

# Re Danielak

IN THE MATTER OF:

**The Investment Dealer and Partially Consolidated Rules and the Universal Market Integrity Rules of the New Self-Regulatory Organization of Canada**

**And**

**Martin Danielak**

2023 IIROC 05

New Self-Regulatory Organization of Canada  
Hearing Panel (Alberta District)

Heard: May 10, 2023 (by videoconference)

Decision: May 10, 2023

Reasons for Decision: May 19, 2023

## **Hearing Panel:**

Eric Spink, KC, Chair, Martin Davies, and Jonathan Lund

## **Appearances:**

April Engelberg, Senior Enforcement Counsel

Martin Danielak, present

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## **REASONS FOR ACCEPTANCE OF SETTLEMENT**

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### **Introduction**

¶ 1 The Hearing Panel heard an application requesting that it accept a Settlement Agreement between Enforcement Staff and Martin Danielak, pursuant to sections 8215 and 8428 of the Investment Dealer and Partially Consolidated Rules (“IDPC Rules”) and the Universal Market Integrity Rules (“UMIR”) of the New Self-Regulatory Organization of Canada (the “Corporation”). After hearing submissions, the Hearing Panel accepted the Settlement Agreement, and these are our reasons.

¶ 2 The Settlement Agreement is attached as Appendix. In the Settlement Agreement, Mr. Danielak (“the Respondent”) admitted the following contraventions:

- (a) Between October 2019 and November 2019, the Respondent entered orders for the shares of Citation Growth Corp., that he ought reasonably to have known would create, or could reasonably be expected to create, a false or misleading appearance of trading activity or interest in the purchase or sale of the security, contrary to UMIR 2.2(2).
- (b) Between October 2019 and November 2019, the Respondent failed to comply with his Dealer Member’s policies and procedures by communicating with his client by way of text messages using unapproved third-party communication applications, contrary to IDPC Rule 1400.

¶ 3 The Respondent agreed to the following sanctions and costs:

- (a) a fine in the amount of \$21,000;

- (b) disgorgement of commissions in the amount of \$105;
- (c) a two-month suspension from access to any marketplace regulated by the Corporation;
- (d) re-write the Conduct and Practices Handbook exam; and
- (e) pay costs in the amount of \$2,500.

## **Facts**

- ¶ 4 The facts are set out in the Settlement Agreement. This section summarizes the facts that the Panel considered to be particularly significant.
- ¶ 5 The Respondent has been a Registered Representative since May 2012 and, in 2019, was registered as an Investment Advisor and Portfolio Manager with Richardson Wealth.
- ¶ 6 In October and November of 2019, the Respondent entered 47 buy orders for shares of Citation Growth Corp. through a corporate account for which an individual (“LT”) had trading authority. The Respondent acted on instructions received from LT by text message. The pattern and method showed that the client had no intention to execute the orders.
- ¶ 7 The Respondent admits that he “ought to have known” that the orders could reasonably be expected to create a false or misleading appearance of trading activity or interest and that, in hindsight, he understood that the purpose was “to support the stock”.
- ¶ 8 LT had a personal account with another Registered Representative at Richardson Wealth through which LT was selling shares of Citation Growth Corp. during the same period. There is no evidence that the Respondent was aware of this fact at the time of entering the buy orders.
- ¶ 9 The Respondent has no prior disciplinary record, admitted the misconduct, and agreed to Enforcement Staff’s Early Resolution Offer (which granted a 30% reduction in the fine that otherwise would have been sought).

## **Role of the Panel**

- ¶ 10 The Panel can only accept or reject the Settlement Agreement. The Panel’s role is as described in *Re Milewski*, [1999] IDACD 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.

## **Guidelines, Previous Decisions, and Key Factors in Determining Sanctions**

- ¶ 11 Enforcement Counsel referred to the Key Factors in Determining Sanctions in the 2015 IIROC Sanction Guidelines (“Guidelines”), and to the following decisions: *Re Costa* 2019 IIROC 15; *Re Waddington* 2017 IIROC 39; *Re Aitchison* 2020 IIROC 23; *Re Englesby & Nishimura* 2016 IIROC 40; and *Re Sweeney* 2022 IIROC 22.
- ¶ 12 The Guidelines say:

The purpose of sanctions in a regulatory proceeding is to protect the public interest by restraining future conduct that may harm the capital markets. In order to achieve this, sanctions should be significant enough to prevent and discourage future misconduct by the respondent (specific deterrence), and to deter others from engaging in similar misconduct (general deterrence). [...]

General deterrence can be achieved if a sanction strikes an appropriate balance by addressing a Regulated Person’s specific misconduct but is also in line with industry expectations. Any sanction

imposed must be proportionate to the conduct at issue and should be similar to sanctions imposed on respondents for similar contraventions in similar circumstances. The sanction should be reduced or increased depending on the relevant mitigating and aggravating factors.

¶ 13 Enforcement Counsel referred to the principle that a suspension should be considered where “there has been one or more serious contraventions” or “the misconduct in question has caused some measure of harm to investors, the integrity of a marketplace or the securities industry as a whole”.

¶ 14 Enforcement Counsel also referred to the principle that a respondent should not financially benefit from misconduct, as reflected in the proposed disgorgement of commissions totalling \$105.

¶ 15 Enforcement Counsel acknowledged that the Respondent admitted only that he “ought to have known” that the orders contravened UMIR 2.2(2), and that the Respondent’s misconduct was similar to that described in *Re Waddington* [para. 14] as “reckless with respect to regulatory requirements, rather than intentional”.

¶ 16 All the previous decisions cited to the Panel dealt with trading contraventions roughly similar to this case. Enforcement Counsel submitted that the proposed sanctions here fall squarely within the range established by the previous decisions.

¶ 17 Enforcement Counsel also noted the Respondent’s lack of disciplinary history, his cooperation with the investigation, and acceptance of Enforcement Staff’s Early Resolution Offer (which granted a 30% reduction in the fine that otherwise would have been sought).

¶ 18 Mr. Danielak made a brief submission in which he expressed remorse for his conduct and described how much he had learned from this experience.

### **Analysis and Conclusion**

¶ 19 The Panel found it significant that the Respondent’s misconduct in this case was reckless, as opposed to intentional. We attach more weight to this factor than did the panel in *Re Waddington* because that case included exacerbating facts that are not present here: the Respondent in *Re Waddington* initiated the manipulative orders for his own account, seeking to profit, after having been directed to stop entering such orders by his firm’s Chief Compliance Officer. The panel in *Re Waddington* noted the seriousness of the contravention and said (at para. 15): “It is not significantly less serious if, after more than thirty years in the industry, the Respondent did not know the regulatory significance of his conduct.”

¶ 20 In this case, the orders originated from a client and, except for the \$105 in commissions, benefitted only the client. Although the Respondent’s acceptance of trading instructions by text message and his failure to recognize that the orders were manipulative remain serious contraventions, the Panel finds them less serious than the misconduct in *Re Waddington*.

¶ 21 The Panel also took into account the Respondent’s lack of previous disciplinary history, his admission of responsibility, his expression of remorse, and his acceptance of Enforcement Staff’s Early Resolution Offer.

¶ 22 Having considered all these circumstances, the Panel agreed that the sanctions proposed in the Settlement Agreement are fair, reasonable, and sufficient to achieve both specific and general deterrence. We therefore accepted and endorsed the Settlement Agreement on May 10, 2023.

Dated at Edmonton, Alberta this 19 day of May 2023.

Eric Spink, KC, Chair

Martin Davies

Jonathan Lund

## **SETTLEMENT AGREEMENT**

### **PART I – INTRODUCTION**

1. The Corporation<sup>i</sup> will issue a Notice of Application to announce a settlement hearing pursuant to sections 8215 and 8428 of the Investment Dealer and Partially Consolidated Rules (the “Investment Dealer Rules”) to consider whether a hearing panel should accept this Settlement Agreement between Enforcement Staff and Martin Danielak (the “Respondent”).

### **PART II – JOINT SETTLEMENT RECOMMENDATION**

2. Enforcement Staff and the Respondent jointly recommend that the hearing panel accept this Settlement Agreement in accordance with the terms and conditions set out below.

### **PART III – AGREED FACTS**

3. For the purposes of this Settlement Agreement, the Respondent agrees with the facts as set out in Part III of this Settlement Agreement.

#### **Overview**

4. In October and November 2019, the Respondent entered 47 unsolicited buy orders on behalf of a client that he ought reasonably to have known would create, or could reasonably be expected to create, a false or misleading appearance of trading activity in or interest in the purchase of a security. The pattern and method of the order entry demonstrates that the client had no intention to execute the buy orders.
5. The Respondent had an obligation to be aware of, and alert to, manipulative and deceptive activity when entering orders on Canada’s equity marketplaces. UMIR 2.2 prohibits manipulative and deceptive trading activities, which harm market integrity and undermine confidence in the marketplaces.
6. In addition, the Respondent communicated with and received client instructions by way of text messages, using an unapproved third-party communication application.

#### **Background**

7. The Respondent has been a Registered Representative since May 2012 and is presently working as a Portfolio Strategist at Raymond James. He was registered with Richardson Wealth from May 2012 to December 2019 as an Investment Advisor and Portfolio Manager. Between January 2020 and July 2020, he was a Registered Representative at Raymond James. Between July 2020 and March 2022, he was a Registered Representative at Canaccord Genuity Corp.
8. The Respondent’s client engaged in manipulative and deceptive trading activity in shares of Citation Growth Corp. (“CGRO”), a CSE-listed security, through a corporate account for which an individual (“LT”) had trading authority. The Respondent handled all the orders in question for the corporate account.
9. LT had a significant financial interest in CGRO. He was an initial investor and together with his spouse and personal holding company held a 1.14 million CRGO shares, valued at approximately \$422,000 on October 31, 2019. LT had a personal account with another Registered Representative at Richardson Wealth in which account LT was selling CRGO shares during the same period. There is no evidence that the Respondent was aware of this fact at the time of entering the buy orders in CRGO.
10. On November 29, 2019, Branch Management questioned the Respondent about the orders. The Respondent advised that in hindsight he understood that the purpose of the trades was to “support

the stock”.

### **The Manipulative and Deceptive Activity**

11. In October 2019 and November 2019 (the “Relevant Period”), the Respondent entered 47 buy orders for CGRO on behalf of the client. The buy orders expired at the end of the day unfilled. Only 1 of the 47 buy orders was filled.
12. In October 2019, 28 buy orders were entered, none of which were filled. Each of the 28 buy orders were entered as day orders and expired at the end of the trading day.
13. In November 2019, 19 buy orders were entered, one of which was filled.
14. All the buy orders were for 20,000 common shares. Generally, two orders were entered within minutes at prices that were marginally different.
15. The Respondent would cancel an order or enter a Change Formal Order (“CFO”) to amend the limit price of the order lower if the best bid price dropped.
16. The Respondent received trading instructions from LT by text message. The Respondent deleted the text messages and did not provide them to his Dealer Member or Enforcement Staff.
17. The following four examples illustrate the pattern and method of order entry:
  - (i) On October 18, 2019, at 10:27:01, the Respondent entered two buy orders for 20,000 shares of CGRO, one with a limit price of \$0.35 and one with a limit price of \$0.34. At the time of order entry, the bid price was \$0.38 and there was 47,661 available volume ahead in line of the \$0.35 buy order. The bid price dropped to \$0.35 at 13:25:35. Approximately twenty-two minutes later at 13:47:20, there was only 300 available volume ahead of the \$0.35 buy order. The Respondent cancelled the original \$0.35 buy order and entered a buy order for 20,000 shares of CGRO at a limit price of \$0.33. There was 58,000 available volume ahead in line of the \$0.33 buy order. The buy orders expired at the end of the trading day.
  - (ii) On October 21, 2019, at 9:36:32, the Respondent entered two buy orders for 20,000 shares of CGRO; one with a limit price of \$0.30 and one with a limit price of \$0.295. At the time of order entry, the bid price was \$0.31. The bid price dropped to \$0.305 at 09:37:21. Approximately two hours later, at 11:36:46, the Respondent cancelled the original \$0.30 buy order and re-entered a buy order for 20,000 shares of CGRO at a lower limit price of \$0.29. Both buy orders expired at the end of the trading day.
  - (iii) On November 12, 2019, at 10:37:20, the Respondent entered two buy orders for 20,000 shares of CGRO; one with a limit price of \$0.37 and one with a limit price of \$0.36. At the time of order entry, the bid price was \$0.385 and there was 90,500 available volume ahead in line of the \$0.37 buy order. The bid price dropped to \$0.38 at 11:57:24. Approximately nine minutes later, at 12:06:11, there was only 500 available volume ahead of the \$0.35 buy order. The Respondent cancelled the original buy order with the limit price of \$0.37 and re-entered a buy order for 20,000 shares of CGRO to a lower limit price of \$0.35. There was 73,000 available volume ahead in line of the \$0.35 buy order. The bid price dropped to \$0.37 at 13:52:29. Approximately 34 minutes later, at 14:26:32, the Respondent cancelled the second order at a limit price of \$0.36 and re-entered a buy order for 20,000 shares of CGRO at a lower limit price of \$0.34. The buy orders expired at the end of the day.
  - (iv) On November 14, 2019, at 10:09:17 the Respondent entered two buy orders for 20,000 shares of CGRO, one with a limit price of \$0.345 and one with a limit price of \$0.34. At the time of order entry, the bid price was \$0.365 and there was 77,000 available volume ahead in line of

the \$0.345 buy order. The bid price dropped to \$0.35 at 10:55:46. At 14:35:52, there was only 1,000 available volume ahead of the \$0.345 buy order. The Respondent cancelled the first order at a limit price of \$0.345 and re-entered a buy order for 20,000 shares of CGRO at a lower limit price of \$0.335. The buy orders expired at the end of the day.

18. This pattern and method of order entry, along with the Respondent's understanding that the client intended to "support" the stock should have caused the Respondent to question the entry of the orders on the basis that the orders were non-*bona fide* and that the client had no intention to execute the orders.
19. The Respondent has admitted that he acted as an order taker. The Respondent followed the client's trading instructions by entering the unsolicited orders. The Respondent failed to ask questions about the orders. He never questioned or raised any issues or concerns with the fact that the orders were repeatedly entered despite never being filled, nor why buy orders were repeatedly amended when the price declined to levels that the client had previously entered orders to buy.
20. On November 28, 2019 GMP Securities Compliance staff reviewed an alert related to a trade entered on November 14, 2019 for CGRO within the Corporate Account whereby the client changed a limit price of an order which placed the trade further away from the bid. This resulted in an internal investigation and the filing of a Gatekeeper Report with IROC.

#### **The Internal Investigation**

21. Richardson GMP conducted an internal investigation which determined, among other things, that the Respondent "failed to discharge his duties as a gatekeeper to the financial markets, by placing orders without ensuring their legitimacy". The review found that the Respondent ought to have raised concerns about LT's trading pattern to his supervisor but did not.
22. At the time that the investigation was concluded, the Respondent had left Richardson GMP and therefore did not face disciplinary action from the firm.

#### **Financial Benefit**

23. The financial benefit to the Respondent from the trading activity was minimal. The total gross commissions for the Corporate Account during the Relevant Period were \$700. Between July to December 2019, the Respondent received 15% of gross revenue or \$105.

#### **Mitigating Factors and Early Resolution Offer**

24. The Respondent has admitted the misconduct described above reducing the length of time required to investigate this matter and agreed to resolve this matter in a timely manner. The Respondent accepted Enforcement Staff's Early Resolution Offer which granted a 30% reduction on the fine Enforcement Staff otherwise would have sought.

#### **PART IV – CONTRAVENTIONS**

25. By engaging in the conduct described above, the Respondent committed the following contraventions of Corporation requirements:
  - (i) Between October 2019 and November 2019, the Respondent entered orders for the shares of Citation Growth Corp., that he ought reasonably to have known would create, or could reasonably be expected to create, a false or misleading appearance of trading activity or interest in the purchase or sale of the security, contrary to UMIR 2.2(2).
  - (ii) Between October 2019 and November 2019, the Respondent failed to comply with his Dealer Member's policies and procedures by communicating with his client by way of

text messages using unapproved third-party communication applications, contrary to Investment Dealer Rule 1400.

#### **PART V – TERMS OF SETTLEMENT**

26. The Respondent agrees to the following sanctions and costs:
- (i) Fine of \$21,000 fine;
  - (ii) \$105 disgorgement for commissions;
  - (iii) Two months suspension from access to a marketplace regulated by the Corporation;
  - (iv) re-write Conduct Practices Handbook; and
  - (v) \$2,500 in costs.
27. If this Settlement Agreement is accepted by the hearing panel, the Respondent agrees to pay the amounts referred to above within 30 days of such acceptance unless otherwise agreed between Enforcement Staff and the Respondent.

#### **PART VI – STAFF COMMITMENT**

28. If the hearing panel accepts this Settlement Agreement, Enforcement Staff will not initiate any further action against the Respondent in relation to the facts set out in Part III and the contraventions in Part IV of this Settlement Agreement, subject to the provisions of the paragraph below.
29. If the hearing panel accepts this Settlement Agreement and the Respondent fails to comply with any of the terms of this Settlement Agreement, Enforcement Staff may bring proceedings under Investment Dealer Rule 8200 against the Respondent. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement.

#### **PART VII – PROCEDURE FOR ACCEPTANCE OF SETTLEMENT**

30. This Settlement Agreement is conditional on acceptance by the hearing panel.
31. This Settlement Agreement shall be presented to a hearing panel at a settlement hearing in accordance with sections 8215 and 8428 of the Investment Dealer Rules, in addition to any other procedures that may be agreed upon between the parties.
32. Enforcement Staff and the Respondent agree that this Settlement Agreement will form all the agreed facts that will be submitted at the settlement hearing, unless the parties agree that additional facts should be submitted at the settlement hearing. If the Respondent does not appear at the settlement hearing, Staff may disclose additional relevant facts, if requested by the hearing panel.
33. If the hearing panel accepts this Settlement Agreement, the Respondent agrees to waive all rights under the Rules of the Corporation and any applicable legislation to any further hearing, appeal and review.
34. If the hearing panel rejects this Settlement Agreement, Enforcement Staff and the Respondent may enter into another settlement agreement or Enforcement Staff may proceed to a disciplinary hearing based on the same or related allegations.
35. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the hearing panel.
36. This Settlement Agreement will become available to the public upon its acceptance by the hearing panel and the Corporation will post a copy of this Settlement Agreement on the Corporation website. The Corporation will publish a notice and news release of the facts, contraventions, and the sanctions

agreed upon in this Settlement Agreement and the hearing panel’s written reasons for its decision to accept this Settlement Agreement.

- 37. If this Settlement Agreement is accepted, the Respondent agrees that neither they nor anyone on their behalf, will make a public statement inconsistent with this Settlement Agreement.
- 38. This Settlement Agreement is effective and binding upon the Respondent and Enforcement Staff as of the date of its acceptance by the hearing panel.

**PART VIII – EXECUTION OF SETTLEMENT AGREEMENT**

- 39. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.
- 40. An electronic copy of any signature will be treated as an original signature.

**DATED** this 10 day of April, 2023.

“Witness”

Witness

“Martin Danielak”

Martin Danielak

“April Engelberg”

April Engelberg

Senior Enforcement Counsel on behalf of  
Enforcement Staff of the Corporation

The Settlement Agreement is hereby accepted this “10” day of “May”, 2023 by the following Hearing panel:

Per: “Eric Spink”

Chair

Per: “Jonathan Lund”

Industry Member

Per: “Martin Davies”

Industry Member

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<sup>i</sup>On January 1, 2023, IIROC and the MFDA were consolidated into a single self-regulatory organization recognized under applicable securities legislation. The New Self-Regulatory Organization of Canada (the “Corporation”) has adopted interim rules that incorporate the pre-amalgamation regulatory requirements contained in the rules and policies of IIROC and the by-law, rules, and policies of the MFDA (the “Interim Rules”). The Interim Rules include (i) the Investment Dealer and Partially Consolidated Rules, (ii) the UMIR and (iii) the Mutual Fund Dealer Rules. These rules are largely based on the rules of IIROC and the rules and certain by-laws and policies of the MFDA that were in force immediately prior to amalgamation. Where the rules of IIROC and the rules and by-laws and policies of the MFDA that were in force immediately prior to amalgamation have been incorporated into the Interim Rules, Enforcement Staff have referenced the relevant section of the Interim Rules.