Re Ballanger

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Michael Ballanger

2018 IIROC 26

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

Heard: June 6, 2018 in Toronto, Ontario
Oral Decision: June 6, 2018
Decision: July 17, 2018

Hearing Panel:
Joan Smart, Chair, Randee Pavalow and Nick Pallotta
Appearance:
Kathryn Andrews, Enforcement Counsel
Michael Ballanger by Teleconference

REASONS FOR DECISION

I. INTRODUCTION

¶ 1 Proceedings were commenced by the Investment Industry Regulatory Organization of Canada ("IIROC") against Michael Ballanger ("the Respondent") by Notice of Hearing, dated October 27, 2017. Subsequently, Enforcement Staff of IIROC ("Staff") served a Notice of Motion for Settlement Hearing, dated May 30, 2018, in connection with a Settlement Agreement entered into between IIROC and the Respondent, dated May 29, 2018.

¶ 2 A hearing was held on June 6, 2018 to consider the Settlement Agreement, pursuant to Section 8215 of the Consolidated Enforcement, Procedural, Examination and Approval Rules of IIROC. At the conclusion of the hearing, the Hearing Panel decided to accept the Settlement Agreement. These are our reasons for that decision.

¶ 3 Staff also sought an order abridging the time for the service and filing of the Notice of Motion, to which the Respondent had consented, and the Order was granted by the Hearing Panel.

II. THE RESPONDENT'S ADMISSION OF CONTRAVENTION

¶ 4 The Respondent admitted that, between April and October, 2013, he failed to comply with his firm's policies and procedures regarding new product reviews and the receipt and containment of confidential information, contrary to IIROC Dealer Member Rule 29.1.

III. AGREED FACTS

Background

¶ 5 The Respondent was employed as a Registered Representative with Richardson GMP ("RGMP") from October 2012 until his employment was terminated in September 2014. He had been a registrant since 1977. The Respondent has not been an IIROC registrant since leaving RGMP and indicated he does not intend to return to the investment industry.

¶ 6 In a discussion with RGMP's Chief Compliance Officer ("CCO") and followed up by a November 15, 2012 email, the Respondent had been informed by the firm's CCO of RGMP's procedures regarding the proper handling of potentially material or confidential information.

The Respondent's relationship with Tinka

¶ 7 At the relevant time Tinka Resources Ltd. ("Tinka") was a junior resource exploration company and high risk illiquid issuer.

¶ 8 In 2012 and 2013, the Respondent had a close working relationship with Tinka's principals and received confidential information from them about the company.

¶ 9 The Respondent had recommended Tinka to many of his clients at RGMP. Between November 2012 and July 2013, approximately 10,570,550 shares of Tinka were transferred into RGMP in the Respondent's book of business, representing approximately 13% of the issued and outstanding shares. Approximately 5 million shares were purchased via private placements at RGMP.

¶ 10 By March 10, 2014 the Respondent's client positions in Tinka represented 18% of the issued and outstanding shares of the company.

The Respondent commits RGMP to act for Tinka without prior approval

¶ 11 RGMP's Compliance Policies and Procedures Manual, dated June 2011, (the "Policies and Procedures Manual") provided that the New Product Review Committee must review and approve all new third party investment products, including private placements for sale within RGMP.

¶ 12 On April 24, 2013, Tinka issued a press release announcing a non-brokered private placement financing of up to 2,353,000 units for gross proceeds of up to $2,000,050. The press release stated that "Richardson GMP is acting for the Company and will be paid a commission consisting of cash and warrants on a portion of the financing."

¶ 13 Prior to April 24, 2013, the Respondent committed RGMP to act for Tinka in a non-brokered private placement without the review or approval of RGMP, contrary to the firm's Policies and Procedures Manual. The Respondent did not inform either RGMP's compliance department or his branch manager of this proposed financing before Tinka issued the press release, nor did he notify the firm that he was in possession of confidential and potentially material non-public information.

¶ 14 Subsequently RGMP approved the above private placement after the fact and participated in this financing.

The Respondent fails to advise RGMP of receipt of confidential information regarding Tinka in a timely manner

¶ 15 On October 8, 2013, the Respondent emailed RGMP's compliance department about a draft press release for a proposed Tinka financing. He had not previously notified RGMP about his knowledge or involvement in the proposed transaction or that he was in possession of confidential and potentially material non-public information.

¶ 16 According to the Policies and Procedures Manual, the Respondent was required to inform RGMP's compliance department if he was in possession of potential inside information. Given the circumstances of this

transaction, the Respondent knew or ought to have known that he was required to inform RGMP of the confidential or potentially material non-public information regarding Tinka.

¶ 17 In an October 8, 2013 email, RGMP's CCO reminded the Respondent of the firm's procedures relating to the receipt and containment of confidential information.

¶ 18 RGMP added Tinka to its grey list on October 8, 2013 and added it to their restricted list on November 7, 2013 when the private placement financing was announced publicly.

¶ 19 On November 8, 2013 RGMP's compliance department sent the Respondent an email questioning trades in Tinka executed for one of his clients between October 22 and 24, 2013, as these trades were not marked unsolicited.

Close supervision of the Respondent by RGMP

¶ 20 RGMP questioned the Respondent further in February 2014. When his responses were not satisfactory to the firm, he was placed under close supervision in April 2014 for a period of not less than 6 months. Certain conditions were imposed, including that he was to develop an exit strategy for Tinka to be presented to management within 30 days.

¶ 21 Ultimately the Respondent did not present an exit strategy for Tinka to RGMP and his employment was terminated by RGMP in September 2014.

IV. TERMS OF SETTLEMENT

¶ 22 The Respondent agreed to the following sanctions:

a) A fine in the amount of $15,000 (to be paid within 30 days of acceptance of the Settlement Agreement unless otherwise agreed between Staff and the Respondent);

b) A one year suspension from registration with IIROC;

c) A requirement to re-write and pass the Conduct and Practices Handbook Examination within 12 months of any re-registration with IIROC; and

d) Six months of close supervision upon any re-registration with IIROC.

V. REASONS

Duty of Hearing Panel at Settlement Hearing

¶ 23 According to Rule 8215 (5) of the Consolidated Enforcement, Procedural, Examination and Approval Rules, "After a settlement hearing, a panel may accept or reject a settlement agreement". Our task is not to decide what penalty we would have imposed in the case, but rather to determine whether the penalty is a fair and reasonable one in the circumstances and meets the objective of the disciplinary process to maintain high standards of conduct in the securities industry and protect market integrity. A panel must also consider whether the penalty will serve as a specific and general deterrent.

¶ 24 As was noted in *Re Milewski* [1999] I.D.A.C.D. No. 17 at page 9:

> "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."

¶ 25 We also note the statement in *Re Rotstein and Zackheim*, 2012 IIROC 27:

> "Based upon this material it is our responsibility to review the agreement in order to satisfy ourselves that it falls within a reasonable range of appropriateness to the offence and circumstances recorded in the agreement and that there is nothing in the agreement which would be contrary to the public interest or bring the of the Rules of IIROC into public disrepute. If we are satisfied that the Settlement Agreement does not offend these principles then it should be accepted."

Considerations

¶ 26 It is critical to the integrity of the investment industry as a whole that firms have robust compliance policies in place and that registrants in the firm comply with them. The failures by the Respondent to comply with RGMP's policies and procedures when he (i) committed the firm to act for Tinka in a private placement financing without prior approval, and (ii) did not advise RGMP in a timely manner that he was in possession of confidential or potentially material non-public information regarding Tinka, were very concerning and contrary to IIROC Dealer Member Rule 29.1.

¶ 27 It is also critical to the integrity of the investment industry that firms be able to properly supervise their registered employees. Given that the Respondent did not inform RGMP of certain of his activities in connection with Tinka, it was not possible for the firm to properly supervise those activities.

¶ 28 We note that the Respondent had been in the industry for many years and should have been aware of the importance of following firm policies and procedures. In addition, he had been specifically advised by RGMP's CCO of the firm's procedures relating to the proper handling of potentially material or confidential information.

¶ 29 In reaching our decision, we took into consideration several mitigating factors, including that there was no evidence of client harm or unusual benefit to the Respondent as a result of the subject activity and that, in the case of the 2013 Tinka financing, RGMP ultimately approved and participated in the financing. We also noted that the Respondent had been a registrant for 37 years without any prior disciplinary history.

¶ 30 With respect to the fine of $15,000, the Respondent acknowledged that, but for his financial circumstances, the Settlement Agreement would have included a higher fine, plus costs. The IIROC Sanction Guidelines indicate that the inability to pay is a relevant consideration in determining the appropriate financial sanctions to be imposed on a respondent. We have considered that in making our determination to accept the Settlement Agreement. We also note that the Settlement Agreement includes other significant sanctions.

¶ 31 At the hearing we raised questions about the one year suspension, which is a serious penalty. According to the IIROC Sanction Guidelines, a suspension should be considered where, among other things, there has been one or more serious contraventions or the misconduct has caused some measure of harm to the securities industry as a whole. In relation to this case, we believe the failure by a registrant to follow firm policies and procedures is a serious contravention and could harm the securities industry as a whole. However, had the Respondent still been a registrant or intended to re-register in the future, we believe this penalty would have warranted further consideration in relation to the Respondent's conduct. The Respondent noted at the hearing that he accepted the one-year suspension as he has no intention of going back into the securities industry. As a result, the provisions in the Settlement Agreement relating to the suspension, re-training and close supervision will have limited practical impact on any future career of the Respondent, but allow him to resolve his issues with IIROC. However, we are mindful of the reputational impact it will have on him after his long career in the securities industry.

¶ 32 Staff directed us to several previous IIROC enforcement cases, including *Walker and Foster & Associates Financial Services Inc. (Re),* 2017 IIROC 24, which involved handling of confidential information by a registrant and *Karakolis (Re),* 2018 IIROC 07, which involved a breach by a registrant of his firm's policies and procedures relating to the opening of client accounts. The cases were otherwise not particularly germane to the case before us in terms of their facts. In those cases the financial penalties were higher but the

other sanctions less severe than in the Settlement Agreement before us.

Conclusion

¶ 33 We concluded that the agreed penalty fell within a reasonable range of appropriateness in the circumstances

and would serve as a specific and general deterrent. Accordingly, we accepted the Settlement Agreement.

Dated at Toronto, Ontario this 17th day of July, 2018.

Joan Smart

Randee Pavalow

Nick Pallotta

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 Michael Ballanger ("Respondent" or "Ballanger").

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.

Overview

4. Ballanger was a Registered Representative at Richardson GMP ("RGMP") at the material time. In 2013 Ballanger obtained confidential information by virtue of his connections at a high risk illiquid issuer known as Tinka Resources Ltd ("Tinka").

5. In April 2013, Ballanger failed to comply with RGMP's policies and procedures when he committed his firm to act for Tinka in a private placement financing without obtaining prior approval.

6. In October 2013, Ballanger failed to comply with RGMP's policies and procedures by not advising RGMP in a timely manner that he was in possession of confidential or potentially material non public information regarding Tinka.

Background

7. Ballanger was employed as a Registered Representative with RGMP from October 2012 until his employment was terminated in September 2014. Ballanger had been a registrant since 1977 and at one

point was licensed as an Assistant Branch Manager. Ballanger has not been an IIROC registrant since leaving RGMP.

8. In a discussion with RGMP's Chief Compliance Officer ("CCO") and followed up by a November 15, 2012 email, Ballanger had been informed by the firm's CCO of RGMP's procedures regarding the proper handling of potentially material or confidential information.

Ballanger's relationship with Tinka

9. At the relevant time Tinka was a junior resource exploration company which focused on the development of precious metals mines.

10. In 2012 and 2013, Ballanger had a close working relationship with Tinka's principals and received confidential information from them about the company.

11. Ballanger had recommended Tinka to many of his clients at RGMP. Between November 2012 and July 2013, approximately 10,570,550 shares of Tinka were transferred into RGMP in Ballanger's book of business. This number represented approximately 13% of the issued and outstanding shares of Tinka at that time. A large portion of the Tinka positions (approximately 5 million shares) were purchased via private placements at RGMP.

12. By March 10, 2014 Ballanger client positions in Tinka represented 18% of the issued and outstanding shares of the company.

Ballanger commits RGMP to act for Tinka without prior approval

13. RGMP's Compliance Policies and Procedures Manual dated June 2011 (the "Policies and Procedures Manual") provided that the New Product Review Committee review and approve all new third party investment products including private placements for sale within RGMP.

14. On April 24, 2013, Tinka issued a press release announcing a non-brokered private placement financing of up to 2,353,000 units at a price of $0.85 cents per unit for gross proceeds of up to $2,000,050. The press release stated that "Richardson GMP is acting for the Company and will be paid a commission consisting of cash and warrants on a portion of the financing."

15. Prior to April 24, 2013, Ballanger committed RGMP to act for Tinka in a non brokered private placement without the review or approval of RGMP and contrary to firm policies and procedures. Ballanger did not inform either RGMP's compliance department or his branch manager of this proposed financing before Tinka issued a press release announcing the private placement, nor did he notify the firm that he was in possession of confidential and potentially material non public information.

16. Subsequently RGMP approved the above private placement after the fact and participated in this financing.

Ballanger received confidential information regarding Tinka

17. On October 8, 2013, Ballanger emailed RGMP's compliance department about a draft press release for a proposed Tinka financing. Ballanger had not previously notified RGMP about his knowledge or involvement in the proposed transaction or that he was in possession of confidential and potentially material non public information.

18. According to the Policies and Procedures Manual, Ballanger was required to inform RGMP's Compliance department if he was in possession of potential inside information. Given the circumstances of this transaction, Ballanger knew or ought to have known that he was required to inform RGMP of the confidential or potentially material non public information regarding Tinka.

19. In an October 8, 2013 email, RGMP's CCO reminded Ballanger of the firm's procedures relating to the

receipt and containment of confidential information.

20. RGMP added Tinka to its grey list on October 8, 2013 and added it to the restricted list on November 7, 2013 when the private placement financing was announced publicly.

21. On November 8, 2013 RGMP's compliance department sent Ballanger an email questioning trades in Tinka executed for one of his clients between October 22 and 24, 2013, as these trades were not marked unsolicited.

Close supervision by RGMP

22. RGMP questioned Ballanger further in February 2014 and when his responses were not satisfactory to the firm, Ballanger was placed under close supervision by RGMP in April 2014. At that time the following conditions were imposed:

- close supervision for a period of not less than six months;
- all new accounts were to be reviewed by branch management;
- he was not allowed to enter solicited buys in Tinka;
- he was not allowed to reference Tinka in marketing materials;
- he could not sell his personal holdings or trade in this security until all client sales were satisfied and,
- he was to develop an exit strategy for this security, to be presented to management within 30 days.

23. In early June 2014 Ballanger met with the compliance department and was reminded that he was to do the following:

- prepare a written plan for the disposition of Tinka;
- not to discuss investment recommendations on social media;
- bring receipt of non public information to the attention of the compliance department and,
- all marketing materials should be pre approved.

24. Ultimately the Respondent did not present an exit strategy for Tinka to RGMP. Ballanger's employment was terminated by RGMP in September 2014 before the close supervision period had ended.

Other

25. The Respondent does not have a previous disciplinary history.

26. The Respondent is 65 years old and has indicated that he does not intend to return to the investment industry.

27. The Respondent acknowledges that but for certain financial circumstances, evidence of which has been provided to Staff, a greater fine and costs would have been provisions in this Settlement Agreement.

PART IV – CONTRAVENTIONS

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

Count 1: Between April and October 2013, the Respondent Michael Ballanger failed to comply with his Dealer Member firm's policies and procedures regarding new product reviews and the receipt and containment of confidential information, contrary to IIROC Dealer Member Rule 29.1.

PART V – TERMS OF SETTLEMENT

29. The Respondent agrees to the following sanctions:

    a) To pay a fine to IIROC in the amount of $15,000;

    b) A one year suspension from registration with IIROC;

    c) To re-write and pass the Conduct and Practices Handbook Examination within 12 months of any re-registration with IIROC; and,

    d) Six months of close supervision upon any re-registration with IIROC.

30. 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

31. 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 of the following paragraph.

32. 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

33. This Settlement Agreement is conditional on acceptance by the Hearing Panel.

34. 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.

35. 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.

36. 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.

37. 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.

38. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the Hearing Panel.

39. 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.

40. 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.

41. 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

42. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.

43. A fax or electronic copy of any signature will be treated as an original signature.

DATED this "29" day of May, 2018.

_____	"Michael Ballanger"
Witness	Respondent Michael Ballanger
"Frank Scali"	"Kathryn Andrews"
Witness	Kathryn Andrews Senior 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 "June", 2018 by the following Hearing Panel:

Per: "Joan Smart"
Panel Chair

Per: "Randee Pavalow"
Panel Member

Per: "Nick Pallotta"
Panel Member