

# Re Nott et al

IN THE MATTER OF:

**The Universal Market Integrity Rules**

**and**

**TD Securities Inc., Kenneth Nott, Aidin Sadeghi, Christopher Kaplan,  
Robert Nemy and Jake Poulstrup**

2011 IIROC 43

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

Decision: June 17, 2011  
(16 paras.)

**Hearing Panel:**

The Honourable Stanley Kurisko, Q.C. (Chair), Donald Lawson, Phillip Ted Norris

**Counsel:**

Charles Corlett, IIROC Enforcement Counsel  
Kenneth Nott, Self-represented

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## Terms of payment of the fine and costs by Kenneth Nott

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¶ 1 The IIROC Statement of Allegations alleged that Nott entered a total of 230 Artificial Closing Bids consisting of one for ACU, 53 for CAN.H/CAN, 91 for CDF.A and 85 for PEC.

¶ 2 Nott did not file a defence to the Statement of Allegations. He represented himself. He testified and voluntarily stated that the closing bids listed in the Tables to the Statement of Allegations were not motivated by an intention to establish a price justified by real demand or supply. He said his intention was to maintain the price of the security.

¶ 3 Having ruled that bidding within the context of the market for the purpose of maintaining a closing bid price constitutes an Artificial Closing Bid, the Panel held that the alleged Artificial Closing Bids by Nott set out in the Statement of Allegations had been proved.<sup>1</sup>

¶ 4 Having regard to mitigating considerations outlined in the Sanctions Reasons and Decision<sup>2</sup>, with particular regard to Nott's honest and helpful evidence, his financial circumstances and his lack of intent, the Panel ordered that Nott pay IIROC a fine of \$15,000.00 and costs of \$5,000.00<sup>3</sup>. This Panel further ordered that:<sup>4</sup>

Payment of the fine and costs shall not fall due until thirty days after the release of the Sanctions Decision and Reasons. Time and terms of payment of the fine shall be

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<sup>1</sup> Sanction Decision and Reasons [2011] IIROC No. 26: Summary of findings re Nott, paragraphs [53]-[55].

<sup>2</sup> Paragraphs [173]-[176]

<sup>3</sup> *Ibid*, paragraph [180]

<sup>4</sup> *Ibid*, paragraph [181]

negotiated. If an agreement cannot be reached within thirty days of the release of the Sanctions Decision and Reasons, written submissions shall be submitted to the Panel and the Panel will fix the terms of payment.

¶ 5 IIROC and Nott have not reached an agreement on the time and terms of payment. Each has provided the Panel with written submissions.

#### *Submissions by Nott*

¶ 6 Nott says that he was unemployed during most of the lengthy period of these proceedings and was forced out of the industry. He accepted an entry level position outside the industry only last year. This position does not cover his basic living expenses and therefore he cannot pay \$650.00 per month proposed by IIROC Staff. He proposes that once he finds employment in the industry, “the only true industry for which I have ever worked,” he would then be able to pay the fine over the three year period suggested by IIROC Staff. Nott says that without this arrangement the fine will basically equate to an indefinite suspension.

#### *Submissions by IIROC Staff*

¶ 7 In Ontario IIROC has no mechanism by which to enforce an order for fine and costs. There are former registrants that have been fined for contravention of IIROC rules who never pay their fines. However, they would not be allowed to return to the industry without paying the fine. Thus, adopting Nott’s request would effectively amount to an order that he need not pay the fine and costs unless he is employed in the investment industry.

¶ 8 IIROC Staff says its proposal is at the upward end of the amount of time for repayment that has been ordered in contested hearings or negotiated pursuant to a settlement agreement. To extend the time for repayment over more than three years becomes impractical. Poulstrup and Kaplan obtained employment in the industry and have agreed to pay over a three year period.

#### *Decision*

¶ 9 The Panel agrees with the substance of the submissions of IIROC Staff. However, some flexibility is required that will enable Nott to obtain employment in the investment industry before he is required to begin making payments.

¶ 10 The Panel orders that Nott pay \$625.00 per month on the fifth day of each month commencing June 5, 2012 for 22 months being a total of \$13,750.00 leaving a balance of \$6,250.00. One half this balance (\$3,125.00) shall be paid on the 5<sup>th</sup> day of the 23<sup>rd</sup> month. The remaining \$3,125.00 shall be paid on the 5<sup>th</sup> day of the 24<sup>th</sup> month. Default in making any monthly payment shall not accelerate the remaining payments. All payments shall be applied firstly against any outstanding arrears.

#### *Addendum*

¶ 11 The Panel was about to release the foregoing decision when it received an e-mail message from Nott stating: “I have loss my job today due to my company seeing the final decision that was posted by iiroc. This job was not related to the industry whatsoever however this still comes back to haunt me.”

¶ 12 Nott is referring to a News Release posted by IIROC on June 7, 2011<sup>5</sup> announcing the penalties imposed by the Panel for Nott and the other Respondents. With respect to the number of infractions the News Release states the following:

After reviewing the five individuals’ trading activity in five stocks, the panel found that each had entered artificial closing bids for one or more of the five stocks as follows:

- Kenneth Nott, 230 times;

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<sup>5</sup><http://docs.iiroc.ca/DisplayDocument.aspx?DocumentID=FCF67C51F02B4BA9B96DAEAC8A496A5E&Language=en>.

- Aidin Sadeghi, three times. The panel dismissed 54 other allegations of entering artificial closing bids against Mr. Sadeghi, and noted that none of the three bids were part of a pattern of entering artificial closing bids;
- Christopher Kaplan, 37 times. The panel dismissed four allegations of artificial closing bids;
- Robert Nemy, 39 times; and
- Jake Poulstrup, 14 times. The panel also dismissed 15 allegations of artificial closing bids against Mr. Poulstrup.

It should be noted the Panel dismissed 40 allegations of Artificial Closing Bids against Nemy.

¶ 13 There is no comment or reference in the News Release concerning the mitigating comments by the Panel in the Sanctions Decision and Reasons with respect to the 230 Artificial Closing Bids by Nott. The Panel said:<sup>6</sup> (underlining added)

¶ 172 On this Sanctions Hearing Nott says the Panel should limit the number of Artificial Closing Bids to 69 bids entered after five minutes to the close. There is a great likelihood that in the absence of Nott's admission, analysis of his bid-ing in a manner similar to Poulstrup would significantly reduce the number of Artificial Closing Bids. However, the Panel cannot arbitrarily negate the blanket admission by Nott in the manner suggested by Nott for the purpose of leveling the sanctions playing field.

¶ 175 There are additional important mitigating considerations. Nott's was honest and straightforward. His testimony regarding Poulstrup and Kaplan was extremely relevant and helpful. Because Nott admitted that the purpose of his bidding was to maintain the value of the stocks in the context of the market the Panel was not required to go through the demanding exercise of analyzing the evidence to ascertain Nott's intention.

¶ 176 Coupled with his admission of "guilt" Nott says that if management or compliance had indicated to him his trading was inappropriate he would have immediately stopped and that at no time did he knowingly break any rules. He says it was not his intention to break any rules.

*Decision re Nott sanctions*

¶ 177 Nott's assertion that his style of maintaining the value of a stock in the context of the market was in accordance with the culture of bidding at TDSI is consistent with the Boddie Report and the evidence of Mathew Cooper, Acting Chief Compliance Officer for TDSI.<sup>82</sup> No evidence was called to contradict Nott and he was not cross examined by anyone.

¶ 178 In light of the foregoing it would be inappropriate to accept only the admission of guilt and disregard the rest of his testimony. It is reasonable to conclude that Nott did not think he was violating any UMIR rules. His lack of intention is a significant mitigating consideration in imposing sanctions.

¶ 14 The sheer number of Artificial Closing Bids by Nott would lead a person reading the News release to conclude that Nott was the most culpable of all the Respondents. The fact is, however, that the Panel concluded Nott was the least blameworthy (with the exception of Sadeghi). In coming to this conclusion the Panel cited the underlined mitigating considerations.

¶ 15 The News Release is deficient and unfair in failing to mention any of these extremely relevant mitigating comments regarding Nott.

¶ 16 Furthermore, anyone reading the News Release would wonder why the Panel imposed a fine of

<sup>6</sup> Sanction Decision and Reasons [2011] IIROC No. 26.

\$15,000.00 and \$7,500.00 costs for 230 Artificial Closing Bids by Nott that is so much less than the fines and costs for Nemy (39 Artificial Closing Bids, \$75,000.00 fine and \$37,500.00 costs), Kaplan (37 Artificial Closing Bids, \$35,000.00 fine and \$17,500.00) and Poulstrup (14 Artificial Closing Bids, \$20,000.00 fine and \$10,000.00 costs). The substance of the underlined comments that explain the disparity should have been included in the News Release.

The above is approved and released June 17, 2011.

Hon. Stanley Kurisko, Q.C., Panel Chair

Donald Lawson

Phillip Ted Norris

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