

Re Williamson

IN THE MATTER OF:

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

and

The Universal Market Integrity Rules

and

Gary John Williamson

2011 IIROC 13

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

Heard: February 22, 2011
Decision: February 22, 2011
(13 paras.)

Hearing Panel:

Mr. Frederick Webber (chair), Mr. Leo Ciccone and Mr. Guenther Kleberg

Appearances:

Mr. Andrew Werbowski, Enforcement Counsel

Respondent did not appear

HEARING PANEL DECISION

¶ 1 As a result of a Settlement Agreement entered into between IIROC and the Respondent, a Settlement Hearing was conducted on February 22, 2011 in Toronto pursuant to the IIROC Dealer Member Rules. The Hearing Panel received and considered oral submissions from IIROC counsel and IIROC's Settlement Book containing the Settlement Agreement, relevant IIROC Rules and disciplinary sanction guidelines and certain decisions of previous hearing panels.

¶ 2 The Respondent did not appear at the scheduled time and place for the hearing. The panel was assured by IIROC counsel that the Respondent knew of the correct time and place for the hearing. Additional time was given before the start of the hearing to allow for the Respondent to appear but he did not do so and the hearing proceeded in his absence.

¶ 3 IIROC counsel advised the panel of the history of the negotiation of the Settlement Agreement including his advice to the Respondent that he need not sign the offer of settlement and should seek legal advice. The Respondent said he would do so, but IIROC counsel had no contact from any counsel acting for the Respondent. Ultimately the Settlement Agreement was signed by the Respondent on February 10, 2011.

¶ 4 The contraventions alleged by IIROC and admitted by the Respondent are set out in the Settlement Agreement and are as follows;

“Between January 1, 2008 and February 29, 2008, as a trader employed by Global Maxfin Capital Inc., [the Respondent] entered orders on the TSX Venture Exchange (“TSXV”) that he knew or ought reasonably to have known would create or could reasonably be expected to create an artificial bid price contrary to UMIR 2.2(2)(b) and UMIR Policy 2.2 for which he is liable under UMIR 10.4(1).

¶ 5 The salient facts are set out in Appendix “A” to the Settlement Agreement and can be summarized as follows. The Respondent entered orders to purchase securities of Royal Roads Corporation (RRO) without any intention that the orders would be executed and for no bona fide purpose. The Respondent entered the orders with the intention of establishing a high closing bid price in order to improve the unrealized daily profit and loss position of the shares held in his inventory account and thereby to misrepresent the performance of the securities. The high closing bid prices were artificial in that they were not justified by any real demand for the securities, and misrepresented the performance and actual demand for the securities to the market and to other market participants. The Respondent was compensated on commissions earned as well as profits and losses in his inventory account. The impugned transactions served to overstate the unrealized profits or understate the unrealized losses for RRO in his inventory account.

¶ 6 During the relevant period the Respondent entered numerous bid orders for RRO very late in the trading day. All the orders were entered as day orders and closed at 16:00:00, none of the orders were filled and all increased the closing bid price. RRO was an illiquid security and the Respondent knew that to be so.

¶ 7 Given RRO’s lack of liquidity and the short length of time the orders were open, the Respondent’s bid orders had virtually no prospect of being filled. The Respondent knew or ought to have known that his late day orders would not be filled and would artificially inflate the value of his inventory account.

¶ 8 In the Settlement Agreement, IIROC and the Respondent agreed on the following sanctions:

- (i) a fine of \$40,000 payable by the Respondent to IIROC;
- (ii) a six-month suspension from access to an IIROC-regulated marketplace; and
- (iii) costs of \$5000 payable by the Respondent to IIROC.

¶ 9 The issue for the Panel was whether to accept or reject the proposed settlement. This Panel accepts as applicable in this case, the statement in the decision *Re Milewski*, [1999] I.D.A.C.D. No.17:

“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.”

¶ 10 Given the standard of “reasonableness”, it is the responsibility of this Panel to determine whether the penalties set forth in the Settlement Agreement strike a reasonable balance between fairness to the Respondent in the circumstances and the purposes of the disciplinary sanctions, viz.:

- 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 the securities industry; and
- e. promote public confidence on the SRO system.

¶ 11 IIROC counsel reviewed with the panel the factors set forth in the UMIR Disciplinary Guidelines which are relevant in the case. Although the actions of the Respondent did not cause any harm to other market participants and the Respondent did not reap any substantial financial rewards, his actions caused harm to the integrity of the marketplace by artificially inflating the appearance of demand for the shares of RRO. His actions were intentional, not negligent or inadvertent, and he was aware of the regulatory requirements.

¶ 12 The panel also reviewed the cases included in the Settlement Book. These cases are useful guides for the appropriate sanctions to be applied although each could be distinguished from this case in some regard. The panel was also advised by IIROC counsel that the Respondent had lost his job with his employer and was in some financial difficulty.

¶ 13 The Hearing Panel agreed that the terms of the Settlement Agreement were reasonable given the nature of the misconduct, the purposes of sanctions, the aggravating and mitigating factors and the sanctions imposed in other cases referred to. Accordingly the Settlement Agreement was accepted by the Panel.

Dated as of the 22nd day of February 2011.

Frederick Webber- Chair

Leo Ciccone-Member

Guenther Kleberg- Member

*** * * * OFFER OF SETTLEMENT * * * ***

A. INTRODUCTION

1. The Enforcement Department Staff (Staff) of the Investment Industry Regulatory Organization of Canada (IIROC) has conducted an investigation (the Investigation) into the conduct of Gary John Williamson (the Respondent).
2. The Investigation was commenced by the Investigations and Enforcement Department Staff of IIROC in November 2008.
3. The Investigation has disclosed matters for which IIROC seeks certain sanctions against the Respondent pursuant to Rule 10.5 of the Universal Market Integrity Rules (UMIR).
4. If this Offer of Settlement is accepted by the Respondent, 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. The Respondent 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. The Respondent consents to be subject to the jurisdiction of IIROC and its relevant disciplinary process and rules in relation to this matter.
7. Staff and the Respondent jointly recommend that the Hearing Panel accept this Settlement Agreement.

B. AGREEMENT AS TO REQUIREMENTS CONTRAVENED

8. The Respondent agrees that:
 - i. Between January 1, 2008 and February 29, 2008, as a trader employed by Global Maxfin Capital Inc. he entered orders on the TSX Venture Exchange (“TSXV”) that he knew or ought reasonably to have known would create or could reasonably be expected to create an artificial bid price contrary to UMIR 2.2(2)(b) and UMIR Policy 2.2 for which he is liable

under UMIR 10.4(1).

C. ADMITTED FACTS

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

D. DISPOSITION

10. For the contravention in paragraph 8 above, Staff and the Respondent have agreed upon disposition as follows:

- i. a fine of \$40,000 payable by the Respondent to IIROC;
- ii. a six-month suspension from access to an IIROC-regulated marketplace; and
- iii. costs of \$5,000 payable by the Respondent to IIROC.

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

- 11. The Respondent shall have until the close of business on February 7, 2011 to accept the Offer of Settlement and serve an executed copy thereof on Staff.
- 12. This 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. The Respondent 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 accept or reject this Settlement Agreement.
- 14. In the event the Settlement Agreement is accepted 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 this Settlement Agreement will be included in the permanent record of IIROC in respect of the Respondent 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 this Settlement Agreement may not be referred to without the consent of both parties.
- 16. The Respondent agrees that, in the event it fails to comply with any of the terms of the Settlement Agreement, IIROC may enforce this settlement in any manner it deems appropriate and may, without limiting the generality of the foregoing, suspend the Respondent's access to marketplaces regulated by IIROC until IIROC determines that the Respondent is in full compliance with all terms of the Settlement Agreement.
- 17. The Respondent agrees that neither it, nor anyone on its behalf, will make a public statement inconsistent with this Settlement Agreement.

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

DATED at Oakville on the 10th day of February, 2011.

“Witness signature”

Witness Signature

“Robert Coffee”

“Gary Williamson”

Gary John Williamson

Name of Witness

“Address of Witness”

Address of Witness

DATED at Toronto, Ontario on the 10th day of February, 2011.

Per: “Jeff Kehoe”

JEFF KEHOE

VICE-PRESIDENT, ENFORCEMENT

INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

Suite 1600, 121 King Street West

Toronto, Ontario M5H 3T9

This foregoing Settlement Agreement is hereby approved this 22nd day of February, 2011, by the following hearing panel constituted to review the terms thereof:

Per: “Fred Webber”

Panel Chair

Per: “Leo Ciccone”

Panel Member

Per: “Guenther Kleberg”

Panel Member

*** * * * STATEMENT OF ALLEGATIONS * * * ***

I. REQUIREMENTS CONTRAVENED

1. Between January 1, 2008 and February 29, 2008 Gary Williamson, a trader employed by Global Maxfin Capital Inc. entered orders on the TSX Venture Exchange (“TSXV”) that he knew or ought reasonably to have known would create or could reasonably be expected to create an artificial bid price contrary to UMIR 2.2(2)(b) and UMIR Policy 2.2 for which he is liable under UMIR 10.4(1).
2. The text of the relevant UMIR Requirements is set out in Schedule A hereto.

II. RELEVANT FACTS AND CONCLUSIONS

OVERVIEW

3. During the relevant period, Williamson entered orders to purchase securities of Royal Roads Corporation (RRO) without any intention that the orders would be executed and for no *bona fide* purpose.
4. Williamson entered the orders with the intention of establishing a high closing bid price in order to improve the unrealized daily profit and loss position of the shares held in his inventory account and thereby to misrepresent the performance of the securities.
5. The high closing bid prices were artificial in that they were not justified by any real demand for the securities. The high closing bid prices misrepresented the performance and actual demand for the securities to the market and to other market participants.

THE RESPONDENT

6. Williamson has been registered as Registered Representative (Non-Retail) since January 2000 and was

employed by several investment dealers prior to joining Global Maxfin Capital Inc. in June 2007. Williamson was hired by Global Maxfin Capital Inc. as an institutional salesman at Global's Toronto branch.

WILLIAMSON'S INVENTORY ACCOUNT

7. Global earns revenue through proprietary trading. Williamson was assigned an individual inventory account identified as "XS". Williamson was the only person who entered orders in his inventory account.
8. Williamson's inventory account was valued daily with the value documented on Inventory Daily Reports. This report values all the long positions in the account at the closing bid and all short positions at the closing offer. The report also shows realized and unrealized profits or losses for each security in the account.
9. Williamson was aware of his profit and loss position and reviewed this position with Global's Chief Operations Officer on a daily basis.

WILLIAMSON'S COMPENSATION AND INDEBTEDNESS TO GLOBAL

10. Williamson was compensated based on commissions earned as well as profits and losses within his inventory account. Williamson's compensation was calculated and paid monthly.
11. Prior to the trading activity described below, Williamson was indebted to Global in excess of \$32,000 as a result of a foreign exchange error (for which he was partly responsible) and trading losses in his inventory account.
12. Williamson's monthly compensation was partially reduced to pay down his indebtedness to Global.

ARTIFICIAL PRICING

13. Between January 2, 2008 and February 29, 2008, Williamson entered numerous late bid orders for RRO in his inventory account. The RRO position represented a significant portion of the total value of Williamson's inventory account.
14. During the relevant period (42 trading days) Williamson set the closing bid on 33 days.
15. During the relevant period Williamson entered 21 buy orders after 15:30. None of the orders were filled and all increased the closing bid price. The orders were all entered as day orders, and expired at 16:00:00.
16. The table below summarizes Williamson's closing bids for RRO during the relevant period.

#	Order Date	Time	Volume	Price	Bid	Closing Bid	Closing Ask	Spread
1	1 / 2 / 08	15:59:54	2,000	0.285	0.2750	0.2850	0.3000	0.0150
2	1 / 04 / 08	15:59:53	9,000	0.285	0.2700	0.2850	0.3000	0.0150
3	1 / 7 / 08	15:59:52	1,000	0.290	0.2800	0.2900	0.3000	0.0100
4	1 / 8 / 08	15:59:50	1,500	0.270	0.2300	0.2700	0.2850	0.0150
5	1 / 9 / 08	15:37:31	1,000	0.265	0.2500	0.2650	0.2750	0.0100
6	1 / 10 / 08	15:59:44	1,000	0.240	0.2200	0.2400	0.2500	0.0100
7	1 / 14 / 08	15:57:02	1,000	0.250	0.2300	0.2500	0.2600	0.0100
8	1 / 15 / 08	15:59:51	2,000	0.260	0.2400	0.2600	0.2700	0.0100
9	1 / 16 / 08	15:59:50	2,000	0.240	0.2200	0.2400	0.2500	0.0100

10	1 / 24 / 08	15:37:28	1,000	0.200	0.1800	0.2000	0.2200	0.0200
11	1 / 25 / 08	15:59:47	1,000	0.210	0.1750	0.2100	0.2200	0.0100
12	1 / 30 / 08	15:59:49	1,000	0.230	0.2000	0.2300	0.2400	0.0100
13	2 / 11 / 08	15:59:54	1,000	0.270	0.2400	0.2700	0.2800	0.0100
14	2 / 12 / 08	15:59:57	2,000	0.270	0.2500	0.2700	0.2900	0.0200
15	2 / 20 / 08	15:59:51	1,000	0.245	0.2000	0.2450	0.2500	0.0050
16	2 / 21 / 08	15:59:53	1,500	0.285	0.2700	0.2850	0.2900	0.0050
17	2 / 22 / 08	15:59:56	2,000	0.285	0.2500	0.2850	0.2900	0.0050
18	2 / 25 / 08	15:59:55	1,000	0.295	0.2200	0.2950	0.3000	0.0050
19	2 / 27 / 08	15:59:54	1,000	0.280	0.2500	0.2800	0.2850	0.0050
20	2 / 28 / 08	15:51:40	50,000	0.280	0.2700	0.2800	0.2850	0.0050
21	2 / 29 / 08	15:59:45	1,000	0.245	0.2150	0.2450	0.2500	0.0050

17. Williamson entered 17 of the orders (entry times highlighted in gray) within the last 16 seconds of the day; and 13 of those were entered within the last 10 seconds of the day.
18. RRO was an illiquid stock and was illiquid during the relevant period. Specifically:
- trading in RRO only occurred on 26 of the 42 days;
 - there were a total of 66 trades for an average of 1.57 trades per day; and
 - the total trading volume was 438,579 shares for an average of 10,442 per day.
19. Williamson followed the trading activity for RRO carefully and knew that RRO was an illiquid security.
20. Given RRO's lack of liquidity, and the length of time the orders were open, Williamson's bid orders had virtually no prospect of being filled. However, all 17 orders had the effect of increasing the overnight value of Williamson's inventory account. Williamson knew or ought to have known that his late day orders would not be filled and the orders would artificially inflate the value of his inventory account.

EFFECT ON INVENTORY ACCOUNT

21. The table below shows how Williamson's late day bid orders affected the value of his inventory account each day:

#	Order Date	Shares	Cost	Bid after Williamson's Bid	Bid Prior to Williamson's Bid	P&L after Williamson's Bid	P&L prior to Williamson's Bid	Difference
1	1 / 2 / 08	93,500	0.2100	0.2850	0.2750	7,012.50	6,077.50	935.00
2	1 / 4 / 08	96,000	0.2116	0.2850	0.2700	7,046.40	5,606.40	1,440.00
3	1 / 7 / 08	96,500	0.2121	0.2900	0.2800	7,517.35	6,552.35	965.00
4	1 / 8 / 08	96,000	0.2200	0.2700	0.2300	4,800.00	960.00	3,840.00
5	1 / 9 / 08	89,000	0.2206	0.2650	0.2500	3,951.60	2,616.60	1,335.00
6	1 / 10 /	89,000	0.2206	0.2400	0.2200	1,726.60	(53.40)	1,780.00

	08							
7	1 / 14 / 08	89,000	0.2206	0.2500	0.2300	2,616.60	836.60	1,780.00
8	1 / 15 / 08	72,000	0.2206	0.2600	0.2400	2,836.80	1,396.80	1,440.00
9	1 / 16 / 08	72,000	0.2206	0.2400	0.2200	1,396.80	(43.20)	1,440.00
10	1 / 24 / 08	64,000	0.2206	0.2000	0.1800	(1,318.40)	(2,598.40)	1,280.00
11	1 / 25 / 08	64,500	0.2206	0.2100	0.1750	(683.70)	(2,941.20)	2,257.50
12	1 / 30 / 08	62,300	0.2215	0.2300	0.2000	529.55	(1,339.45)	1,869.00
13	2 / 11 / 08	44,300	0.2600	0.2700	0.2400	443.00	(886.00)	1,329.00
14	2 / 12 / 08	47,300	0.2593	0.2700	0.2500	506.11	(439.89)	946.00
15	2 / 20 / 08	48,300	0.2596	0.2450	0.2000	(705.18)	(2,878.68)	2,173.50
16	2 / 21 / 08	48,800	0.2600	0.2850	0.2700	1,220.00	488.00	732.00
17	2 / 22 / 08	50,800	0.2596	0.2850	0.2500	1,290.32	(487.68)	1,778.00
18	2 / 25 / 08	63,800	0.2658	0.2950	0.2200	1,862.96	(2,922.04)	4,785.00
19	2 / 27 / 08	63,800	0.2658	0.2800	0.2500	905.96	(1,008.04)	1,914.00
20	2 / 28 / 08	63,800	0.2658	0.2800	0.2700	905.96	267.96	638.00
21	2 / 29 / 08	7,800	0.2653	0.2450	0.2150	(158.34)	(392.34)	234.00

22. The column headed "P&L After Williamson's Bid" shows his unrealized profit or loss on RRO as reported each day on the Daily Inventory Reports.
23. The column headed "P&L Prior to Williamson's Bid" shows what his true unrealized profit or loss on RRO would have been for each day, had he not entered the orders.
24. The column headed "Difference" shows how Williamson's late day orders were able to overstate the unrealized profits (or understate the unrealized losses) for RRO in his inventory account each day.

III. SUMMARY

25. The purpose of UMIR 2.2(2)(b) and Policy 2.2 is to protect the marketplace from artificial pricing, which undermines the integrity of the marketplace and erodes investor confidence.

26. Williamson knew or ought to have known that his order entry activity would create or could reasonably be expected to create an artificial bid price. The closing bid orders had no *bona fide* purpose. Williamson entered the orders to establish a high closing bid price in order to improve the daily profit and loss position of RRO held in his inventory account. In so doing, he misrepresented the performance and actual demand for RRO to the market and to other market participants.

SCHEDULE "A"

EXCERPTS FROM THE UNIVERSAL MARKET INTEGRITY RULES MADE AND ADOPTED AS RULES OF IROC PURSUANT TO TRANSITION RULE 1.1 SCHEDULE A.1

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

- (g) 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;
- (h) 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
- (i) 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.

Part 3 – Artificial Pricing

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.

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