

Re Wood

IN THE MATTER OF:

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

and

Daryl William Wood

2014 IIROC 50

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

Heard: October 14, 2014

Decision: October 14, 2014

Decision released: October 23, 2014

Hearing Panel:

Joseph A. Bernardo (Chair), Brian Field and Lloyd Costley

Appearances:

Paul Smith, Enforcement Counsel

Patrick Sullivan, Respondent's Counsel

Daryl William Wood

REASONS FOR DECISION

¶ 1 On October 14, 2014, a Settlement Agreement between the Investment Industry Regulatory Organization of Canada (IIROC) and Darryl William Wood was presented to the Hearing Panel for acceptance in closed session.

¶ 2 The Hearing Panel accepted the Settlement Agreement. These are our reasons.

FACTS

¶ 3 The facts as set out in the Settlement Agreement are minimal.

¶ 4 Mr. Wood was registered with IIROC as the Chief Financial Officer of Union Securities Ltd. from March 2010 to July 2011. Union was a Dealer Member and a privately held company among whose shareholders were officers and employees of the firm.

¶ 5 In March 2011, IIROC's Financial and Operations Compliance Staff were in the course of conducting their annual examination of Union. Their work included reviewing the firm's Monthly Financial Reports.

¶ 6 Dealer Members are required to file Monthly Financial Reports with IIROC within 20 business days of each month end. The information in these reports is pertinent to assessing a firm's capital position and, among other things, must include a reconciliation of all client securities and investments disclosed in client account statements but not held in the firm's control.

¶ 7 The client account statements of Union officer and employee shareholders who held accounts at the firm disclosed, in some cases, their private Union shareholdings. These securities were by definition not in the firm's control and therefore captured by the monthly reconciliation requirement. Union's July 2010 Monthly Financial

Report did not include a reconciliation of these shareholdings. IIROC Staff asked the firm to provide it.

¶ 8 Mr. Wood prepared the requested reconciliation. He did this on March 16, 2011. He delivered it to IIROC Staff on the same day, but did not inform them when the reconciliation had been prepared or who had prepared it.

¶ 9 IIROC Staff asked Mr. Wood to clarify who had prepared the reconciliation and when it had been done. Mr. Wood told IIROC Staff that he himself had prepared the July 2010 reconciliation. He also told them that he had done the work in August 2010. This was a misrepresentation.

¶ 10 IIROC Staff subsequently investigated the matter and Mr. Wood was fully co-operative.

¶ 11 Mr. Wood has not been registered with IIROC in any capacity since departing from Union in July 2011 and has not previously been subject to disciplinary sanction.

¶ 12 Counsel for the parties supplemented these facts when they made their respective oral submissions. They agreed that:

- Mr. Wood's misrepresentation was an impulsive mistake from which neither he nor anyone else stood to gain financially.
- There was never any risk of the Union examination being impaired. The very reason IIROC Staff had sought the reconciliation in the first place was that they were aware that it had not been previously prepared.
- There were no inaccuracies in the reconciliation itself. The misrepresentation was limited solely to Mr. Wood's claim about when the reconciliation had been prepared.

MISCONDUCT

¶ 13 As an Approved Person, Mr. Wood was subject to IIROC Dealer Member Rule 29.1, which placed him under a duty to observe high standards of ethics and conduct and to refrain from business conduct that was unbecoming or detrimental to the public interest.

¶ 14 Mr. Wood acknowledges in the Settlement Agreement that his conduct was contrary to Rule 29.1.

APPLICABLE STANDARD

¶ 15 This matter came before us under IIROC Dealer Member Rule 20, which confers upon Hearing Panels the discretion to accept or reject settlement agreements.

¶ 16 The Rule does not enumerate criteria for exercising this discretion. Instead, Hearing Panels have through practice endeavoured to develop a standard for reviewing settlement agreements that respects both the purposes of the disciplinary process and the inherent value in efficiently resolving legal disputes.

¶ 17 The cardinal purposes of regulatory enforcement in the securities context are protection of the investing public and the integrity of our capital markets. Within the context of IIROC disciplinary and settlement hearings, achieving these core objectives cannot be separated from the need to protect the integrity of IIROC's processes, prevent members from repeating their misconduct and protect IIROC's membership from future harm. Accomplishing these goals requires enforcement outcomes that are proportionate to the misconduct at issue. It also requires that those outcomes be obtained in a manner that is as timely and efficient as circumstances may permit.

¶ 18 Our legal system places a high value on the settlement of legal disputes. Indeed, lawyers are under a professional obligation to encourage compromise or settlement whenever it is possible to do so on a reasonable basis. Settlement not only relieves parties of the cost, risk and uncertainty that comes with litigation, but as the product of negotiation and compromise a settlement is more likely to arrive at a fair and balanced resolution of a dispute. In observing that "the settlement process is an important one which should be encouraged and supported" the Hearing Panel in *Re Portfolio Strategies Securities Inc.* (2012 IIROC 36 at paragraph 10) expressed a view widely shared by many Hearing Panels, namely, that an effective disciplinary regime is one

that avoids unnecessary litigation whenever a reasonable outcome can be otherwise be obtained through settlement.

¶ 19 That is also why Hearing Panels have been virtually uniform in recognizing that when considering a settlement agreement they must be mindful that it is the product of negotiation and compromise between parties who are the most familiar with the strengths and weaknesses of their respective positions. In considering whether to accept or reject a settlement agreement, a Hearing Panel’s role is not to decide whether it would have arrived at the same outcome as that proposed by the parties. Rather, as stated in *Re Johnson* (2012 IIROC 19), a Hearing Panel should accept a settlement agreement “unless it considers the penalty provided for clearly to fall outside a reasonable range of appropriateness.”

DECISION

¶ 20 On the evidence, Mr. Wood’s failed attempt to backdate a single monthly filing never presented any risk of harm to either the investing public or the integrity of Union’s annual examination. On the contrary, it is hard to see how information relating to the firm’s ownership, let alone the dating of it, could have had any possible material significance for IIROC’s assessment of Union’s capital position, which was the object of the exercise. If any individual was harmed as a result of his misconduct it was Mr. Wood himself, who has had to endure the consequences of what was evidently an isolated incident of poor judgment. It is abundantly clear that specific deterrence is not a relevant penalty consideration in this case.

¶ 21 Having said that, IIROC’s supervision of its members depends on the transparency and accuracy of the information provided to it by its Dealer Members. Mr. Wood’s lapse was trivial in its particulars, but nonetheless a Chief Financial Officer of a Dealer Member who intentionally attempts to mislead IIROC about any aspect of financial reporting cannot expect to escape sanction.

¶ 22 The issue raised by this case is the need to protect the integrity of IIROC’s examination process. IIROC is satisfied that a penalty of \$15,000 is sufficient to make the point, and to his credit Mr. Wood has accepted responsibility for his conduct.

¶ 23 Taking all the circumstances of this case into consideration, the penalty agreed to by IIROC and Mr. Wood cannot be said to “fall outside a reasonable range of appropriateness”. Accordingly, the Hearing Panel accepted the Settlement Agreement.

Dated at Vancouver, British Columbia, this 23rd day of October, 2014.

Joseph A. Bernardo (Chair)

Lloyd Costley

Brian Field

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff (“**Staff**”) and Daryl William Wood (“**Respondent**”) consent and agree to the settlement of this matter by way of this agreement (“**Settlement Agreement**”).
2. The Enforcement Department of IIROC has conducted an investigation (“**Investigation**”) into the conduct of the Respondent.
3. The Investigation discloses matters for which the Respondent may be disciplined by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1, Part C (“**Hearing Panel**”).

II. JOINT SETTLEMENT RECOMMENDATION

4. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.
5. The Respondent admits that in March 2011 when he was the Chief Financial Officer at Union Securities Ltd. (“**Union**”), he acted contrary to IIROC Dealer Member Rule 29.1 by representing to IIROC Financial and Operations Compliance Staff (“**FinOps**”) that a report he prepared summarizing the share

positions held in Union had been completed in August 2010 when the report had in fact been completed in March 2011.

6. Staff and the Respondent agree that this matter shall be settled by the Respondent paying a fine of \$15,000.

III. STATEMENT OF FACTS

(i) Acknowledgment

7. Staff and the Respondent 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

Overview

8. These facts relate to periods in 2011 when the Respondent was Chief Financial Officer at Union, a Dealer Member firm. In March 2011, the Respondent submitted a report to FinOps summarizing the share positions held in Union that he represented had been completed in August 2010 when in fact it had been completed in March 2011.

Reconciliations

9. As part of the requirement to file monthly and annual capital related reports with FinOps, Dealer Member firms must perform a reconciliation of securities and investments held outside the firm's control, at least monthly.
10. With every Monthly Financial Report ("MFR"), a Dealer Member firm is required to reconcile all security holdings held by a third party.
11. As Union's own shares are recorded on various client statements, they are also subject to the requirement to be reconciled monthly.
12. The reconciliations are required to be completed within 20 business days of the month end.

Wood

13. Wood was a retail Investment Advisor for approximately one year from 1995-96. He obtained his Certified Management Accountant designation in 2000 and was Director of Finance with Market Regulations Services Inc. ("RS") from November, 2001 until May, 2005. Wood had not been an Officer at a Dealer Member firm before joining Union in 2010. He completed his qualifying exams and was registered as Union's Chief Financial Officer in March, 2010. He stayed in that role for approximately 16 months until July, 2011. He has not been registered with IIROC since that time.
14. In March, 2011, when they were reviewing Union's July 2010 MFR as part of an annual examination, FinOps requested the reconciliation of the private shares of Union held by its officers and employees, some of which were reported on the officers' and employees' Union account statements.
15. On March 16, 2011 Wood prepared the reconciliation and delivered it to FinOps, but he did not indicate when it was prepared or who prepared it.
16. FinOps requested clarification as to when the reconciliation had been prepared and who had prepared it. Wood advised FinOps that the reconciliation had been prepared one month in arrears - ie: the July reconciliation had been prepared in August - and that he himself had prepared it.
17. Wood's statement to FinOps that the July 2010 reconciliation was prepared in August 2010 was a misrepresentation.

Mitigating Factors

18. The Respondent has not previously been subject to disciplinary sanction and fully co-operated with IIROC Staff during the Investigation.

IV. TERMS OF SETTLEMENT

- 19. This settlement is agreed upon in accordance with IIROC Dealer Member Rules 20.35 to 20.40, inclusive and Rule 15 of the Dealer Member Rules of Practice and Procedure.
- 20. The Settlement Agreement is subject to acceptance by the Hearing Panel.
- 21. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.
- 22. 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.
- 23. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives his right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
- 24. 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 in relation to the matters disclosed in the Investigation.
- 25. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
- 26. Staff and the Respondent 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.
- 27. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.
- 28. 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 Vancouver, British Columbia, this 14th day of October, 2014.

“Patrick Sullivan”

“Daryl William Wood”

WITNESS

RESPONDENT

AGREED TO by Staff at Vancouver, British Columbia, this 14th day of October, 2014.

“Wesley Chan”

“Paul Smith”

WITNESS

PAUL SMITH

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

ACCEPTED at Vancouver, British Columbia, this 14th day of October, 2014, by the following Hearing Panel:

Per: “Joseph Bernardo”

Panel Chair

Per: “Brian Field”

Panel Member

Per: “Lloyd Costely”

Panel Member