Re W.D. Latimer Co.

IN THE MATTER OF:

The Dealer Member Rules of the Investment Industry Regulatory Organization of Canada

and

W.D. Latimer Co. Limited

2016 IIROC 26

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

Heard: June 17, 2016 in Toronto, Ontario
Oral Decision: June 17, 2016
Written Reasons: July 20, 2016

Hearing Panel:
Susan Lang, Chair; Mary Savona; Peter Dymott
Appearances:
Charles Corlett, Enforcement Counsel
Ellen Bessner, Counsel for the Respondent

REASONS FOR DECISION

Introduction

¶ 1 This is a disciplinary proceeding in which the Investment Industry Regulatory Organization of Canada (IIROC) alleges and the Respondent, W.D. Latimer Co. Limited (Latimer) admits the following contraventions of IIROC Dealer Member Rules, Guidelines, Regulations or Policies;

> Between February 2012 and August 2013, the Respondent failed to adequately supervise the opening of accounts at other Dealer Member firms for the purpose of obtaining allocations of new issues in circumstances that it ought to have known were improper, contrary to Dealer Member rule 38.1.

¶ 2 The Staff of IIROC and the Respondent entered into a Settlement Agreement in accordance with IIROC Dealer Member Rules 20.35 to 20.40, inclusive and Rule 15 of the Rules of Practice and Procedure. The Settlement Agreement was submitted to the Hearing Panel for its acceptance or rejection. After considering the material filed and written and oral submissions, we accepted the Settlement Agreement and issued an order accordingly. These are our reasons for doing so.

TERMS OF SETTLEMENT

¶ 3 The Settlement Agreement provided for the Respondent to pay a fine of $30,000 and $5,000 costs to IIROC.

THE CIRCUMSTANCES

¶ 4 In paragraphs 9–31, the Settlement Agreement sets out the acknowledged factual background that forms

the basis for the settlement. The Settlement Agreement is attached as Appendix A. What follows is a brief summary of the factual circumstances as set out in the Agreement.

¶ 5 The Respondent, which engages almost exclusively in proprietary trading, hired Garrett Prins as a proprietary trader. With the consent of Latimer's Ultimate Designated Person and Chief Compliance Officer, Prins and, later, another Trader, opened accounts with investment firms (Firms) in order to receive allocations of new issues to trade in Latimer's inventory account. Even though the Traders did not allocate, or intend to allocate, the Distributions to clients, the accounts were not designated as "pro" accounts when they were opened. Properly designated pro accounts would have been ineligible for new issues that were oversubscribed ("non-pro eligible"). Indeed, forty-one of the New Issue Distributions allocated to Latimer's inventory accounts were designated as non-pro eligible. This came to light when one of the Firms reported the trading activity to IIROC.

¶ 6 Primarily, the Traders expressed interest in New Issue Distributions that were priced lower than the prevailing secondary market price of the security. After confirmation that an allocation would be received, the Traders would short the shares of the New Issue Distributions in the secondary market and cover the short positions on receipt of the New Issue Distributions.

¶ 7 These circumstances form the basis of the acknowledgment that the "Respondent failed to adequately supervise the opening of the retail accounts with the Firms in circumstances it ought to have known were improper." In the words of the Settlement Agreement, paragraphs 13 and 14, "the Respondent:

i. permitted the Traders to arrange for the opening of the accounts without making independent inquiries about the nature and purpose of the accounts with any representatives of the Firms;

ii. submitted account opening documentation that was not consistent with its own, or industry, practice for the opening of accounts between Dealer Members; and

iii. failed to take steps to confirm the accounts were designated as "pro" accounts as the Respondent had instructed the Traders.

Had the Respondent taken adequate supervisory steps during the account opening process, the accounts would not have been opened by the Firms at the retail account level or at all."

¶ 8 Not only did the Respondent not provide adequate oversight and supervision, but it approved account opening documentation that was not consistent with its own or industry practice. That documentation, although it indicated that the Respondent was an investment dealer, also provided information about personal investment knowledge and identity verification, which was not consistent with the opening of retail corporate accounts.

SERIOUSNESS OF THE CONTRAVENTIONS

¶ 9 Dealer Members bear an important responsibility for the supervision of their employees. Such supervision is essential to provide protection for the public by ensuring the ethical conduct, fair trading and integrity of the investment industry. Breach of this obligation must therefore be treated as serious. See: *Re OptionsXPress Canada Corp.,* [2012] IIROC 72.

CIRCUMSTANCES OF MITIGATION

¶ 10 We take into account the following circumstances relied on in the Settlement Agreement in mitigation in coming to a determination of penalty:

i. The Respondent acknowledged its failure to supervise;

ii. The Respondent is a relatively small investment dealer with a limited number of Registered Representatives and is engaged in a relatively narrow range of securities-related activities;

iii. All the accounts were closed by August 2013, so there was no continuing risk of harm to the investing public; and

iv. IIROC did not quantify harm caused by the failure of supervision but was satisfied it was "relatively small" and was "closer on the spectrum to 'risk of harm' rather than crystallized and measurable harm."

DUTY OF A HEARING PANEL UPON A SETTLEMENT HEARING

¶ 11 In deciding whether to accept a Settlement Agreement, the obligation is to determine whether the proposed penalty falls within the range of being fair and reasonable in the circumstances of the case, including the objective of maintaining the integrity of the investment industry. In addition, settlements are to be supported as a means of encouraging negotiation and compromise to arrive at an expeditious and less costly resolution of appropriate disciplinary proceedings. See: *Re Portfolio Strategies*, [2012] IIROC 36; *Re Byron Capital Markets*, [2014] IIROC 22; *Re OptionsXPress Canada Corp., supra*.

GUIDELINES AND OTHER DECISIONS

¶ 12 The IIROC Sanction Guidelines, while not binding, are useful in providing guidance on penalty. Decisions in other cases are of assistance in determining the appropriate range. Penalty must be appropriate to the circumstances of the conduct and the Respondent, including the need for deterrence. The proposed penalty is within the range set for breach of supervisory obligations in other cases: *Re Portfolio Strategies, supra* - $24,000; *Re Byron Capital Markets Ltd., supra* - $40,000 and in *Re OptionsXPress, supra* - $65,000. We also observe the individual nature of the supervisory failing and that it was restricted to a narrow line of the Respondent's business in limited transactions over a limited time.

IMPACT OF THE PENALTY

¶ 13 In all the circumstances, including the objective of deterrence, the penalty, a fine of $30,000 and costs of $5,000, is sufficient to act as both a specific and general deterrent and to alert members that breach of supervisory duties is considered to be serious.

DECISION

¶ 14 For these reasons, we reached the conclusion that the settlement was reasonable and accepted its terms.

Dated at Toronto, Ontario this 20th day of July 2016.

Susan Lang

Chair

Mary Savona

Peter Dymott

APPENDIX

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. IIROC Enforcement Staff ("Staff") and the Respondent, W.D. Latimer Co. Limited (the "Respondent") consent and agree to the settlement of this matter by way of this agreement (the "Settlement Agreement").

2. The Enforcement Department of IIROC has conducted an investigation (the "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 (the "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 to the following contraventions of IIROC Dealer Member Rules, Guidelines, Regulations or Policies:

> Between February 2012 and August 2013, the Respondent failed to adequately supervise the opening of accounts at other Dealer Member firms for the purpose of obtaining allocations of new issues in circumstances that it ought to have known were improper, contrary to Dealer Member Rule 38.1.

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

   (i) a fine of $30,000.

7. The Respondent agrees to pay costs to IIROC in the sum of $5,000.

III. STATEMENT OF FACTS

(i) Acknowledgment

8. 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

9. The Respondent is a Dealer Member of IIROC that engages almost exclusively in proprietary trading. Certain of the Respondent's proprietary traders (the "Traders") opened retail accounts with investment advisors at Scotia Capital Inc. ("Scotia"), BMO Nesbitt Burns Inc. ("BMO") and Macquarie Private Wealth Inc. ("Macquarie") (together, the "Firms") for the purpose of receiving allocations of new issues to trade in their inventory accounts.

10. Between February 2012 and August 2013 (the "Relevant Period"), the Respondent's traders received allocations in eighty-two (82) new issues (the "New Issue Distributions") through the accounts.

11. The New Issue Distributions were designated as "non-pro eligible" by the Firms when the offering was oversubscribed (where the demand or expected demand for the security exceeded the number of shares available for distribution). Unbeknownst to the Respondent, forty-one (41) of the New Issue Distributions were designated by the Firms as "non-pro eligible," which indicated to the Firms' advisors that these new issue shares should only be allocated to non-pro clients.

12. The Traders were engaged exclusively in proprietary trading and never allocated, nor intended to allocate, the New Issue Distributions to any clients. The Traders primarily expressed interest in New Issue Distributions that were priced lower than the prevailing secondary market price of the security. After confirmation that an allocation would be received, the Traders would short the shares of the New Issue Distributions in the secondary market and cover the short positions on receipt of the New Issue Distributions.

13. The Respondent failed to adequately supervise the opening of the retail accounts with the Firms in circumstances it ought to have known were improper. The Respondent:

   (i) permitted the Traders to arrange for the opening of the accounts without making independent inquiries about the nature and purpose of the accounts with any representatives of the Firms;

   (ii) submitted account opening documentation that was not consistent with its own, or industry, practice for the opening of accounts between Dealer Members; and

(iii) failed to take steps to confirm the accounts were designated as "pro" accounts as the Respondent had instructed the Traders.

14. Had the Respondent taken adequate supervisory steps during the account opening process, the accounts would not have been opened by the Firms at the retail account level or at all.

The Account Openings

15. In December 2011, the Respondent hired Garrett Prins ("Prins") as a proprietary trader. Prins had a prior disciplinary history as a trader.

16. In January 2012, Prins approached the Respondent's senior personnel, including the individual acting as both the firm's Ultimate Designated Person and Chief Compliance Officer (the "UDP") with the idea of opening accounts at Scotia and BMO in order to receive allocations of new issues to trade in his firm inventory account. Prins indicated to the UDP that he had contacts at Scotia and BMO through which to open accounts on behalf of the Respondent.

17. The UDP approved the idea on the condition that the accounts be designated "pro" accounts. The UDP did not make any independent inquiries of any representatives at Scotia or BMO. The Respondent had not engaged in such a trading or business practice before.

18. In February 2012, Prins opened three retail corporate accounts in the name of the Respondent. Two different accounts were opened with retail investment advisors at Scotia and a third account was opened with a BMO retail investment advisor. The accounts were set up for delivery against payment. The account opening documentation with Scotia indicated that W.D. Latimer was a "broker-dealer" and "brokerage firm"'; the account documentation with BMO indicated that W.D. Latimer was a broker regulated by IIROC.

19. In May 2012, Prins' employment was terminated by the Respondent for reasons unconnected to this matter. At that time, other Traders assumed direction over the accounts.

20. In September 2012, one of the Traders, with the approval of the UDP, opened a retail corporate account for the Respondent with Macquarie through one of the Scotia retail investment advisors who had moved to that firm. The purpose of the account was to receive allocations of new issues. The account opening documentation indicated that W.D. Latimer was an "investment dealer."

21. In late October 2012, Macquarie became aware that new issues that were not "pro eligible" had been allocated to the Respondent's account and prohibited further trading in new issues in the account.

22. In late October 2012, one of the Traders, with the approval of the UDP, attempted to open an account with a retail investment advisor at another Dealer Member firm. The firm would not permit the retail investment advisor to hold an account for an investment dealer for the purpose of receiving allocations of new issues.

23. In late October 2012, Scotia became aware that new issues had been allocated to the Respondent through two retail accounts which were not designated as "pro" accounts. Scotia reported the trading activity to IIROC and indicated that both accounts would be closed.

24. In early November 2012, the UDP learned that the BMO account was also not designated as a "pro" account and instructed the trader directing the account to have it designated as a "pro" account. Unbeknownst to the Respondent, the account continued to receive allocations of both "pro eligible" and "non-pro eligible" new issues until August 2013. BMO closed the Respondent's account in October 2013 after inquiries from IIROC Staff.

The Respondent's Failure to Supervise

25. The Respondent did not make any inquiries of representatives of the Firms about the propriety of opening

accounts for the purpose of obtaining new issues.

26. The Respondent did not question Prins about, or determine for itself, the role or position of Prins' contacts at Scotia or BMO. In particular, the Respondent permitted Prins and other employees to communicate the essential facts, and complete and submit account documentation, to the investment advisors without adequate oversight and supervision.

27. The Respondent approved and submitted account opening documentation to the Firms that, despite indicating that it was an investment dealer, was not consistent with its own, or industry, practice for the opening of accounts between Dealer Members.

28. The Respondent had opened "broker-dealer" accounts with other Dealer Members prior to the Relevant Period for purposes other than trading new issues. Opening accounts of this type required minimal account documentation. The Respondent's own account application procedures required minimal account documentation for the opening of "broker-dealer" accounts and, as permitted, exempted such accounts from certain identification and verification requirements.

29. Despite this understanding of, and experience with, account opening procedures for "broker-dealer" accounts, the Respondent permitted account documentation to be submitted that was consistent with the opening of retail corporate accounts, including providing information as to personal investment knowledge and identity verification.

30. While the Respondent indicated on the account opening documents that it was an investment dealer, it did not question the necessity for the account opening documentation with any of the traders in question, the Firms' investment advisors or other representatives of the Firms.

31. The Respondent's UDP informed Prins that only "pro" accounts should be opened, but did not take steps to confirm with the traders, the investment advisors or any other representatives of the Firms that the accounts had been designated as "pro" accounts.

IV. TERMS OF SETTLEMENT

32. 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.

33. The Settlement Agreement is subject to acceptance by the Hearing Panel.

34. The Settlement Agreement shall become effective and binding upon the Respondent and Staff as of the date of its acceptance by the Hearing Panel.

35. 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.

36. If the Hearing Panel accepts the Settlement Agreement, the Respondent waives its right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.

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 in relation to the matters disclosed in the Investigation.

38. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.

39. 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.

40. Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.

41. 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 Toronto in the Province of Ontario, this 27th day of May, 2016.

"Witness"	**"S. Deluca" President & CEO**
Witness	**Respondent**

AGREED TO by Staff at the City of Toronto in the Province of Ontario, this 26th day of May, 2016.

"Witness"	**"CharlesCorlett"**
Witness	**Charles Corlett** Senior Enforcement Counsel on behalf of Staff of the Investment Industry Regulatory Organization of Canada

ACCEPTED at the City of Toronto in the Province of Ontario, this 17th day of June, 2016, by the following Hearing Panel:

Per: "Susan Lang"
Panel Chair

Per: "Mary Savona"
Panel Member

Per: "Peter Dymott"
Panel Member