014.
75. In addition, from July 2008 to February 2015 Buttar owned 50% of a US brokerage firm called Mercator Associates, LLC. (“Mercator”). This ownership interest was properly disclosed on NRD.
76. In or about April 2014 the US Financial Industry Regulatory Authority (“FINRA”) identified certain regulatory issues in relation to Mercator and Buttar.
77. The FINRA regulatory issues were not reported on NRD until November 2014.

iii. Syed Husain

78. From May to October 2013 Syed Husain (“Husain”) was an RR at JSI. During Husain’s employment

with JSI he also acted as a Portfolio Manager for an offshore mutual fund company.

79. However, Husain's OBA was not reported on NRD during the course of his employment at JSI.

iv. Jacob Failed to Ensure that Corrective Measures Were Implemented

80. In November 2014 Jacob acknowledged to IIROC the need to have a program of ongoing review of the status of declared OBAs at JSI. He, together with Rutledge, also undertook that JSI would implement monitoring of all OBAs throughout the year to identify any potential conflict of interest issues.

81. Jacob has represented to IIROC that he believed that Rutledge was reviewing and monitoring OBAs throughout the year. However, Jacob did not take adequate steps to ensure that the review program for, and monitoring of, OBAs were implemented.

h) Options Trading Absent Registration or an Options Supervisor

82. At no time did JSI have an approved Designated Options Supervisor nor was the firm or any of its registrants approved for options trading.

83. Nevertheless, throughout 2015 Darren Carrigan, a JSI registrant, traded in options in at least three separate accounts.

84. Though Jacob acknowledges that he ought to have been aware of the activities within his firm, he was ultimately not aware of Carrigan's options trading activities and as a result failed to prevent this trading from taking place when it was not an approved activity and failed to supervise the firm and its employees in this regard.

i) Trading by JSI Employee While Prohibited by OSC

85. Jacob was also responsible to IIROC for supervision to ensure compliance by JSI, and by each individual acting on the firm's behalf, with applicable securities law requirements.

86. In March 2014, Alka Singh ("Singh"), a JSI employee, was the subject of an Ontario Securities Commission order made pursuant to a settlement agreement (the "OSC Order").

87. As part of the terms of the OSC Order, Singh was prohibited from trading in any securities or derivatives and from acquiring any securities for a period of three years commencing March 27, 2014.

88. However, in May 2014, Rutledge opened a US cash account in his capacity as RR for Singh and approved the opening of this account in his capacity as CCO, thereby in effect acting as his own supervisor.

89. Notwithstanding the OSC Order, Singh was permitted to acquire and trade securities in her JSI account. As of November 2014 she held 50,000 shares of one security in the account. In January 2015 all of the shares were sold out of the account and all of the sales were marked "unsolicited".

90. Though he acknowledges that he ought to have been aware of the activities within his firm, Jacob was not aware of the OSC Order in relation to Singh nor of Rutledge's servicing of her account and as a result failed in his supervisory role when this account was opened and trading took place, notwithstanding the OSC Order.

j) Failure to Adequately Supervise JSI Employee Accounts at Other Firms

91. As indicated in the 2014 and 2015 compliance reviews, Rutledge failed to supervise trading in JSI employee accounts held at other investment firms.

92. As set out in the P&P, JSI employees who held investment accounts at other Dealer Member firms were required to:

- Provide JSI with attestations setting out the details of such external accounts; and
- Provide the other firms with letters of authorization ("LOAs") authorizing and instructing

them to send copies of their monthly account statements to JSI.

93. Rutledge failed to ensure that JSI employees complied with these P&P requirements notwithstanding that both he and Jacob had given undertakings in this regard to Compliance Staff in response to the 2014 BCC report.
94. In particular, they undertook to ensure that employee attestations would be reformatted to contain specific attestation signatures below a list of the employee's disclosed accounts held at other investment firms.
95. Further, during 2014-2015 Rutledge failed to properly supervise these outside accounts by, among other things:
 - Failing to review and provide evidence of review of the monthly account statements received from the other firms;
 - Failing to send the LOAs to the other firms for several months after certain employees started working at JSI; and
 - Failing to obtain LOAs from several of JSI's employees.
96. Compliance Staff had previously identified similar concerns related to employee accounts held at other investment firms following IIROC examinations in 2010 and 2013 however Jacob ultimately failed to take adequate steps to ensure that Rutledge properly supervised these outside accounts.

k) Failure to Fully Comply with Anti-Money Laundering Requirements

97. The JSI P&P indicated that Rutledge, along with Buttar, was responsible for implementing anti-money laundering ("AML") procedures required by the *Canadian Proceeds of Crime (Money Laundering) and Terrorist Financing Act* ("AML Legislation").
98. However, in September and in December of 2014 Rutledge failed to ensure that client identification was properly obtained in at least two instances when accounts were opened with expired client identification records.
99. In addition, in the case of five client accounts where no face to face client meetings had taken place, Rutledge failed to ensure that the applicable AML procedures had been complied with.
100. Further, according to the JSI P&P Rutledge was responsible for providing employee training on a two year cycle in accordance with AML Legislation.
101. However in April 2015 Rutledge advised IIROC that he had not provided AML training to all JSI employees since the last training conducted at the end of 2012.

l) Failure to Maintain Adequate Corporate Finance Records

i. Inadequate Records of Insiders

102. The JSI P&P indicated that the CCO was responsible for the monitoring of trading by corporate insiders. However, Rutledge failed to keep adequate records of insiders and to conduct the required monitoring of their trading.
103. In the summer of 2015 Rutledge advised Compliance Staff that the firm had no means of identifying the accounts of insiders. He admitted that he relied solely on his memory when conducting supervisory reviews.
104. Examples of his failure to properly monitor insiders' trading include:
 - a. In April of 2015, Rutledge and Buttar separately provided Compliance Staff with lists of insiders of various companies, however the lists were inconsistent as they contained a different set of client names for the same time period;

- b. Both lists were incomplete in that at least three JSI clients whose documentation identified them as corporate insiders were not found on either list; and
- c. A corporate client of JSI which had offices on the firm's premises, and which was an insider of an issuer until October 31, 2014, was permitted to execute at least five trades of shares of the issuer from September 11 to October 20, 2014; however none of these trades were marked as insider trades.

ii. Prospectus Distribution & Expressions of Interest

- 105. In the case of private placement offerings, JSI and Rutledge were responsible for sending final prospectuses to all clients who had purchased securities. However, final prospectuses were generally only provided to clients who made specific requests for one.
- 106. Rutledge failed to maintain lists of expressions of interest by clients and did not track clients who received copies of preliminary prospectuses.

m) Failure to Identify, Address, and Consistently Disclose Potential Conflicts of Interest

- 108. Jacob also failed in his responsibilities as UDP to introduce adequate measures to supervise JSI and its employees to ensure it identified, addressed and consistently disclosed any potential conflicts of interest as detailed below.

i. Buttar as CFO at JSI

- 109. In or about September 2012 Plumbago engaged JSI to arrange financing for it through a private placement of its securities.
- 110. From May 2013 onward Buttar acted as interim CFO for Plumbago while he was contemporaneously CFO at JSI.
- 111. As part of the private placement for Plumbago certain marketing materials (the "Marketing Materials") were created including a series of Information Memoranda ("IM") prepared by JSI, and Subscription Agreements (the "Subscription Agreements") prepared by Plumbago.
- 112. For the period from May 2013, the date that Buttar began acting as interim CFO of Plumbago, to January 2014, the last financing date for which Marketing Materials were created (the "Marketing Period") Buttar's role as interim CFO of Plumbago was disclosed in the Marketing Materials.
- 113. However, his contemporaneous role as CFO at JSI was not otherwise consistently disclosed in the Marketing Materials, other than an IM in December 2013. By January 2014, his name was not included in any capacity in any of the Marketing Materials.
- 114. As of at least March 2015 Buttar continued to act as interim CFO at Plumbago, as well as CFO at JSI; until he resigned as CFO at JSI effective December 16, 2015.
- 115. There is no evidence of any adverse impact on any clients or subscribers as a result of the failure to consistently disclose Buttar's role as CFO at JSI.

ii. JSI Ownership of Plumbago

- 116. Throughout the Marketing Period JSI had an ownership interest of at least 34% in Plumbago. The Subscription Agreements included a general provision indicating that an "affiliate of JSI" owned approximately 40% of the common shares of Plumbago.
- 117. However, the Subscription Agreements did not clearly disclose that the affiliate was a company called Jacob Securities Holdings Inc. ("JSHI"), which owned 100% of JSI. JSHI's ownership interest in Plumbago was otherwise not consistently disclosed in the other Marketing Materials.
- 118. There is no evidence of any adverse impact on any clients or subscribers as a result of the failure to disclose JSHI's ownership interest in Plumbago.

119. Jacob represented to IIROC that he relied upon legal advice in relation to the preparation of the Marketing Materials and Subscription Agreements.

J. Additional Factors

120. Prior to becoming the UDP of Jacob Securities, Jacob had never been registered as a UDP. He had also never been registered with IIROC as a CCO or CFO of a Dealer Member.
121. Jacob hired individuals to serve as CCO and CFO and represented to IIROC that he believed them to be competent, that he trusted those individuals to diligently carry out the responsibilities assigned to them, and that he believed that they were doing so.

PART IV – CONTRAVENTION

122. By engaging in the conduct described above, the Respondent committed the following contraventions of IIROC's Rules:

From November 2013 to December 2015 Jacob as UDP failed to supervise the activities of JSI and individuals acting on its behalf in order to ensure compliance with IIROC Rules, and failed to promote compliance with IIROC Rules by JSI and those acting on its behalf, contrary to IIROC Rules 38 and 2500.

PART V – TERMS OF SETTLEMENT

123. The Respondent agrees to the following sanctions and costs:
- a) A global fine of \$100,000.00
 - b) A suspension from acting as UDP for three years
 - c) Costs of \$10,000.00
124. If this Settlement Agreement is accepted by the Hearing Panel, the Respondent agrees to pay the amounts referred to above within 30 days of such acceptance unless otherwise agreed between Staff and the Respondent.

PART VI – STAFF COMMITMENT

125. If the Hearing Panel accepts this Settlement Agreement, Staff will not initiate any further action against the Respondent in relation to the facts set out in Part III and the contraventions in Part IV of this Settlement Agreement, subject to the provisions below.
126. If the Hearing Panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Rule 8200 against the Respondent. These proceedings may be based on, but are not limited to, the facts set out Part III of this Settlement Agreement.

PART VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT

127. This Settlement Agreement is conditional on acceptance by the Hearing Panel.
128. This Settlement Agreement shall be presented to a Hearing Panel at a settlement hearing in accordance with the procedures described in Sections 8215 and 8428, in addition to any other procedures that may be agreed upon between the parties.
129. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing, unless the parties agree that additional facts should be submitted at the settlement hearing. If the Respondent does not appear at the settlement hearing, Staff may disclose additional relevant facts, if requested by the Hearing Panel.
130. If the Hearing Panel accepts the Settlement Agreement, the Respondent agrees to waive all rights under the IIROC Rules and any applicable legislation to any further hearing, appeal and review.

131. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondent may enter into another settlement agreement or Staff may proceed to a disciplinary hearing based on the same or related allegations.
132. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.
133. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel and IIROC will post a full of copy of this Settlement Agreement on the IIROC website. IIROC will also publish a summary of the facts, contraventions, and the sanctions agreed upon in this Settlement Agreement.
134. If this Settlement Agreement is accepted, the Respondent agrees that neither he nor anyone on his behalf, will make a public statement inconsistent with this Settlement Agreement.
135. The Settlement Agreement is effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

136. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.
137. A fax or electronic copy of any signature will be treated as an original signature.

DATED this 1st day of March, 2017.

“Witness”

Witness

“Sasha Jacob”

Sasha Jacob

“Witness”

Witness

“Natalija Popovic” March 3, 2017

Natalija Popovic

Enforcement Counsel on behalf of Enforcement
Staff of the Investment Industry Regulatory
Organization of Canada

The Settlement Agreement is hereby accepted this 6th day of March, 2017 by the following Hearing Panel:

Per: “Martin Friedland”

Panel Chair

Per: “Stuart Livingston”

Panel Member

Per: “Nick Savona”

Panel Member

Copyright © 2017 Investment Industry Regulatory Organization of Canada. All Rights Reserved.