

Re Mackie & Leadbeater

IN THE MATTER OF:

**The Rules of the Investment Industry Regulatory Organization of
Canada**

and

James Frederick Norman Mackie

and

Tricia Joanne Leadbeater

2015 IIROC 45

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

Heard: October 9, 2015
Decision: October 9, 2015
Reasons: December 2, 2015

Hearing Panel:

Eric Spink, QC, Chair, Bradley Whyte and Martin Davies

Appearances:

David McLellan, Senior Enforcement Counsel for IIROC

Andrew Wilson, Counsel for James Mackie and Tricia Leadbeater

REASONS FOR ACCEPTANCE OF SETTLEMENT

¶ 1 This Settlement Hearing considered a Settlement Agreement agreed to by the Respondents, James Mackie and Tricia Leadbeater on September 21, 2015, attached as Appendix 1.

¶ 2 At the hearing, the panel heard submissions from both counsel and the panel's jurisdiction was acknowledged. After a brief adjournment, the panel accepted the Settlement Agreement with reasons to follow. These are our reasons.

¶ 3 The Settlement Agreement sets out the admitted facts and violations of IIROC Dealer Member Rules 29.1 and 1300.19(c).

¶ 4 The violations are essentially that the Respondents failed to disclose a conflict of interest to clients who purchased certain securities underwritten by the Respondents' firm. The conflict of interest arose when a group of employees of a Dealer Member, including the Respondents, loaned \$4.5 million to an individual client of the firm who was also a senior officer of a publicly traded issuer. The loan was not problematic in itself, as it had been disclosed in advance and approved by the Dealer Member's Branch Manager and Chief Compliance Officer. The problem arose subsequently when, with the loan still outstanding, the issuer announced a \$55 million bought deal offering, the Dealer Member participated in the underwriting, and the Respondents recommended/bought the securities for a total of 21 clients without disclosing the conflict of interest. The loan

was repaid a short time after the offering closed.

¶ 5 James Mackie, a Registered Representative, recommended and accepted orders from 14 clients. Tricia Leadbeater, a Portfolio Manager, made discretionary purchases of the securities for 7 of her managed account clients. Neither Respondent disclosed the conflict of interest arising from the outstanding loan, and Tricia Leadbeater also failed to give her clients prior notice that her firm was underwriting the securities offering, as required by Rule 1300.19.

¶ 6 The panel asked, subject to Rule 15.3 of IIROC's Rules of Practice and Procedure, for clarification of certain facts, particularly, the value of securities sold and details of communications with some clients. Counsel agreed that: there were no client losses arising from these transactions; and Ms. Leadbeater's clients were subsequently informed in writing of the conflict of interest and underwriting but no client chose to unwind their investment.

¶ 7 The Settlement Agreement provides for the following penalties and costs:

- for Mr. Mackie:
 - o a \$30,000 fine; and
 - o costs of \$2,500;
- for Ms. Leadbeater:
 - o a \$40,000 fine; and
 - o costs of \$2,500.

¶ 8 The panel's role in a settlement hearing is to determine whether the proposed settlement falls within "a reasonable range of appropriateness" (Re Milewski [1999] I.D.A.C.D. No. 17), bearing in mind the facts of the case, the IIROC Sanction Guidelines, and other decisions involving similar misconduct. Milewski observes that the panel is asked "to 'accept', rather than approve, a settlement agreement".

¶ 9 IIROC's counsel reviewed all the material in the Settlement Book, including the relevant IIROC Dealer Member Rules and the new Sanction Guidelines.

¶ 10 IIROC's counsel referred to several previous decisions but he properly emphasized that none of them were fundamentally similar to the present case. The closest decision was Re Schiesser 2011 IIROC 78, where the settlement agreement included a \$30,000 fine for failing to disclose a conflict of interest in circumstances not readily comparable to the present situation. We were also referred to: Re Taylor [2005] I.D.A.C.D. No. 20; Re D'Souza 2014 IIROC 53; Re Hanna 2012 IIROC 71; Re Blackmore 2014 IIROC 43; Re Dalpe and Milette 2013 IIROC 18; and Re Taggart 2013 IIROC 24. Although those decisions dealt with facts quite different from the present case, they usefully illustrate the principles applied in determining what sanction is appropriate.

¶ 11 Counsel for the Respondents emphasized that: neither Respondent has any prior disciplinary record; the loan was properly disclosed to the Member Dealer; the loan was repaid; there were no client losses; and the conflict of interest in this case was indirect (as opposed to a direct conflict if the loan had been to the issuer).

¶ 12 After considering the facts and submissions, the panel determined that the agreed-upon penalties this case are fair and reasonable. In our view, the different penalties for each Respondent adequately reflect the higher level of responsibility associated with managed accounts. For these reasons, the panel accepted and executed the original Settlement Agreement on October 9, 2015.

Dated at Calgary, Alberta this 2nd day of December, 2015.

Eric Spink, QC, Chair

Bradley Whyte

Martin Davies

APPENDIX 1

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IROC Enforcement Staff (“Staff”) and the Respondents, James Frederick Norman Mackie and Tricia Joanne Leadbeater (“Respondents”), consent and agree to the settlement of this matter by way of this agreement (the “Settlement Agreement”).
2. The Enforcement Department of IROC has conducted an investigation (“the Investigation”) in the conduct of James Frederick Norman Mackie and Tricia Joanne Leadbeater (“Respondents”).
3. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IROC Transitional Rule No.1, Schedule C.1, Part C (the “Hearing Panel”).

II. JOINT SETTLEMENT RECOMMENDATION

4. Staff and the Respondents jointly recommend that the Hearing Panel accept this Settlement Agreement.
5. The Respondents admit to the following contraventions of IROC Dealer Member Rules, Guidelines, Regulations or Policies:

James Mackie

- a) In April, 2010, he recommended and accepted orders for 14 clients in a public offering of securities without disclosing a conflict of interest, contrary to Dealer Member Rule 29.1;

Tricia Leadbeater

- b) In April, 2010, she used discretionary authority to purchase securities for 7 managed account clients without disclosing a conflict of interest, contrary to Dealer Member Rule 29.1; and
- c) In April, 2010, she failed to obtain written consent from managed account clients prior to participating in a public offering of securities in which her firm was acting as underwriter, contrary to IROC Rule 1300.19(c)

6. Staff and the Respondents agree to the following terms of settlement:

James Mackie

- a) pay a fine to IROC in the sum of thirty thousand dollars (\$30,000); and
- b) pay costs to IROC in the sum of two thousand five hundred (\$2,500).

Tricia Leadbeater

- a) pay a fine to IROC in the sum of forty thousand dollars (\$40,000); and
- b) pay costs to IROC in the sum of two thousand five hundred (\$2,500).

III. STATEMENT OF FACTS

(i) Acknowledgment

7. Staff and the Respondents agree with the facts set out in this Section III and acknowledge that the terms of the settlement contained in this Settlement Agreement are based upon those specific facts.

(ii) Factual Background

8. The Respondents were part of an employee group at a Dealer Member firm that lent funds to a client who was a senior officer of a publicly traded issuer. While the loan to the officer was still outstanding, the Dealer Member agreed to participate in a syndicate, lead by another Dealer Member, to underwrite a debenture offering of the issuer.

9. The conflict of interest arising from the outstanding loan was not properly disclosed to the clients who purchased the securities (some of whom held managed accounts).
10. In addition, the managed account clients were not given advance notice that the Dealer Member was participating in a syndicate underwriting the offering. The managed account clients were advised approximately 4 months after their investment. No clients unwound their transactions upon receipt of this information.

Parties

11. At the time of the loan, the two Respondents were registrants with J.F. Mackie & Company Ltd (“JF Mackie”), a Dealer Member firm in Calgary:
 - a. James Mackie, Registered Representative; and
 - b. Tricia Leadbeater, Portfolio Manager.
12. On April 7, 2009 JF Mackie was acquired by Research Capital Holding Corporation (“RCHC”). JF Mackie and its carrying broker, Research Capital Corporation (also a subsidiary of RCHC), continued to operate as separate IIROC Dealer Member firms.
13. On January 31, 2010, JF Mackie and Research Capital Corporation were reorganized to form a single Dealer Member firm, Mackie Research Capital Corporation (“Mackie Research”).

The Loan

14. In September 2009, a group of employees in the Calgary branch of JF Mackie, including the Respondents Mackie and Leadbeater, agreed to provide a personal loan to a client, DW (the “Loan”). DW was also a senior officer of a publicly traded issuer (the “Issuer”).
15. Prior to advancing the Loan, the employees conferred with the Calgary Branch Manager and Chief Compliance Officer for JF Mackie, who approved and confirmed that the Loan could go ahead. In addition, compliance staff of Research Capital Corporation, were aware of the Loan.
16. The Loan was formalized in a Loan Agreement dated September 18, 2009. DW agreed to pay interest of 18% per annum, with full repayment in 6 months.
17. On September 19, 2009, the funds were transferred from the lending employees’ JF Mackie accounts to DW’s bank account.
18. The total amount of the Loan was \$4.5 million, which included contributions by the Respondents Mackie (\$1,750,000) and Leadbeater (\$100,000).
19. In November of 2009, repayment of the Loan was extended to May 4, 2010.

Debenture Offering

20. On March 10, 2010, the Issuer announced a \$55M bought deal debenture offering (the “Offering”).
21. By letter agreement dated April 1, 2010, while the Loan to DW was still outstanding, Mackie Research was engaged as part of a syndicate to underwrite the Offering, led by another Dealer Member. There were three other members of the syndicate. The underwriting engagement agreement was signed by DW on behalf of the Issuer.
22. The Offering went ahead and debentures were issued under a prospectus dated April 12, 2010, and it closed on April 16, 2010.
23. On May 4, 2010, DW repaid the Loan in full, with interest.

Conflict of Interest

24. The Loan involved personal financial dealings with a client, DW. A conflict of interest arose when Mackie Research was engaged as one of the syndicate underwriters in the Offering of the Issuer, as the client, DW, was a senior officer of the Issuer but was also indebted to the Respondents. There was therefore an undeclared, but indirect, conflict of interest for the Respondents Mackie and Leadbeater each time they recommended the purchase of the securities to their clients.

James Mackie

25. James Mackie, an advisor and a Registered Representative, recommended and accepted orders for 14 clients in the Offering, but he did not give these clients prior notice of the Loan.
26. The failure to give his clients prior notice of the Loan was a failure to disclose a conflict of interest, and as such is conduct unbecoming contrary to Dealer Member Rule 29.1.

Tricia Leadbeater

27. Tricia Leadbeater, a Portfolio Manager, purchased debentures in the Offering for 7 of her managed account clients through the exercise of her discretionary trading authority, but she did not give these clients prior notice of the Loan.
28. In addition, Leadbeater did not give these clients prior notice that Mackie Research was an underwriter of the Offering and its debentures that she purchased for them. However, the clients were advised after the fact, and no client unwound their investment upon receipt of this information.
29. The failure to give her clients prior notice of the Loan was a failure to disclose a conflict of interest, and as such is conduct unbecoming contrary to Dealer Member Rule 29.1.
30. In addition, the failure to give clients prior notice that Mackie Research was an underwriter of the Offering was a violation of Rule 1300.19(c).

IV. TERMS OF SETTLEMENT

31. This settlement is agreed upon in accordance with IROC Dealer Member Rules 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.
32. The Settlement Agreement is subject to acceptance by the Hearing Panel.
33. The Settlement Agreement shall become effective and binding upon the Respondents and Staff as of the date of its acceptance by the Hearing Panel.
34. The Settlement Agreement will be presented to the Hearing Panel at a hearing (“the Settlement Hearing”) for approval. Following the conclusion of the Settlement Hearing, the Hearing Panel may either accept or reject the Settlement Agreement.
35. If the Hearing Panel accepts the Settlement Agreement, the Respondents waive his/her/its right under IROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
36. If the Hearing Panel rejects the Settlement Agreement, Staff and the Respondents may enter into another settlement agreement; or Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.
37. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
38. Staff and the Respondents agree that if the Hearing Panel accepts the Settlement Agreement, they, or anyone on their behalf, will not make any public statements inconsistent with the Settlement Agreement.
39. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondents are payable immediately upon the effective date of the Settlement Agreement.

40. Unless otherwise stated, any suspensions, bars, expulsions, restrictions or other terms of the Settlement Agreement shall commence on the effective date of the Settlement Agreement.

AGREED TO by the Respondent at the City of Calgary in the Province of Alberta, this 21 day of September, 2015.

“Witness” _____

Witness

“James Mackie” _____

James Mackie

AGREED TO by the Respondent at the City of Calgary in the Province of Alberta, this 21 day of September, 2015.

“Witness” _____

Witness

“Tricia Leadbeater” _____

Tricia Leadbeater

AGREED TO by Staff at the City of Calgary in the Province of Alberta, this 23 day of September, 2015.

“Witness” _____

Witness

“David McLellan” _____

David McLellan

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

ACCEPTED at the City of Calgary in the Province of Alberta, this 9 day of October, 2015, by the following Hearing Panel:

Per: “Eric Spink” _____

Panel Chair

Per: “Bradley Whyte” _____

Panel Member

Per: “Martin Davies” _____

Panel Member

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