

# Re Sauder

IN THE MATTER OF:

**THE DEALER MEMBER RULES OF THE  
INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA**

**AND**

**THE BY-LAWS OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA**

**AND**

**IAN DOUGLAS SAUDER**

2010 IIROC 21  
File No. 0018/Jan/09

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

Hearing: May 3, 2010  
Decision: May 14, 2010  
(10 paras.)

## **Hearing Panel:**

The Honourable Fred Kaufman, C.M., Q.C., Chair  
Robert J. Guilday, Industry Representative  
Leo Ciccone, Industry Representative

## **Appearances:**

Milton Chan, Enforcement Counsel, IIROC  
The Respondent did not appear and was not represented.

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## **REASONS FOR THE PANEL'S DECISION**

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¶ 1 By Notice of Hearing dated February 24, 2010, and duly served on the Respondent Ian Douglas Sauder, Mr. Sauder was notified that, on May 3, 2010, a hearing panel of IIROC would determine whether he committed any or all of the following contraventions:

- i. Between July 2005 and December 2008, while employed as a Registered Representative by Union Securities Ltd, the Respondent produced to clients falsified monthly account statements that misrepresent the holding and activities of clients' accounts, thereby engaging in conduct unbecoming and/or detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1;
- ii. Between June 2005 and May 2008, while employed as a Registered Representative by Union Securities Ltd, the Respondent forged clients' signatures on account documents and instructions without the knowledge or consent of the client, thereby engaging in conduct unbecoming and/or

- detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1;
- iii. Between January 8, 2008 and October 27, 2008, while employed as a Registered Representative by Union Securities Ltd, the Respondent conducted eight unauthorized transactions in the account of clients J, M, and PM, thereby engaging in conduct unbecoming and/or detrimental to the public interest, contrary to IIROC Dealer Member Rule 29.1;
  - iv. Between June 2005 and December 2008, while employed as a Registered Representative by Union Securities Ltd, the Respondent concealed from his employer the fact that client SS was his spouse and that the Respondent was a beneficial owner of the account, misrepresented his relationship with SS to his firm by producing a document which he represented to the firm as a court document, and controlled and conducted transactions in SS's account, thereby engaging in conduct unbecoming and/or detrimental to the public interest, contrary to IIROC Dealer Member Rules 29.1 and 1300.1(b);
  - v. On or about October 7, 2009, the Respondent, refused and/or failed to attend and give information in respect of an investigation being conducted by Staff, contrary to IIROC Dealer Member Rule 19.5.

¶ 2 Subsequent to receiving the Notice of Hearing, Mr. Sauder indicated to Enforcement Counsel that he did not wish to participate in the investigation or disciplinary process, and we point, in particular, to an e-mail sent by the Respondent to Mr. Chan on March 4, 2010. In that e-mail, produced at the hearing, Mr. Sauder stated that he was well aware "of the ramifications of for my failure to cooperate and I except (sic) them." (It is reasonable to assume that he intended to say that he *accepted* the ramifications.)

¶ 3 Given these circumstances, in accordance with Rules 7.2 and 13.5 of the Rules of Practice and Procedure, we proceeded with the hearing and accepted as proven the facts and contraventions alleged by Staff in the Notice of Hearing. That done, we proceeded to the penalty phase and heard representations by Enforcement Counsel.

## THE FACTS

¶ 4 The facts of the case, as detailed in the Notice of Hearing, are as follows:

### **The Respondent**

1. The Respondent commenced working in a registered capacity in the investment industry in July 1996, when he was employed by Barnet Magrill. Subsequently he was employed by Merit Investment Corporation in January 1997, and later by Desjardins Securities Inc ("Desjardins Securities") in September 2001.
2. The Respondent was employed by Union Securities Ltd ("Union Securities") in May 2005 as a Registered Representative (Options), and continued his employment until December 23, 2008.
3. On December 23, 2008, without notice to Union Securities, the Respondent ceased reporting to work and ceased performing his employment duties. On January 9, 2009, Union Securities terminated the Respondent's employment for cause.
4. The Respondent has not been employed in any IIROC registered capacity since January 2009.
5. There is no history of any prior disciplinary action by IIROC or the IDA against the Respondent.

### **Misrepresentation of Relationship with Spouse**

6. The Respondent was married to SS throughout the relevant period.
7. SS has a brokerage account under her name with Union Securities. The Respondent did not mark the account as a "pro" account in order to facilitate cross-guarantees with other client

accounts, and additionally to evade compliance scrutiny normally associated with a “pro” account.

8. The Respondent is a beneficial owner of SS’s account, and directed all transactions that took place in SS’s account.
9. In or about late 2007, Union Securities questioned the Respondent about his relationship with SS. The Respondent produced a Certificate of Divorce, which stated that he and SS were divorced in October 2002. This document was not authentic, and he was in fact not divorced from SS.

#### **Client J**

10. Client J is a retired insurance executive. His daughter is a close friend of SS. Upon J’s retirement in 2005, he opened a brokerage account with the Respondent at Desjardins Securities. The account was transferred to Union Securities with the Respondent.
11. Various account documents and instructions with J’s signature were filed to his customer file at Union Securities, including but not limited to:
  - a) NAAF, dated June 17, 2005;
  - b) Instructions to transfer account from Desjardins Securities, dated June 17, 2005;
  - c) Client Response Form, dated June 17, 2005;
  - d) An undated letter instructing Union Securities to change his address to his actual home address. The request was processed by Union Securities on December 5, 2005;
  - e) An undated letter instructing Union Securities to change his address to a post office box located at 157 Adelaide Street West (the “PO Box”). The request was processed by Union Securities on March 28, 2006;
  - f) Updated NAAF, dated May 6, 2008; and
  - g) Updated Client Response Form, dated May 6, 2008.
12. J agreed to transfer his account from Desjardins Securities to Union Securities, and was told by the Respondent that the transfer would be taken care of. During the relevant period, J did not see any of the documents listed above. The signatures on all of the documents listed above were forged by the Respondent.
13. The NAAF dated June 17, 2005 indicated that J’s account would be guaranteed by others. Four Guarantee Agreements, all dated July 5, 2005, were filed to his customer file. One of the guarantors was the SS account controlled by the Respondent. The other three guarantors were strangers to J. During the relevant period, J had no knowledge of the guarantee on his accounts.
14. Union Securities also had four other Guarantee Agreements, all dated July 5, 2005, indicating that J agreed to guarantee these four accounts. During the relevant period, J had no knowledge of these guarantees. J did not agree to guarantee any of the four accounts. His signatures on these four Guarantee Agreements were forged by the Respondent.
15. To circumvent scrutiny by Union Securities, the Respondent redirected all correspondences to J to the PO Box without the knowledge or consent of J.
16. On or around June 17, 2005 and May 6, 2008, The Respondent intercepted letters intended for J confirming account information, and returned Client Response Forms with forged signatures to Union Securities. During the relevant period, J had no knowledge of these letters.
17. On or around April 12, 2006 and April 12, 2007, the Respondent intercepted letters intended for

J confirming that he was guaranting (sic) SS's account, and returned Client Response Forms with forged signatures to Union Securities. During the relevant period, J had no knowledge of these letters.

18. Between July 2005 and October 2005, and between March 2006 and December 2008, account statements issued for J's account were mailed to the PO Box and intercepted by the Respondent. J never received these authentic account statements.
19. Between July 2005 and October 2005, and between March 2006 and December 2008, J received falsified account statements produced by the Respondent at his home address.
20. Between January 8 and 16, 2008, six transactions of shares of Barrick Gold took place in J's account. J did not authorize these transactions. During the relevant period, J had no knowledge of these transactions, as they were not reported in the falsified account statements he received.
21. On December 23, 2008, the Respondent visited J's home and confessed that he misused J's account without J's authorization. J immediately contacted Union Securities and his account was frozen. Union Securities eventually reversed the transactions not authorized by J, and compensated him for the discrepancies associated with the transactions.

#### **Client M and Corporate Client PM**

22. Client M has been a co-worker of the Respondent's wife SS for over a decade. SS was an employee of M's company PM, and became an officer of PM in 2006. M and SS serve as Chief Executive Officer and Corporate Secretary of PM respectively.
23. A brokerage account was opened for PM (the "PM account") by the Respondent over a decade ago. When the Respondent commenced employment at Union Securities, the account was transferred with the Respondent as well. M is the sole beneficial owner of the PM account at Union Securities.
24. Various account documents and instructions with M's signature were filed to PM account's customer file at Union Securities, including but not limited to:
  - a) NAAF, dated June 27, 2005;
  - b) Corporate Resolution, dated June 27, 2005;
  - c) Beneficial Ownership Declaration, dated June 27, 2005;
  - d) Client Response Form, dated June 27, 2005;
  - e) Certificate of Foreign Status of Beneficial Owner, dated June 27, 2005;
  - f) Instructions to transfer account from Desjardins Securities, dated June 23, 2005;
  - g) An undated letter instructing Union Securities to change PM's address to its actual business address. The request was processed by Union Securities on January 3, 2006;
  - h) An undated letter instructing Union Securities to change PM's address to a the "PO Box". The request was processed by Union Securities on March 22, 2006;
  - i) Updated NAAF, dated May 6, 2008;
  - j) Updated Client Response Form, dated May 3, 2008 ;
  - k) Updated Corporate Resolution, dated May 3, 2008;
  - l) Updated Beneficial Ownership Declaration, dated May 3, 2008;
  - m) Updated Certificate of Foreign Status of Beneficial Owner, dated May 3, 2008; and

- n) An undated letter directing a transfer of certain securities from M's personal account to the PM account.
25. M agreed to transfer the PM account from Desjardins Securities to Union Securities, and was told by the Respondent that the transfer would be taken care of. During the relevant period, M did not see any of the documents listed above. The signatures on all of the documents listed above were forged by the Respondent.
  26. The NAAF, dated June 27, 2005, indicated that the PM account would be guaranteed by others. Six Guarantee Agreements, all dated between May and July, 2005, were filed to PM account's customer file. During the relevant period, J had no knowledge of the guarantees on his accounts.
  27. M was the guarantor on two of the six Guarantee Agreements. The signatures on them were forged by the Respondent. SS was the guarantor on two of the six Guarantee Agreements. J was the guarantor on one of the Guarantee Agreements. J was a stranger to M. The remaining two guarantors were also strangers to M.
  28. Union Securities also have three other Guarantee Agreements, all dated July 5, 2005, indicating that M agreed to have the PM account guaranteeing the accounts of the three of the guarantors of his account. During the relevant period, M had no knowledge of these guarantees, and did not agree to them. His signatures on these three Guarantee Agreements were forged by the Respondent.
  29. To circumvent scrutiny by Union Securities, the Respondent re-directed all correspondence for the PM account to the PO Box without the knowledge or consent of M.
  30. On or around June 27, 2005 and May 3, 2008, the Respondent intercepted letters intended for M confirming account information, and returned Client Response Forms with forged signatures to Union Securities. During the relevant period, M had no knowledge of these letters.
  31. Between July and November 2005, and between March 2006 and November 2008, account statements issued for the PM account were mailed to the PO Box and intercepted by the Respondent. M never received these authentic account statements.
  32. Between July and November 2005, and between March 2006 and November 2008, M received at the office of PM falsified account statements produced by the Respondent.
  33. Between September 29 and October 27, 2008, two transactions of trust units of Enerplus Resources took place in the PM account. M did not authorize these transactions. During the relevant period, M had no knowledge of these transactions, as they were not reported in the falsified account statements he received from the Respondent.
  34. On or about December 23, 2008, the Respondent visited M at the PM office and confessed that he misused other clients' accounts. The Respondent however did not mention that either M's personal account or the PM account was involved in his misconducts.
  35. On or about January 3, 2009, M contacted Union Securities and was informed about the guarantees and that his account was frozen. Union Securities eventually corrected and compensated PM for the discrepancies associated with the transactions not authorized by M.

### **Refusal to Cooperate with Investigation**

36. By letter dated April 21, 2009 (the "Opening Letter"), the Respondent was notified that an investigation was commenced into the circumstances surrounding his termination as an RR with Union Securities.
37. The Opening Letter was sent by registered mail to the Respondent's address recorded in the National Registration Database (NRD). The Opening Letter was however undeliverable as the Respondent no longer lived at that address.

38. On August 24, 2009, Staff contacted the Respondent's counsel, who provided an updated mailing address for the Respondent, and agreed to accept service on the Respondent's behalf. The Respondent's counsel further informed Staff that the Respondent "has moved on with his life" and did not wish to "deal with IIROC".
39. By registered mail dated September 25, 2009 (the "Compel Letter"), Staff advised the Respondent that he was being compelled to attend for an interview and provide information to Staff pursuant to Association By-law 19.5. The letter directs the Respondent to attend the Toronto office of IIROC at 10:00 am on October 7, 2009. A copy of the Compel Letter was provided to the Respondent's counsel.
40. The Compel Letter was successfully delivered to the Respondent on September 29, 2009. The Respondent acknowledged receipt of the Compel Letter.
41. The Respondent did not attend the scheduled interview as directed by Staff, did not contact the Staff to reschedule the interview and did not provide any explanation for his failure to attend the scheduled interview.
42. On October 9, 2009, the Respondent communicated with Staff via phone and email, and indicated to Staff that he does not intend to cooperate with the investigation, and that he understands the possible consequences of his refusal to cooperate.

## **THE PENALTY**

¶ 5 Clearly, these are very serious contraventions. As Staff points out, the Respondent's conduct caused harm and a great deal of anxiety to the clients involved. They were exposed to trading risks that they did not consent to, and their accounts were frozen during the firm's internal investigation. His misconduct also compromised the reputation and integrity of Union Securities, and caused it to incur significant financial losses. And, most importantly, the Respondent's conduct offended the foundation of trust on which the securities industry relies.

¶ 6 The scheme was extensive and elaborately planned. It took place over an extended period of time; it was manipulative, fraudulent and deceptive.

¶ 7 There are some mitigating circumstances. The Respondent has no prior disciplinary record with IIROC or the IDA. He was not enriched by the scheme, and indeed suffered personal losses. He accepted responsibility, admitted his misconduct, and expressed remorse. And while he refused to cooperate with the investigations (his employer's and IIROC's), he provided information through legal counsel, and IIROC's investigation was not obstructed by his failure to cooperate. Nevertheless, his conduct was in violation of Rule 19.5, as alleged in the fifth count of contraventions alleged by Staff.

¶ 8 There is a wealth of case law dealing with penalties imposed in similar circumstances. It is unnecessary to set out the details. Suffice it to say that we agree with Enforcement Counsel's submission that the penalties to be imposed in this case must be sufficiently severe not only to punish the Respondent, but also to serve as a warning to others who might be tempted to contravene the Rules and Regulations.

¶ 9 While there are five separate contraventions, they all arise from the same set of facts. Therefore, rather than specify specific amounts for each contravention, we imposed a global fine in the amount of \$200,000. This is within the guidelines and in line with previous cases. We also pronounced a permanent ban from registration in any capacity in situations over which IIROC has jurisdiction. And finally, we ordered that costs be paid in the amount of \$25,000.

¶ 10 We wish to note that Mr. Chan's representations were thorough and fair and of great assistance to the panel.

Toronto, May 14, 2010.

Hon. Fred Kaufman, Chair

Robert Guilday, Industry Representative

Leo Ciccone, Industry Representative

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