

Re Wellington West Capital

IN THE MATTER OF:

**The Dealer Member Rules of the Investment Industry Regulatory
Organization of Canada (IIROC)**

and

The By-Laws of the Investment Dealers Association of Canada (IDA)

and

Wellington West Capital Inc

2012 IIROC 37

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

Heard: June 25, 2012 at Winnipeg, Manitoba
Decision: June 28, 2012

Hearing Panel:

Mr. Robert Hucal, Chair, Mr. Bernie Plett, Mr. William Welton

Appearance:

Mr. Lorne Herlin, Counsel for IIROC

Mr. Jonathan Kroft & Ms Lori A. Labine, Counsel for Wellington West Capital Inc.

Decision

¶ 1 This Hearing Panel (the “Panel”) was appointed to conduct a Settlement Hearing pursuant to the Settlement Agreement made in accordance with the Investment Industry Regulatory Organization of Canada (“IIROC”) Dealer Member Rules 20.35 to 20.40 and Rule 15 of the Dealer Member *Rules of Practice and Procedure*.

¶ 2 The Settlement Hearing proceeded on June 25, 2012. The Panel was provided with a Settlement Agreement made on June 19, 2012 by IIROC staff and Wellington West Capital Inc. (“Wellington West”).

¶ 3 At the conclusion of submissions by IIROC’s Counsel and Counsel for Wellington West and after reviewing the terms of the Settlement Agreement, the Panel accepted the Settlement Agreement.

¶ 4 The Settlement Agreement is annexed to this Decision. It contains, inter alia:

a) *A statement by Wellington West admitting contravention* of IIROC Rules, Guidelines, IDA By-Laws, Regulations and Policies and more specifically that:

Wellington West failed, in March 2006, to properly process and price the sale of OPTI Canada Inc. (“OPTI”) shares to clients, contrary to IDA By-law 29.1 (currently IIROC Dealer Member Rule 29.1); and

Wellington West failed to make all reasonable inquiries into a Registered Representative’s conduct in relation to the March 2006 purchase of OPTI shares and the subsequent allocation of

these shares to clients, contrary to IDA By-law 29.1 (currently IIROC Dealer Member Rule 29.1);

b) *A Statement of Facts* agreed to between IIROC Staff and Wellington West:

¶ 5 The authority granted pursuant to Rule 20.26 allows this Panel to accept or reject the Settlement Agreement. The material presented states that a Hearing Panel should not interfere in a negotiated settlement - in *re Milewski*¹. That decision, applied subsequently² suggests a rejection should only occur if the Panel views the penalty as falling outside a reasonable range of appropriateness;

¶ 6 We assume that a considerable amount of time was taken in negotiating the terms of the Settlement Agreement and the parties were represented by experienced counsel. No client losses were alleged or client complaints made and resolution of the problem, when identified, was relatively quick.

¶ 7 The Panel has reviewed the facts agreed to in the Settlement Agreement and has heard the submission of IIROC Counsel and Counsel for Wellington West. We were referred to IIROC Dealer Member Disciplinary Sanction Guidelines and Specific Sanction Guidelines, Dealer Member Rules 29.27, 1300.2, 2500 and 2700. The Panel considered the General Principles set out in these Guidelines.

c) *An Agreement as to the following Sanctions:*

a) payment of a \$60,000 fine;

b) payment of costs of IIROC in the sum of \$5,000.

¶ 8 In support of a penalty within UMIR 512 sanction guidelines, we were referred to *re Pope & Co.*³ where the fine for a similar breach of policy was found to be reasonable. Similarly, the financial penalties, in *re Collias & Young*⁴ were cited as applying to the subject circumstance.

¶ 9 Disciplinary sanction guidelines relating to Dealer Member Rule 29.27 “Failure to Supervise” were cited as an authority in determining the extent and reasonableness of the penalty. The agreed facts indicated that Wellington West, although responding to the events creating the problem, failed to make necessary inquiries relating to the Registered Representative’s actions, the failure being “not doing enough” rather than “doing nothing”.

¶ 10 Wellington West has accepted responsibility, acknowledged misconduct and cooperated fully with the IIROC investigation. There were no client losses or complaints.

¶ 11 The Panel is of the unanimous view that the terms of the Settlement Agreement are consistent with the objectives set out in the Guidelines and that the sanction objectives of general and specific deterrence will be achieved by the agreed penalties, which the Panel finds to be within a reasonable range of appropriateness.

Given at Winnipeg, Manitoba this 28th day of June, 2012

Robert Hucal

Bernie Plett

William Welton

SETTLEMENT AGREEMENT

I. INTRODUCTION

¹ *re Milewski* 1999 IDAC No. 17

² *re Gaudet* 2010 IIROX No. 29; *re Graydon Elliott Capital* 2007 IDACD No. 43

³ *re Pope & Co.* 2010 IIROC No. 30

⁴ *re Collias & Young* 2012 IIROC 14

1. Staff of the Investment Industry Regulatory Organization of Canada (IIROC) and the Respondent Wellington West Capital Inc. (Wellington) consent and agree to the settlement of this matter by way of this settlement agreement (the Settlement Agreement).
2. The Enforcement Department of IIROC has conducted an investigation (the Investigation) into the conduct of Wellington.
3. On June 1, 2008, IIROC consolidated the regulatory and enforcement functions of the Investment Dealers Association of Canada (the IDA) and Market Regulation Services Inc. Pursuant to the Administrative and Regulatory Services Agreement between the IDA and IIROC, effective June 1, 2008, the IDA has retained IIROC to provide services for IDA to carry out its regulatory functions.
4. Wellington consents to be subject to the jurisdiction of IIROC.
5. The Investigation discloses matters for which Wellington 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

6. IIROC Staff and Wellington jointly recommend that the Hearing Panel accept this Settlement Agreement.
7. The Respondent admits to the following contraventions of IIROC Rules, Guidelines, IDA By-Laws, Regulations or Policies:

Count 1

In March 2006, Wellington failed to properly process and price the sale of Opti Canada Inc. (Opti) shares to clients, contrary to IDA By-law 29.1 (currently, IIROC Dealer Member Rule 29.1).

Count 2

Wellington failed to make all reasonable inquiries into a Registered Representative's conduct in relation to the March 2006 purchase of Opti shares and the subsequent allocation of these share to clients, contrary to IDA By-law 29.1 (currently, IIROC Dealer Member Rule 29.1).

8. IIROC Staff and Wellington agrees to the following term of settlement:
 - a. payment of a \$60,000 fine.
9. Wellington agrees to pay costs to IIROC in the sum of \$5,000.

III. STATEMENT OF FACTS

(i) Acknowledgment

10. IIROC 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

11. On March 15, 2006, a Wellington registered representative placed an order to purchase 100,000 shares of Opti at the best price available. As a result, a total of 45,300 Opti shares were purchased at prices, ranging from \$46.00 to \$46.85 per share, for a total cost of approximately \$2.1 million. The balance of the order was then cancelled.
12. The shares were allocated to client accounts on March 15, 16, and 17, 2006. By March 17, 2006, 44,991 shares had been allocated to 121 client accounts at the prices for which they had been acquired on the market on March 15, 2006. Generally, the market price for Opti shares declined between the time the Opti shares were purchased and the times that the shares were fully allocated to

clients. As a result, the majority of the clients paid more for their shares than they would have paid had they individually purchased Opti shares on the market at the time they were allocated.

13. Although Wellington promptly identified that the registered representative did not follow proper procedures in conducting these transactions and it made inquiries, it did not make all reasonable inquiries of the RR.

Wellington

14. Effective October 1993, Wellington was admitted to the membership of the IDA.
15. Effective June 1, 2008, Wellington was admitted to the membership of IIROC.
16. Effective July 15, 2011, Wellington was acquired by another IIROC Dealer Member and effective November 24, 2011 it resigned its IIROC membership.
17. Wellington's head office was located in Winnipeg and it was a Type 4 Introducing Broker.

March 15, 2006 Order for 100,000 Opti Shares

18. AA was a registered representative who worked at the Victoria branch office of Wellington (the RR).
19. BB was a registered representative who worked as an assistant to AA (the Assistant).
20. Opti was a Calgary based oil sands development company whose shares were listed on the Toronto Stock Exchange (TSX). On March 15, 2006, the opening price for Opti shares was \$44.90.
21. On March 15, 2006 at approximately 7:08 a.m. (PT), pursuant to the RR's instructions the Assistant telephoned the trading desk of Wellington's carrying broker and placed an order to purchase 100,000 Opti shares at the best price possible (the Opti Order).
22. Later on the morning of March 15, 2006, at approximately 8:49 a.m. (PT), the trade desk telephoned the Assistant and informed her that 44,600 Opti shares had been purchased at an average price of \$46.47 per share. The Assistant then instructed the trade desk to stop purchasing Opti shares.
23. At approximately 9:19 a.m. (PT) the trade desk sent the Assistant an email which indicated that in fact 45,300 Opti shares had been purchased at various prices, ranging from \$46.00 to \$46.85 per share, as follows:

# of Opti Shares	Purchase Price
5,000	\$46.00
1,100	\$46.15
300	\$46.20
4,300	\$46.25
300	\$46.29
2,000	\$46.40
2,000	\$46.45
5,000	\$46.50
20,000	\$46.60
2,000	\$46.69
2,000	\$46.70

900	\$46.84
400	\$46.85

Allocation of the Opti Shares to Client Accounts

24. Starting at 11:10 a.m. (PT) on March 15, 2006 and continuing over the next two days, the RR provided the Assistant with lists which identified client accounts, the number of Opti shares that each account was to be allocated, and the share price that each account was to be charged. The RR allocated the Opti shares to clients at the various purchase prices, not at an average price.
25. The Assistant then emailed the allocation information to Wellington's Operations Department in Winnipeg. In total the Assistant sent 13 emails.
26. Wellington's Operations Department used the information from the thirteen emails to transfer the Opti shares from the carrying broker's suspense account to the client accounts. As a result, 44,991 shares were allocated to 121 client accounts.

Price of Opti Shares

27. Generally, the market price for Opti shares declined between the time the 44,991 shares were purchased and the various times that the shares were allocated to the 121 client accounts.
28. Based on the price for Opti shares at the times that the 44,991 Opti shares were allocated to clients, 111 of the 121 client accounts were charged purchase prices that were higher than the market price at the time of allocations. The aggregate difference between the prices charged to the clients for the shares and the market prices at the time of allocations was approximately \$32,398.
29. The remaining 10 client accounts were allocated purchase prices that were lower than the market price at the time of allocation.

Failure to Properly Process & Price the Sale of the Opti Shares

30. The 121 client trade confirmations indicated that Wellington completed the trades as agent for the clients on the dates the shares were allocated. The prices paid by the clients were the March 15, 2006 purchase prices.
31. As detailed below, Wellington ultimately concluded that the Opti Order was a principal trade. Accordingly the confirmation slips should have indicated that Wellington acted as principal and the shares should have been priced at the prevailing market price at the time the shares were allocated to the client accounts.

Compliance Response

32. In the morning of March 15, 2006, the RR's Branch Manager (the BM) learned that the RR had placed the Opti Order. As soon as he found out, the BM contacted Wellington's Chief Compliance Officer (the CCO) and Wellington's Chief Executive Officer (the CEO).
33. On March 17, 2006, the CCO sent an email to one of Wellington's Senior Vice Presidents (the Senior VP) seeking his guidance regarding the RR's purchase of the Opti shares. The CCO, among other things, wrote that:

...Block filled over three days in essence making this a principal trade and technically committing Wellington to \$630,000 in capital (\$2.1 million x 30%) without firm's knowledge and approval...

34. In his March 17, 2006 email, the CCO also expressed concerns that the RR may have breached other regulatory requirements and he indicated that Wellington needed to "educate" the RR.

35. In his March 18, 2006 reply email, the Senior VP agreed with the CCO's assessment that the RR had improperly used Wellington's capital for a principal trade and that the RR had breached regulatory requirements. Accordingly, the Senior VP indicated that the RR should be promptly given a written reprimand and that "a report should also be made to the Board so they are aware and can help put appropriate guidelines and support in place to protect the clients and our firm".
36. In a March 23, 2006 email, the CCO informed the CEO and Wellington's President (the President) that he was "contemplating reprimanding ... / fining [the RR] for principal trading without authorization or approval".
37. Pursuant to the CCO's request, on or about March 28, 2006, the President telephoned the Assistant and then the RR to discuss the Opti Order and the subsequent allocation of the Opti shares.
38. In a March 29, 2006 email, the President emailed the CCO and reported on his conversations with the RR and his Assistant. In the email he wrote: "... I am not satisfied with the responses to my questions that I received from either [the Assistant] or [the RR] and strongly suggest that we do a full investigation of this trade".
39. The CCO made further inquiries of the Operations Department staff as to the relevant events and received further information on April 10, 2006. Ultimately, Wellington concluded that the Opti trades were principal trades.
40. Pursuant to Wellington's policies and procedures, the RR was not allowed to engage in principal trading of any kind without the prior approval of the CCO and the Chief Financial Officer. The RR did not obtain such approval for the Opti Order.

Failure to Make All Reasonable Inquiries

41. Wellington did not make further inquiries of the RR and the Assistant in relation to the Opti Order and the subsequent allocation of the Opti shares to clients.
42. In April 2006, following upon arrangements made when the RR became employed by Wellington, the firm applied for and received approval for the RR to be designated a branch manager.
43. Wellington did not formally reprimand the RR in respect of the Opti Order. On or about April 14, 2007, Wellington gave the RR a letter which disciplined the RR for other matters. The discipline included, among other things, the imposition of a fine, the removal of the RR as branch manager, and a regime of strict supervision. The letter referred to a previous compliance issue, but Wellington did not rely upon the previous matter in imposing the discipline.
44. Given the particular circumstances of this matter, Wellington should have made further inquiries of the RR as to the circumstances of the Opti transactions.

Mitigating Factor

45. Wellington has cooperated fully with the IIROC investigation of this matter.

IV. TERMS OF SETTLEMENT

46. This Settlement Agreement 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*.
47. The Settlement Agreement is subject to acceptance by the Hearing Panel.
48. The Settlement Agreement shall become effective and binding upon the Respondent and IIROC Staff as of the date of its acceptance by the Hearing Panel.
49. 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.

50. If the Hearing Panel accepts the Settlement Agreement, Wellington waives its right under IIROC rules and any applicable legislation to a disciplinary hearing, review or appeal.
51. If the Hearing Panel rejects the Settlement Agreement, IIROC Staff and Wellington may enter into another settlement agreement; or IIROC Staff may proceed to a disciplinary hearing in relation to the matters disclosed in the Investigation.
52. The Settlement Agreement will become available to the public upon its acceptance by the Hearing Panel.
53. IIROC Staff and Wellington 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.
54. Unless otherwise stated, any monetary penalties and costs imposed upon Wellington are payable immediately upon the effective date of the Settlement Agreement.
55. The Settlement Agreement may be signed in counterparts.

AGREED TO by the Respondent at the City of _____ in the Province of _____, this _____ day of June, 2012.

“Witness signature”

Witness

“Respondent’s signature”

Respondent

AGREED TO by IIROC Staff at the City of Vancouver in the Province of British Columbia, this 18th day of June, 2012.

“Ronald Johnston”

Witness

“Lorne Herlin”

Lorne Herlin

Enforcement Counsel
on behalf of IIROC Staff

ACCEPTED at the City of Winnipeg in the Province of Manitoba, this 25th day of June, 2012, by the following Hearing Panel:

Per: “Robert Hucal”

Panel Chair

Per: “Bernard Plett”

Panel Member

Per: “Bill Welton”

Panel Member