

Re Geddes

IN THE MATTER OF:

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

and

The Universal Market Integrity Rules

and

William Michael Geddes

2012 IIROC 11

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

Hearing: February 22, 2012
Decision: February 28, 2012
(20 paras.)

Hearing Panel:

The Honourable Thomas R. Braidwood, Q.C., Chris Lay, L. Karen Henderson

Appearances:

Lorne Herlin, Enforcement Counsel

H. Roderick Anderson, Respondent Counsel

REASONS FOR DECISION

¶ 1 William Michael Geddes (“Geddes”) has agreed that he has committed the following contravention:

“Between December 2007 and October 2008, Geddes, a registered representative employed by National Bank Financial Ltd., entered orders for the shares of Response Biomedical Corporation that he ought reasonably to have known would create or could reasonably be expected to create an artificial sale price for the security, contrary to UMIR 2.2(2) and UMIR Policy 2.2, for which he is liable under UMIR 10.4.”

¶ 2 For purposes of the Settlement Agreement, Staff and Geddes agreed with and relied upon the admitted facts and conclusions which were set out in the Statement of Allegations that was attached as Appendix “A” to the Settlement Agreement.

¶ 3 The parties have further agreed to the following by way of penalty:

- (i) payment of a \$30,000.00 fine by Geddes to IIROC;
- (ii) payment of \$1,500.00 in costs by Geddes to IIROC;
- (iii) Geddes be suspended from registration for a period of sixty days commencing on February 25, 2012; and

- (iv) Geddes must successfully complete the Conduct and Practice Handbook Course by September 30, 2012.

¶ 4 The steps taken by the parties with reference to the offer of settlement and the agreeing upon the settlement was done pursuant to the Rules and Policies of the Universal Market Integrity Rules (“UMIR”).

¶ 5 It is agreed by the parties that Section 2.2(2) of the UMIR Rules and Policies which reads as follows applies:

“2.2(2) A Participant or Access Person shall not, directly or indirectly, enter an order or execute a trade on a marketplace if the Participant or Access Person knows or ought reasonably to know that the entry of the order or the execution of the trade will create or could reasonably be expected to create:

- (a) a false or misleading appearance of trading activity in or interest in the purchase or sale of the security; or
- (b) an artificial ask price, bid price or sale price for the security or a related security.”

¶ 6 Part 3 of the UMIR Policy 2.2 reads as follows:

“For the purposes of subsection (2) of Rule 2.2, an ask price, bid price or sale price will be considered artificial if it is not justified by real demand or supply in a security. Whether or not a particular price is “artificial” depends on the particular circumstances.

Some of the relevant considerations in determining whether a price is artificial are:

- (a) the prices of the preceding trades and succeeding trades;
- (b) the change in the last sale price, best ask price or best bid price that results from the entry of the order on a marketplace;
- (c) the recent liquidity of the security;
- (d) the time the order is entered and any instructions relevant to the time of entry of the order; and
- (e) whether any Participant, Access Person or account involved in the order:
 - (i) has any motivation to establish an artificial price, or
 - (ii) represents substantially all of the orders entered or executed for the purchase or sale of the security.

The absence of any one or more of these considerations is not determinative that a price is or is not artificial.”

¶ 7 The panel has also listened to submissions and has considered the UMIR Disciplinary Sanction Guidelines, and in particular, those principles set out under the heading “General Purpose”:

“1. Disciplinary sanctions are designed to:

- a. encourage Regulated Persons to comply with all applicable securities legislation and requirements;
- b. prevent fraudulent and manipulative acts and practices and deter misconduct both generally and specifically;
- c. promote just and equitable principles of trade for participants and open and fair business practices by access persons;
- d. improve overall business standards in securities industries; and

e. promote public confidence in the SRO system.”

¶ 8 Also the “General Factors” and the various “Mitigating Factors” that should be considered were the principles set out that should guide this panel in assessing the agreement between the parties.

¶ 9 The following passage was cited in *Re Milewski* [1999] I.D.A.C.D. No. 17:

“Although a settlement agreement must be accepted by a District Council before it can become effective, the standards for acceptance are not identical to those applied by a District Council in making a penalty determination after a contested hearing. In a contested hearing, the District Council attempts to determine the correct penalty. 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.” (page 11).

¶ 10 The following passage was cited in *Re Clark* [1999] I.D.A.C.D. No. 40 (December 14, 1999), wherein the panel in considering a settlement agreement stated:

“It was submitted by staff and accepted by the panel that its role under by-law 20.26 is not the same as its role under by-law 20.10 following the hearing. In considering a settlement under by-law 20.26 the panel should not simply substitute its discretion for that of staff when negotiating a settlement. **The panel must be cognizant of the importance of the settlement process and should not interfere lightly in a negotiated settlement.** In our view, as a result, the panels must also be careful in using previously settlements as precedent. The settlement process is one of negotiation and compromise and the penalty imposed following a settlement will often be less onerous than one imposed following a hearing where similar findings are made. (page 3) (*emph. added*)”

¶ 11 The following passage was cited in *Rault v. Law Society of Saskatchewan* (2009) S.J. No. 436 (C.A.) (July 15, 2009):

“[13] The Appellant contends that the principles applied in the public law field of criminal law, with respect to joint submissions on sentencing, should be applied in the matter of sentences imposed pursuant to statutory powers accorded to the Law Society. In Saskatchewan, the principle related to joint submissions for criminal law purposes is set out in *R. V. Webster*, wherein Cameron, J.A. adopted the principles described in the Alberta Court of Appeal in *R. v. G.W.C.* In summary, those principles establish that there is an obligation on a trial judge to give serious consideration to a joint submission on sentencing agreed upon by counsel unless the sentence is unfit or unreasonable; or contrary to the public interest; and, it should not be departed from unless there are good or cogent reasons for doing so.”

¶ 12 With reference to the suitability of the penalty, the case of *Re Mackenzie* was cited in which there were certain similarities between the facts of that case. The disposition in the Mackenzie case was as follows:

“DISPOSITION

9. For the contraventions in paragraph 7(i) above, Staff and the Respondent have agreed upon disposition as follows:

(i) Payment by the Respondent of a fine in the amount of \$20,000;

- (ii) a prohibition on the Respondent seeking re-registration approval with any Dealer Member of IIROC for a period of 3 months from the effective date of approval of this Settlement Agreement; and
 - (iii) payment by the Respondent of costs in the amount of \$5,000.
10. In agreeing to this disposition, Staff is specifically acknowledging that the Respondent was internally disciplined by his former employer and that he has:
- (i) Paid a fine in the sum of \$20,000;
 - (ii) Re-written the CPH (completed on August 26, 2008); and
 - (iii) Completed a branch presentation summarizing the IA Compliance Manual section on trading.”

¶ 13 In the Mackenzie case, therefore, in addition to the \$20,000.00 fine to IIROC agreed to by the parties, Mackenzie had already been disciplined by his employer in the amount of \$20,000.00, for a total of \$40,000.00 in fines. The Hearing Panel also accepted the 3 month (90 day) suspension. In this case before us, the fine for Geddes is proposed at \$30,000.00 and the suspension proposed at 60 days.

¶ 14 There are a number of mitigating circumstances in the case before us. They include:

- (a) Geddes has no prior disciplinary history and was fully cooperative with the investigation;
- (b) Geddes sold few RBM shares in the material accounts during the material time; and
- (c) Geddes earned income at his firm solely based on commissions, and therefore did not profit from the increase in the value of his clients’ monthly statements.

¶ 15 The panel is of the view that the agreed facts as submitted to us were not as severe as those agreed to in MacKenzie. In MacKenzie, the respondent entered into bids to purchase a certain security without any intention that the orders would be executed and for no bona fide purpose, and the security was illiquid.

¶ 16 In this case before us, the orders were filled (and paid for, not held on margin, nor generally sold, in majority for one board lot), and upon query, IIROC counsel advised the panel that the material security was a liquid one.

¶ 17 We note that some of the relevant considerations contributing to a determination of “artificial price” contained in UMIR 2.2(2) such as liquidity factors or any pricing/volume motivations were not part of this settlement agreement. We acknowledge that the absence of any one or more considerations is not determinative that a price is or is not artificial. We mention these differences from the MacKenzie settlement to support our view that a lesser fine and shorter suspension would be more appropriate in this particular case. We also note that there is no evidence of losses to any client.

¶ 18 We refer to the principles that are cited above concerning the acceptance of a settlement agreement which has been properly negotiated between the parties; we are cognizant of the importance of the settlement process and we should therefore accept a joint settlement submission, unless we view the penalty as clearly falling outside a reasonable range of the appropriateness or if it was unfit or unreasonable or contrary to the public interest, and if there are good or cogent reasons for so rejecting it.

¶ 19 In conclusion, we therefore accept the settlement between the parties and conclude that the following penalty is within an appropriate range, namely:

- (a) payment of a \$30,000.00 fine by Geddes to IIROC;
- (b) payment of \$1,500.00 in costs by Geddes to IIROC;
- (c) Geddes be suspended from registration for a period of sixty days commencing on February 25, 2012; and

- (d) Geddes must successfully complete the Conduct and Practice Handbook Course by September 30, 2012.

¶ 20 The Settlement Agreement is hereby approved this 28th day of February, 2012, by the following Hearing Panel constituted to review the terms thereof.

Thomas R. Braidwood, Q.C.

Chris Lay

L. Karen Henderson

OFFER OF SETTLEMENT

A. INTRODUCTION

1. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada and Market Regulation Services Inc. (RS). Pursuant to the *Administrative and Regulatory Services Agreement* between RS and the Investment Industry Regulatory Organization of Canada (IIROC), effective June 1, 2008, RS has retained IIROC to provide services for RS to carry out its regulatory functions.
2. The Enforcement Department Staff (Staff) of IIROC has conducted an investigation (the Investigation) into the conduct of William Michael Geddes (Geddes).
3. The Investigation has disclosed matters for which IIROC seeks certain sanctions against Geddes pursuant to Rule 10.5 of the Universal Market Integrity Rules (UMIR).
4. If this Offer of Settlement is accepted by Geddes, the resulting settlement agreement (the Settlement Agreement), which has been negotiated in accordance with Part 3 of UMIR Policy 10.8, is conditional upon the approval by a hearing panel appointed pursuant to IIROC Transitional Rule No.1, Schedule C.1 (the Hearing Panel).
5. Geddes agrees to waive all rights under UMIR to a hearing or to an appeal or review if the Settlement Agreement is approved by the Hearing Panel.
6. Geddes consents to be subject to the jurisdiction of IIROC and its relevant disciplinary process and rules in relation to this matter.
7. Staff and Geddes jointly recommend that the Hearing Panel approve the Settlement Agreement.

B. AGREEMENT AS TO REQUIREMENTS CONTRAVENED

8. At all material times, Geddes was a registered representative employed by National Bank Financial Ltd. Geddes agrees that between December 2007 and October 2008, he entered orders for the shares of Response Biomedical Corporation that he ought reasonably to have known would create or could reasonably be expected to create an artificial sale price for the security, contrary to UMIR 2.2(2) and UMIR Policy 2.2, for which he is liable under UMIR 10.4.

C. ADMITTED FACTS

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

D. DISPOSITION

10. For the contravention in paragraph 8 above, Staff and Geddes have agreed upon disposition as follows:
 - i. payment of a \$30,000.00 fine by Geddes to IIROC;

- ii. payment of \$1,500.00 in costs by Geddes to IIROC;
- iii. Geddes be suspended from registration for a period of sixty days commencing on February 25, 2012; and
- iv. Geddes must successfully complete the Conduct and Practice Handbook Course by September 30, 2012.

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

11. Geddes shall have until the close of business on Thursday, February 16, 2012 to accept this Offer of Settlement and serve an executed copy thereof on Staff.
12. The Settlement Agreement shall be presented to a Hearing Panel at a hearing (the Approval Hearing) held for the purpose of approving the Settlement Agreement, in accordance with the procedures described in UMIR Policy 10.8 in addition to any other procedures as may be agreed upon between the parties. Geddes acknowledges that IIROC shall notify the public and media of the Approval Hearing in such manner and by such media as IIROC sees fit.
13. Pursuant to Part 3.4 of UMIR Policy 10.8, the Hearing Panel may approve or reject the Settlement Agreement.
14. In the event the Settlement Agreement is approved by a Hearing Panel, the matter becomes final, there can be no appeal or review of the matter, the disposition of the matter agreed upon in the Settlement Agreement will be included in the permanent record of IIROC in respect of Geddes and IIROC will publish a summary of the requirements contravened, the facts, and the disposition agreed upon in the Settlement Agreement.
15. In the event the Hearing Panel rejects the Settlement Agreement, IIROC may proceed with a hearing of the matter before a differently constituted Hearing Panel pursuant to Part 3.7 of UMIR Policy 10.8 and the Settlement Agreement may not be referred to without the consent of both parties.
16. Geddes agrees that, in the event he fails to comply with any of the terms of the Settlement Agreement, IIROC may enforce the Settlement Agreement in any manner it deems appropriate and may, without limiting the generality of the foregoing, suspend Geddes' access to marketplaces regulated by IIROC until IIROC determines that Geddes is in full compliance with all terms of the Settlement Agreement.
17. Geddes agrees that he will not make a public statement inconsistent with the Settlement Agreement.
18. The Settlement Agreement may be signed in counterparts.

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

DATED at Vancouver, British Columbia on the 9th day of February, 2012.

Per: “Warren Funt”

Warren Funt

Vice President, Western Canada

Investment Industry Regulatory Organization of Canada

Suite 2800 – Royal Centre

1055 West Georgia Street

Vancouver, British Columbia V6E 3R5

DATED at Whistler, British Columbia on the 14th day of February, 2012.

“Lisa Nielsen Geddes”

“William Michael Geddes”

Witness Signature

William Michael Geddes

“Lisa Nielsen Geddes”

Name of Witness

Address of Witness

The Settlement Agreement is hereby approved this 22nd day of February, 2012, by the following Hearing Panel constituted to review the terms thereof:

Per: “Thomas Braidwood”

Panel Chair

Per: “Lloyd Costley”

Panel Member

Per: “Karen Henderson”

Panel Member

STATEMENT OF ALLEGATIONS

I. REQUIREMENTS CONTRAVENED

1. It is alleged that William Michael Geddes (Geddes) has committed the following contravention:

Between December 2007 and October 2008, Geddes, a registered representative employed by National Bank Financial Ltd., entered orders for the shares of Response Biomedical Corporation that he ought reasonably to have known would create or could reasonably be expected to create an artificial sale price for the security, contrary to UMIR 2.2(2) and UMIR Policy 2.2, for which he is liable under UMIR 10.4.

2. The relevant provisions of UMIR are attached hereto as Schedule “A”.

II. RELEVANT FACTS

Overview

3. Geddes owned a large number of shares of Response Biomedical Corporation (RBM). During a period when the price of RBM shares was generally declining, Geddes entered 81 active buy orders to purchase small quantities of RBM shares during the last 15 minutes of the trading session. As a result, on 81 days Geddes increased the closing price of RBM shares.

Background

4. National Bank Financial Ltd. (NBF) is a Participating Organization of the Toronto Stock Exchange (TSX), and a Member of the TSX Venture Exchange (TSX V). Therefore, NBF is a Participant under UMIR.

5. Geddes has worked as a registered representative since March 1987. Since January 2000, Geddes has been employed by NBF. At all material times, Geddes worked at NBF’s Vancouver business location. He currently works at NBF’s Whistler business location.

RBM

6. RBM, among other things, develops, manufactures, and sells diagnostic tests for the medical point-of-care and on-site environmental testing markets.
7. From April 9, 1984 to December 20, 2007, RBM's shares were listed on the TSX V. As of December 21, 2007, RBM shares have been listed on the TSX.
8. At all material times there were approximately 134,729,920 issued and outstanding shares of RBM.

Geddes' Control of RBM Shares

9. At all material times, Geddes made the decisions and entered the orders to purchase and sell shares of RBM on behalf of the following four investment accounts at NBF:
 - i. his registered retirement savings plan account (the RRSP Account);
 - ii. his registered education savings plan account (the RESP Account);
 - iii. his wife's spousal retirement savings plan account (the SRSP Account); and
 - iv. his locked-in retirement account (the LIRA Account).
10. As of November 30, 2007, the RRSP Account, the RESP Account, the SRSP Account, and the LIRA Account (collectively, the Geddes Accounts) held approximately 2,114,100 shares of RBM. These shares had a market value of approximately \$1,881,549 and were in an unrealized profit position of approximately \$15,328.
11. In December 2007, the share price of RBM began to decline. By December 11, 2007, the approximately 2,114,100 shares of RBM that were held in the Geddes Accounts were in an unrealized loss position of approximately \$153,800.
12. In addition to the Geddes Accounts, at all material times an average of 46 investment accounts for which Geddes was the responsible registered representative, collectively held an average of 1,787,067 shares of RBM.

The 81 Active Buy Orders

13. Between December 2007 and October 2008, Geddes entered 81 active buy orders for shares of RBM which were immediately traded upon entry (the 81 buy orders). All 81 buy orders were placed on separate days. Particulars of the 81 buy orders are attached hereto as Schedule "B".
14. As detailed below, the 81 buy orders:
 - i. were placed in the last 15 minutes of the trading sessions;
 - ii. were for small quantities of RBM shares;
 - iii. increased the closing price of RBM shares on 81 days;
 - iv. increased the month end closing price for 7 months;
 - v. were placed during a period when the price of RBM shares were generally in decline; and
 - vi. were for the most part uneconomic due to the high commission costs which they generated.
15. The 81 active buy orders resulted in a new high price for the day 30 times.

i. Buy Orders Were Placed Near the Close of the Trading Sessions

16. As set out in the following table, Geddes placed the 81 buy orders during the last 15 minutes of the trading session, in particular 55 of the 81 buy orders were placed within the last minute of the trading session:

Time Period	# of Buy Orders Placed
15:59 - 16:00	55
15:55 - 15:59	14
15:50 - 15:55	6
15:45 - 15:50	6

ii. Buy Orders Were for Small Quantities of Shares

17. As a result of the 81 buy orders, the Geddes Accounts purchased 102,000 RBM shares. The median size of each order was 500 shares. In particular, 56 of the 81 buy orders were for 500 shares, and 8 of the 81 buy orders were for 1,000 shares.

iii. Buy Orders Increased the Closing Price

18. The 81 buy orders increased the closing price of RBM shares by 1.3% to 12.5% on 81 days, and on average by 4.67%.

iv. Buy Orders Increased Month End Closing Price

19. NBF used the month end closing price to value the monthly account statements that were sent to clients.
20. Between December 2007 and September 2008, 7 of the 81 buy orders increased the closing price of RBM's shares on 7 month-end trading days (the 7 month-end buy orders). In particular, the 7 month-end buy orders were active orders that were entered in the last 15 minutes of the trading session, of which 6 were entered in the final minute of the trading session.

v. Number of Buy Orders Increased As Share Price Declined

21. As the amount of the unrealized losses for the Geddes Accounts increased, the number of orders that Geddes placed which increased the closing price of RBM shares became more frequent.
22. From December 2007 to March 2008, on average Geddes increased the closing price five times each month while the cumulative unrealized losses for the Geddes Accounts ranged from approximately \$178,000 to \$420,000.
23. From April 2008 to September 2008, the cumulative unrealized losses for the Geddes Accounts accelerated substantially, reaching over \$1,000,000 by September 2008. During this period of accelerating unrealized losses, Geddes increased the closing price an average of ten times each month.

vi. Many of the Buy Orders Were Uneconomical

24. Many of the 81 buy orders were uneconomical due to the high commissions that they incurred. In particular:
- the commission for 53 of the 81 buy orders was approximately 10% or more of the purchase price of the RBM shares; and
 - the commission for 7 of the 81 buy orders was approximately 5% to 9% of the purchase price of the RBM shares.

NBF Instructs Geddes to Stop Trading RBM Shares

25. By way of letters dated September 18, 2008, September 25, 2008, and October 29, 2008, IIROC's Trading Review and Analysis Department asked NBF to provide it with information regarding, among other things, the 81 buy orders.
26. On or about October 30, 2008, NBF's Compliance Department instructed Geddes to stop trading RBM near the end of trading sessions. Geddes fully complied with the request.

Mitigating Factors

27. Geddes has no prior disciplinary history and he fully cooperated with the investigation.
28. Geddes sold few of the RBM shares held in the Geddes Accounts during the material time.
29. Geddes earned income at NBF solely based on commissions, and did not therefore profit from the increase in the value of his clients' monthly account statements caused by the 81 active buy orders.

DATED at Vancouver, this __th day of February, 2012.

Investment Industry Regulatory Organization of
Canada

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