Re Waddington

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada

and

Russell Waddington

2017 IIROC 39

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

Heard: July 7, 2017 in Vancouver, BC
Decision: July 7, 2017
Written Reasons: August 9, 2017

Hearing Panel:
Catharine Esson, Chair, Brian Worth and Michael Johnson
Appearances:
Lorne Herlin, Enforcement Counsel
Russell Waddington was not in attendance or represented by counsel

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REASONS FOR DECISION ON SETTLEMENT AGREEMENT

¶ 1 In a closed hearing on July 7, 2017 the Hearing Panel was asked to accept a Settlement Agreement entered into between the Investment Industry Regulatory Organization of Canada ("IIROC") and Russell Waddington. Mr. Waddington was not present. However, we were advised that he had agreed to the Hearing Panel proceeding in his absence, which we did.

¶ 2 Following deliberation that day, the hearing was adjourned to allow the parties to consider concerns expressed by the Hearing Panel. On July 13, 2017, the National Hearing Coordinator provided the Hearing Panel with a revised Settlement Agreement signed by the parties on July 12, 2017 (the "Revised Settlement Agreement"). The Panel advised the National Hearing Coordinator on July 17, 2017 that it accepted the Revised Settlement Agreement and would issue written reasons. These are the Hearing Panel's reasons for accepting the Revised Settlement Agreement.

FACTS

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

¶ 4 The Panel considered the following facts to be particularly important to its consideration:

1. Mr. Waddington has worked in the securities industry since 1979. He has been a proprietary trader at Mackie Research Capital Corporation since December 2010. He is registered as a Trader.

2. From July 2014 to October 2014, Mr. Waddington did not receive any compensation from Mackie because he had incurred trading losses.

3. Mr. Waddington's order entry in the pre-open session triggered an internal alert at Mackie on or about September 15, 2014, resulting in Mackie's Chief Compliance Officer directing Mr. Waddington to cease entering and then cancelling orders during the preopen session.

4. On seven occasions between October and December, 2014, Mr. Waddington entered orders in the preopen session that he intended to execute (bona fide orders) on one side of the market. He simultaneously placed orders that he did not intend to execute (non bona fide orders) on the other side of the market (the "Layering").

5. Mr. Waddington engaged in the Layering in order to induce other market participants to react and trade with one of his bona fide orders at an artificial price.

6. Mr. Waddington engaged in the Layering for the purpose of achieving a profit.

7. Mr. Waddington did not in fact make a profit from this trading. There was no evidence before the Panel whether he avoided losses he otherwise would have incurred.

MISCONDUCT

¶ 5 Mr. Waddington has admitted that he violated UMIR 2.2(2) and UMIR Policy 2.2, for which he is liable under UMIR 10.4(1) because, between October 2014 and December 2014, he entered orders that he ought reasonably to have known would create, or could reasonably be expected to create, a false or misleading appearance of a trading activity in or interest in the purchase or sale of securities or an artificial price for securities.

DECISION

¶ 6 When presented with a settlement agreement, a hearing panel's jurisdiction is to accept it or reject it, not to impose its own view of the appropriate sanction. We agree with the comments of the Hearing Panel in Re:Wood (2014 IIROC 50) at paragraphs 17-19 about how this jurisdiction should be exercised.

¶ 7 We have concluded that the sanction proposed in the Revised Settlement Agreement does not "clearly fall outside the reasonable range of appropriateness". We therefore accept the Revised Settlement Agreement. That being said, we wish to emphasize that we consider the proposed sanction to be at the low end of the reasonable range.

¶ 8 IIROC Enforcement Staff referred us to the Key Factors in Determining Sanction in the IIROC Sanction Guidelines as well as three previous decisions on Settlement Agreements where proprietary traders had entered non bona fide orders:

- Re: Li 2015 IIROC 26
- Re: Sole 2016 IIROC 30
- Re: Zhang 2013 IIROC 35

¶ 9 We have considered these authorities in reaching our decision.

¶ 10 In each of the three cases we were referred to, the Hearing Panel accepted a settlement agreement based on a $10,000 fine, a suspension of one month and costs.

¶ 11 IIROC Enforcement Staff submitted that the conduct in each of these three cases was more serious than in this case, either because the respondent actually made a profit from the impugned trading or because there were more instances of misconduct, or both. We accept that these distinctions exist and therefore this case is marginally less serious than the three precedents.

¶ 12 That being said, in two of the three decisions provided to us, the Hearing Panel expressed substantial concerns about the adequacy of the sanction in light of the necessity to deter both the respondent and others from engaging in similar conduct (Li, supra, para 14; Sole, supra, para 18). We share these concerns.

¶ 13 Mr. Waddington admitted that he placed orders that he did not intend to execute in order to induce other market participants to react and trade with one of his bona fide orders at an artificial price and that he did this to

achieve a profit.

¶ 14 The Hearing Panel recognizes that Mr. Waddington admitted only that he "ought to have known" that his conduct constituted a manipulative or deceptive method, act, or practice" and "would create, or reasonably be expected to create, a false or misleading appearance of trading activity…or an artificial price "contrary to the regulatory rules. Mr. Waddington did not admit he knew these things. Presumably because of this, IIROC Staff characterized the misconduct as reckless with respect to regulatory requirements, rather than intentional.

¶ 15 In our view, regardless of the proper legal categorization of the mental element of the misconduct, the fact that the Respondent placed orders he did not intend to execute for the purpose of creating an artificial price makes this a case of serious misconduct. It is not significantly less serious if, after more than thirty years in the industry, the Respondent did not know the regulatory significance of his conduct.

¶ 16 The seriousness is exacerbated by the following facts:

- The Respondent had been directed to stop entering and then cancelling orders in the preopen session about one month earlier,
- The Respondent was seeking to profit from his misconduct, and
- The Respondent engaged in the improper trading on a number of occasions.

¶ 17 We have, however, also taken into account that the Respondent:

- has had a long career in the industry with no previous disciplinary history; and
- admitted his misconduct and engaged in this settlement process.

¶ 18 We do not consider it to be a mitigating factor that the Respondent did not profit from his misconduct, particularly as we do not know if he benefited by avoiding losses he otherwise would have incurred. Had there been profits (or evidence of avoided losses), it would have been an aggravating factor.

¶ 19 In all the circumstances, respecting that this settlement is a product of compromise between parties who know more about the strengths and weaknesses of their respective positions than we do and that it is not our role to impose our own sanction, we accept the Revised Settlement Agreement.

Dated at Vancouver. BC, this 9th day of August, 2017.

Catharine Esson

Chair

Brian Worth

Michael Johnson

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 Russell Waddington (the 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.

Overview

4. Between October 2014 and December 2014, the Respondent entered orders that he intended to execute (bona fide orders) on one side of the market. He simultaneously placed orders that he did not intend to execute (non-bona fide orders) on the other side of the market in order to induce other market participants to react and trade with one of his bona fide orders at an artificial price. This practice is commonly known as "layering".

5. The Respondent's trading constituted a contravention of Universal Market Integrity Rules (UMIR) 2.2(2) and Policy 2.2 which, among other things, prohibit the entering of non-bona fide orders. Schedule "A" sets out the text of the relevant UMIR requirements.

The Respondent's Work History

6. Mackie Research Capital Corporation (Mackie) is registered as an investment dealer and is a Participant under UMIR.

7. The Respondent began working in the securities industry in 1979.

8. Since December 2010 the Respondent has worked as a proprietary trader at Mackie and is registered as a Trader.

The Respondent's Compensation

9. At all material times, on a monthly basis, Mackie paid the Respondent 60% of any profits that his proprietary account generated. The Respondent was responsible for any losses which he incurred.

10. From July 2014 to October 2014, the Respondent did not receive any compensation from Mackie because he had incurred trading losses.

September 2014 Gatekeeper Report

11. The TSX Venture Exchange (TSXV) has a pre-open session that runs from 7:00 a.m. until the opening of the market at 9:30 a.m. EST. During the pre-open session order entry is allowed but trades do not occur.

12. On or about September 15, 2014, Mackie filed a Gatekeeper Report with IIROC. The report indicated that the Respondent's order entry in the pre-open session had triggered an internal alert at Mackie. As a result, Mackie's Chief Compliance Officer directed the Respondent to cease entering and then canceling orders during the pre-open session.

The Respondent's Layering Activity

13. On seven days between October 2014 and December 2014 during the pre-open session of the TSXV, the Respondent entered large volume non-bona fide orders on one side of the market in relation to his pre-existing position on the other side of the market (the Trading Activity). He would then amend or cancel these large orders immediately after he liquidated his pre-existing long position or covered his pre-existing short position.

14. The Respondent's non-bona fide orders created a false or misleading appearance of activity.

15. The Trading Activity occurred in the following five TSXV listed securities on the following seven days:

Day	**Security**
October 15, 2014	Poet Technologies Inc.

Day	Security
October 17, 2014	Taipan Resources Inc.
October 24, 2014	Sprylogics International Corp.
October 27, 2014	Sprylogics International Corp.
October 29, 2014	Sprylogics International Corp.
December 17, 2014	Patient Home Monitoring Corp.
December 31, 2014	Theralase Technologies Inc.

16. The Respondent did not have Marketplace Trading Obligations for any of the listed securities in question.

17. In five instances, the Respondent's non-bona fide orders were entered on the bid side and in two instances, on the ask side.

Trading in Sprylogics International Corp. on October 29, 2014

18. The Respondent's trading activity in the shares of Sprylogics International Corp. (SPY) on October 29, 2014 is representative of the Trading Activity.

19. The Respondent began the trading day holding 7,500 shares of SPY at an average cost of $0.3866 and he had the following three open buy orders that had been entered on the previous trading day:

- 3,000 shares at $0.400;
- 1,000 shares at $0.400; and
- 5,000 shares at $0.395.

20. At 08:17:35 the national best bid for shares of SPY was $0.410 and the national best offer was $0.420.

21. At 08:18, the Respondent placed his first and second buy order for shares of SPY. In particular at:

- 08:18:41, he placed a buy order for 30,000 shares at $0.390; and
- 08:18:54, he placed a buy order for 40,000 shares at $0.400.

22. After he entered these two buy orders, the Respondent accounted for approximately 73% of the aggregate buy volume to purchase shares of SPY from $0.390 to $0.410.

23. At 08:47:12, the Respondent entered a sell order for 7,500 shares at $0.410.

24. At 09:09:14, the Respondent reduced his bid for 40,000 shares to $0.390 from $0.400.

25. Between 09:13:32 and 09:13:42, the Respondent cancelled his three buy orders from the previous trading day.

26. Then at 09:13:47, the Respondent reduced his bid for 30,000 shares to $0.370 from $0.390.

The Respondent Sells all of his SPY Shares

27. When the market opened at 09:30:00, the Respondent's sell order for 7,500 shares at $0.410 was partially filled when 1,000 shares were sold at $0.410.

28. At 9:30:42, the Respondent cancelled the remainder of the sell order and he entered a sell order for 6,500 shares at $0.400 which was immediately filled.

29. At 09:30:47 the Respondent canceled his buy order for 40,000 shares at $0.390 and at 09:30:55 he reduced his bid for 30,000 shares at $0.370 to 20,000 shares at $0.365.

30. The Respondent did not intend to execute the above-noted buy orders. He entered them to create a false or misleading appearance of demand in the security while he was attempting to sell his shares of SPY.

31. Further particulars of the Respondent's trading activity in the shares of SPY on October 29, 2014 are set out in Schedule "B".

32. As an experienced trader, the Respondent ought to have known that the Trading Activity constituted a manipulative or deceptive method, act, or practice. The Trading Activity misrepresented the supply, demand, or price for the securities and was undertaken to achieve a profit.

PART IV – CONTRAVENTIONS

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

    Between October 2014 and December 2014, the Respondent, entered orders that he ought reasonably to have known would create, or could reasonably be expected to create, a false or misleading appearance of trading activity in or interest in the purchase or sale of securities or an artificial price for securities, contrary to UMIR 2.2(2) and UMIR Policy 2.2, for which he is liable under UMIR 10.4(1).

PART V – TERMS OF SETTLEMENT

34. The Respondent agrees to the following sanctions and costs:

    a) payment of a $10,000 fine;

    b) a suspension from approval in any capacity from August 1, 2017 to September 1, 2017; and

    c) payment of $1,000 in costs to IIROC.

35. 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

36. 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 paragraph below.

37. 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

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

39. 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.

40. 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.

41. 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.

42. 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.

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

44. 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.

45. 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.

46. 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

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

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

DATED this 12th day of July, 2017.

"Witness"
Witness

"Russell Waddington"
Russell Waddington

"Witness"
Witness

"Lorne Herlin"
Lorne Herlin

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

The Settlement Agreement is hereby accepted this 9th day of August, 2017 by the following Hearing Panel:

Per: "Catharine Esson"
Panel Chair

Per: "Brian Worth"
Panel Member

Per: "Mike Johnson"
Panel Member

SCHEDULE "A"

EXCERPTS FROM THE UNIVERSAL MARKET INTEGRITY RULES & POLICY

2.2 Manipulative and Deceptive Activities

(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.

POLICY 2.2 – MANIPULATIVE AND DECEPTIVE ACTIVITIES

Part 2 – False or Misleading Appearance of Trading Activity or Artificial Price

For the purposes of subsection (2) of Rule 2.2 and without limiting the generality of that subsection, if any of the following activities are undertaken on a marketplace and create or could reasonably be expected to create a false or misleading appearance of trading activity or interest in the purchase or sale of a security or an artificial ask price, bid price or sale price, the entry of the order or the execution of the trade shall constitute a violation of subsection (2) of Rule 2.2:

(a) entering an order or orders for the purchase of a security with the knowledge that an order or orders of substantially the same size, at substantially the same time and at substantially the same price for the sale of that security, has been or will be entered by or for the same or different persons;

(b) entering an order or orders for the sale of a security with the knowledge that an order or orders of substantially the same size, at substantially the same time and at substantially the same price for the purchase of that security, has been or will be entered;

(c) making purchases of, or offers to purchase, a security at successively higher prices or in a pattern generally of successively higher prices;

(d) making sales of or offers to sell a security at successively lower prices or in a pattern generally of successively lower prices;

(e) entering an order or orders for the purchase or sale of a security to:

(i) establish a predetermined sale price, ask price or bid price,

(ii) effect a high or low closing sale price, ask price or bid price, or

(iii) maintain the sale price, ask price or bid price within a predetermined range;

(e) entering an order or a series of orders for a security that are not intended to be executed;

(f) entering an order for the purchase of a security without, at the time of entering the order, having the ability or the reasonable expectation to make the payment that would be required to settle any trade that would result from the execution of the order;

(g) entering an order for the sale of a security without, at the time of entering the order, having the reasonable expectation of settling any trade that would result from the execution of the order; and

(h) effecting a trade in a security, other than an internal cross, between accounts under the direction or control of the same person.

If persons know or ought reasonably to know that they are engaging or participating in these or similar types of activities those persons will be in breach of subsection (2) of Rule 2.2 irrespective of whether such activity results in a false or misleading appearance of trading activity or interest in the purchase or sale of a security or an artificial ask price, bid price or sale price for a security or a related security.

SCHEDULE "B"

Row	Time	Activity	Quantity	Price
1	08:18:41	Respondent Buy Order# 1	30,000	$0.390
2	08:18:54	Respondent Buy Order# 2	40,000	$0.400
3	08:47:12	Respondent Sell Order# 1	7,500	$0.410
4	09:09:14	Respondent Changes Buy Order# 2	40,000	$0.390
5	09:13:32	Respondent Cancels Buy Order from Previous Day	3,500	$0.400
6	09:13:37	Respondent Cancels Buy Order from Previous Day	1,000	$0.400
7	09:13:42	Respondent Cancels Buy Order from Previous Day	5,000	$0.395
8	09:13:47	Respondent Changes Buy Order# 1	30,000	$0.370
9	09:30:00	Respondent Sell Order# 1 Partially Filled	1,000	$0.410
10	09:30:42	Respondent Cancels Sell Order# 1	6,500	$0.410
11	09:30:42	Respondent Sell Order# 2	6,500	$0.400
12	09:30:42	Respondent Sell Order# 2 Filled	6,500	$0.400
13	09:30:47	Respondent Cancels Buy Order# 2	40,000	$0.390
14	09:30:55	Respondent Changes Buy Order# 1	20,000	$0.365