Re Bishop

IN THE MATTER OF:

The Investment Dealer and Partially Consolidated Rule

and

Craig Bishop

2023 CIRO 08

Canadian Investment Regulatory Organization
Hearing Panel (Alberta District)

Heard: June 21, 2023, in Calgary, Alberta (via videoconference)
Decision: June 21, 2023
Reasons for Decision: July 31, 2023

Hearing Panel:
Omolara Oladipo, Chair, David Johnson and James Ross
Appearances:
Francis Larin, Senior Enforcement Counsel
David Di Paolo and Loni da Costa, for Craig Bishop
Craig Bishop (present)

REASONS FOR DECISION

INTRODUCTION

¶ 1 On April 26, 2023, Craig Bishop (the "Respondent) entered into a settlement agreement with the New Self-Regulatory Organization of Canada, formerly the Investment Industry Regulatory Organization of Canada ("IIROC") and, as of June 1, 2023, the Canadian Investment Regulatory Organization ("CIRO") (the "Settlement Agreement"). The Settlement Agreement is attached as an appendix to this decision. Pursuant to the Settlement Agreement, the Respondent agreed to pay a fine of $15,000 and $5,000 in costs.

¶ 2 The Respondent has been a Registered Representative with CIRO and its predecessors since 1997. He has been employed by Scotia Capital Inc. ("Scotia") since June 2013.

¶ 3 The Respondent had a long-term friendship and professional relationship with the Chief Executive Officer (the "CEO") of an issuing company which was referred to in the Settlement Agreement as "ABC". From March 2018 to April 2021, the Respondent received material information pertaining to ABC from its CEO on 12 occasions before a corresponding press release was issued by ABC and at a time of day when the relevant markets were closed.

¶ 4 The Respondent did not solicit the information from the CEO, and in fact had, after the first four instances, asked the CEO to stop communicating material information to him. The CEO subsequently sent information to the Respondent a further eight times.

¶ 5 On two of the overall 12 occasions, the Respondent shared the communicated information with clients before a press release was issued by ABC. Since the markets were then closed and press releases respecting the material information were issued by ABC prior to the next opening of the relevant markets, the information

shared by the Respondent was not at any time capable of being acted upon by the Respondent or his clients.

¶ 6 Scotia subsequently reprimanded the Respondent and required him to pay an internal sanction of $50,000. Scotia also subjected the Respondent to close supervision for a period of 12 months and mandated him to re-write the Conduct and Practices Handbook Course ("CPH") examination.

¶ 7 CIRO alleged that between March 2018 and April 2021, in contravention of Investment Dealer Rule 1400, the Respondent failed in his duty to take appropriate measures to protect the financial markets when, at all material times, he learned material information about a listed issuer.

¶ 8 The Hearing Panel notes that on January 1, 2023, CIRO's predecessors - IIROC and the Mutual Fund Dealers Association of Canada (the "MFDA") - were consolidated into a single self-regulatory organization recognized under applicable securities legislation and referred to as New Self-Regulatory Organization of Canada (the "New SRO"). The New SRO subsequently changed its name to CIRO on June 1, 2023. Therefore, references below to CIRO, depending on the time and context, apply to CIRO and any predecessor entity.

¶ 9 An electronic hearing was conducted before the Hearing Panel on June 21, 2023 to consider whether, pursuant to Rule 8215 of CIRO's Investment Dealer and Partially Consolidated Rules (previously IIROC's Consolidated Enforcement, Examination and Approval Rules), the Hearing Panel should accept the Settlement Agreement in respect of the Respondent's alleged misconduct.

¶ 10 The Respondent was in attendance and ably represented by his counsel.

¶ 11 Prior to the hearing, the Hearing Panel had the opportunity to review the terms and bases of the Settlement Agreement.

¶ 12 The Hearing Panel received the submissions and representations of Senior Enforcement Counsel for CIRO, Mr. Francis Larin, and from Mr. David Di Paolo on behalf of the Respondent.

¶ 13 The Hearing Panel subsequently adjourned to deliberate and the main question it considered was the appropriateness of the penalties provided under the Settlement Agreement.

¶ 14 After a brief deliberation and at the conclusion of the hearing, the Hearing Panel found that the Settlement Agreement was within a reasonable range of appropriateness, having considered previous decisions. Accordingly, the Hearing Panel accepted the Settlement Agreement with written reasons to follow. Below are the Hearing Panel's reasons.

ANALYSIS

Test for Acceptance of a Settlement Agreement

¶ 15 As CIRO Enforcement Counsel reminded the Panel, it is well accepted that in considering a settlement agreement, a hearing panel's role is not to decide whether it would have imposed the same sanctions as those negotiated by the parties, nor is it to modify or alter the sanctions. A hearing panel's task is to decide whether the agreed sanctions fall within a "reasonable range of appropriateness".

¶ 16 Accordingly, in considering the acceptance of a settlement agreement, a hearing panel must be satisfied that the agreed sanctions are within an acceptable range, are fair and reasonable, and serve as a deterrent to a respondent and to the industry. A hearing panel should also accept the settlement agreement where it is in the public interest to do so.

¶ 17 In applying the "reasonable range of appropriateness" test, hearing panels are expected to consider IIROC's Sanction Guidelines (the "Guidelines"), previous regulatory decisions, and any other relevant matters.

¶ 18 The Guidelines which were appended to the Settlement Agreement package are still current. The Guidelines provide a framework that should be considered in connection with the imposition of sanctions in all cases and an inexhaustive list of sample factors commonly taken into consideration when deciding appropriate sanctions.

¶ 19 The Guidelines make it clear that the purpose of sanctions in a regulatory proceeding is to protect the

public interest by preventing future conduct that may harm the market. Sanctions should be significant enough to prevent and discourage a respondent from engaging in future misconduct and to deter others from engaging in similar misconduct.

¶ 20 Mr. Larin referenced the Guidelines as well as previous hearing panel decisions for similar types of misconduct.

¶ 21 Written and oral submissions were of assistance to this Hearing Panel in considering whether the agreed sanctions fall within a reasonable range of appropriateness. Mr. Larin was especially helpful in his detailed submissions as he guided the Hearing Panel through the following panel decisions:

a) *Re Desmarais* 2020 IIROC 13

b) *Re Driver* 2020 IIROC 17

c) *Re Ballanger* 2018 IIROC 26

d) *Re Walker and Foster & Associates Financial Services* 2017 IIROC 24

e) *Re Mendelman* 2016 IIROC 14

¶ 22 In *Re Desmarais*, the respondent admitted that he contravened IIROC Dealer Member Rule 29 between January 28, 2016 and February 2, 2016, by recommending purchase securities to three clients despite having had information that the security had not been disclosed to the public. The respondent also failed in his duty to protect the markets by not taking the necessary corrective measures after executing a buy transaction in a security for his own account as well as that of a client. In both instances, he had information about the security that had not been disclosed to the public and which he should have known could affect the decision of a reasonable investor.

¶ 23 The respondent and four of his clients benefited from said privileged information, and obtained in a single week, an almost 100% rate of return on their trades in the security. Following an internal investigation, the Respondent was dismissed on February 24, 2016 by his employer.

¶ 24 Under the Settlement Agreement, the respondent Desmarais agreed to fines in the total amount of $40,000, disgorgement of the after-tax net benefit of $30,000, prohibition from registration with (then) IIROC in any capacity for a period of five years, effective February 24, 2016, strict supervision for 12 months in the event of reregistration, and costs of $2,500.

¶ 25 In *Re Driver*, between May 2013 and July 2014, the respondent acted contrary to Dealer Member Rule 200.2(m)(iii) by accepting trading instructions for a client account from a person other than the client, without the client's written authorization. He also acted contrary to Dealer Member Rule 29.1 when he failed to follow his firm's policies and procedures regarding the receipt and use of confidential information regarding a proposed reverse takeover target of a public company.

¶ 26 The hearing panel in *Re Driver* considered the following aggravating factors:

a) A lack for proper safeguarding of confidential information by the respondent;

b) Failure to disclose the possession of confidential information to the respondent's firm;

c) The respondent knew that the person providing trading instructions for the client's accounts was an insider of the securities being traded which would have led to different supervision obligations by the firm if the trading authorization was properly documented on the client's accounts. The firm was denied the opportunity to conduct proper supervision in relation to the trades in the client's accounts; and

d) The conduct involved several trades in both the respondent's own account and a client's account at the direction of an insider of the company being traded.

¶ 27 The hearing panel also took into consideration the following mitigating factors:

a) the respondent has no prior disciplinary record with IIROC;

b) the respondent accepted his conduct was in breach of the then IIROC Rules and entered into a settlement agreement with IIROC;

c) the trades that occurred while the respondent was in possession of confidential information were not profitable as the price of the security dropped on the first day of trading in the security after it was halted on the disclosure of the reverse takeover; and.

d) The respondent had already paid a $10,000 fine to his firm for the breach of an IIROC Rule.

¶ 28 The respondent in that case agreed to pay a fine of $20,000.00, to be suspended from approval in any capacity for 30 days; and to pay costs of $1,500. The hearing panel considered the proposed one-month suspension to be reasonable especially because the respondent was at the time still employed in the same capacity, and a longer suspension would significantly impair his ability to continue working - which would impair his ability to pay the fine.

¶ 29 In *Re Ballanger,* the respondent admitted that, between April and October 2013, he failed to comply with his firm's policies and procedures regarding new product reviews, as well as the receipt and containment of confidential information, contrary to IIROC Dealer Member Rule 29.1.

¶ 30 The respondent had been a registrant since 1977, and an employee of Richardson GMP ("RGMP") from October 2012 until his employment was terminated in September 2014.

¶ 31 In 2012 and 2013, the respondent had a close working relationship with the principals of Tinka Resources Ltd. ("Tinka"), a junior resource exploration company and high-risk illiquid issuer. The respondent received confidential information from Tinka's principals about the company and recommended Tinka to many of his clients at RGMP. As a result, by March 10, 2014, his clients' positions in Tinka represented 18% of the issued and outstanding shares of the company. Between November 2012 and July 2013, approximately 10,570,550 shares of Tinka (13% of the issued and outstanding shares) were transferred into RGMP in the respondent's book of business, all without the requisite review and approval of RGMP's New Product Review Committee and in contravention of RGMP's Compliance Policies and Procedures Manual. The respondent also failed to inform RGMP's compliance department that he was in possession of potential inside information as he was required to do.

¶ 32 RGMP subsequently placed the respondent under close supervision in April 2014 for a period of not less than six months and imposed conditions on him to develop and present an exit strategy for Tinka within 30 days. When the respondent failed to present an exit strategy to RGMP, his employment was terminated by RGMP in September 2014.

¶ 33 The respondent had not been an IIROC registrant since leaving RGMP and indicated he did not intend to return to the investment industry. He agreed to pay a fine in the amount of $15,000, to serve a one-year suspension from registration with IIROC, to re-write and pass the CPH examination within twelve months of any re-registration with IIROC, and to undergo six months of close supervision upon any re-registration with IIROC.

¶ 34 In *Re Walker and Foster & Associates Financial Services* (*Re Walker*), the respondent was a Registered Representative with the respondent firm Foster & Associates Inc. ("Foster") in Toronto. In late 2012, Mr. Walker received and sent confidential information to several clients regarding a private placement involving Enpar Technologies Inc. ("ENP"). Mr. Walker did not seek his firm's approval to share this information. The clients purchased shares of that issuer, and the respondent also traded ENP shares in his personal account at Foster - all before a press release was issued by ENP regarding the private placement.

¶ 35 The respondent Foster failed to adequately supervise the trading activity in some Mr. Walker's personal and client accounts, contrary to then IIROC Dealer Member Rules 38 and 2500. Foster's supervision of Mr. Walker was inadequate in that the firm failed to:

a) have sufficient policies and procedures in place at the time regarding the containment of

confidential information;

b) place ENP on the firm's grey list;

c) adequately supervise the trading activity in ENP shares in the respondent Walker's own accounts or in his client accounts;

d) adequately question the Respondent Walker regarding the private placement; and,

e) adequately document any supervision taken regarding the respondent Walker's trading activity in ENP shares.

¶ 36 The respondent Walker agreed to pay a fine of $40,000, to be subject to close supervision for 12 months, disgorgement of commission and fees in the amount of $4,427, and costs of $2,000.

¶ 37 The respondent Foster agreed to a fine of $35,000 and costs of $2,000.

¶ 38 Finally, in *Re Mendelman,* the respondent violated IIROC Dealer Member Rule 29.1. There were three aggravated and separate violations of that Rule. In 2001, the respondent was convicted of income tax evasion and fined $255,000 and was also subject to heightened supervision conditions between 2001 and 2011.

¶ 39 In 2013, the respondent's employer discovered that he had borrowed approximately $125,000 from a client in 2001 or 2002 to pay the fine arising out of the income tax evasion conviction. The respondent was aware that personal financial dealings with clients were contrary to the firm's internal policies, and had annually signed a confirmation that he was aware of those requirements and was complying with them.

¶ 40 It also turned out that between February and April of 2013, the respondent had engaged in outside business activities by facilitating off-book investments by his clients, for which the respondent was paid $57,225. The respondent was aware that such off-book dealings were prohibited by the firm's internal policies.

¶ 41 Also, in November 2013, the respondent shared non-public, material information about an upcoming prospectus offering, by forwarding to 11 of his clients, an email he had received containing details of the offering. None of the clients traded in the security or benefited financially from the information.

¶ 42 The relevant aggravating factors included that:

- although the respondent had no disciplinary record with IIROC, he had been subject to heightened supervision conditions for an extended period because of his conviction for tax evasion;
- the loan occurred shortly after that conviction and the respondent repeatedly failed to disclose it;
- the other two violations occurred shortly after the heightened supervision of the respondent ended. The respondent did not self-report the violations which were in pursuit of his own financial gain.

¶ 43 Thankfully, no harm resulted to the respondent's clients from the foregoing violations.

¶ 44 The respondent agreed to pay a $100,000 fine, be suspended for 18 months, to undergo a successful rewrite of the CPH examination before a return to the industry after the suspension, submit to a six-month period of close supervision upon a return to the industry, and to pay costs of $5,000.

CONCLUSION

¶ 45 We reiterate that it is well established in the CIRO jurisprudence that a settlement hearing panel is not tasked with deciding whether it would have imposed the same sanctions as those agreed through negotiation by the parties.

¶ 46 Pursuant to Rule 8215(5), a hearing panel must decide whether to accept or reject the proposed settlement. In making that determination, it will consider whether the proposed sanctions fall within a

reasonable range of appropriateness and whether it is consistent with the Guidelines and prior decisions.

¶ 47 Our Hearing Panel recognized that the proposed sanctions are the product of a process of negotiation and agreement between parties and fall within a reasonable range.

¶ 48 In addition to relying on the precedents, Mr. Larin stressed as mitigating factors, the fact that the Respondent:

a) had no prior disciplinary history before CIRO;

b) accepted his conduct was in breach of the then CIRO Rules and entered into a Settlement Agreement with CIRO;

c) did not enjoy any unusual benefit from the receipt of the subject information and there was no evidence of harm to clients; and

d) had already been subjected to internal disciplinary actions.

¶ 49 Mr. Di Paolo agreed with the effect of the foregoing factors.

¶ 50 The precedents cited during Mr. Larin's submissions were of assistance as they all involved registrants' handling of confidential information and bear a close enough similarity in that regard.

¶ 51 In reaching our decision, the Hearing Panel took into consideration the mitigating factors, as well as the facts that the Respondent did not solicit the information and attempted to stop the flow of information from the CEO. The fact that the Respondent had been a registrant for 26 years was both an aggravating factor and a mitigating factor.

¶ 52 After serious reflection of the submissions at the hearing, the Guidelines, the precedents cited, and the factors invoked regarding the conduct of the Respondent, the Hearing Panel was persuaded by the stated mitigation factors and more importantly, concluded that the appropriate test for settlement agreement approval has been met.

The Hearing Panel therefore accepts the Settlement Agreement.

Dated at Calgary, Alberta this 31 day of July 2023.

"Omolara Oladipo"

Omolara Oladipo, Chair

"David Johnson"

David Johnson

"James Ross"

James Ross

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Corporation[i] 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 Craig Bishop (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.

Registration History

4. The Respondent has been a registered representative with the Corporation as well as its predecessors, the Investment Industry Regulatory Organization of Canada (IIROC) and the Investment Dealers Association of Canada (IDA), since 1997.

5. The Respondent has been registered with and employed by Scotia Capital Inc. (Scotia) since June 2013.

6. The Respondent has no disciplinary history with the Corporation or with its predecessors.

Particulars

7. At all relevant times, the Respondent had a long-term friendship and professional relationship with the Chief Executive Officer (CEO) of issuer ABC.

8. From March 2018 to April 2021, the Respondent received material information pertaining to ABC from its CEO on twelve (12) occasions.

9. For each of these instances, the material information was sent to and received by the Respondent before a corresponding press release was issued by ABC with regards to this information but, in each instance, the information was sent to and received by the Respondent while the relevant markets were closed.

10. None of the instances in which material information was sent to the Respondent, was solicited or requested by the Respondent.

11. After the first four (4) of these instances, which occurred between March 2018 and December 2019, the Respondent made a request to the CEO of issuer ABC to cease sending any material information ahead of the issuance of a corresponding press release.

12. Notwithstanding the foregoing, there were eight (8) subsequent of these instances between January 2020 and April 2021, each of which was unsolicited by the Respondent.

13. On two (2) of these occasions, respectively on or about December 15, 2019 and March 30, 2021, the Respondent shared this material information with some of his clients before a press release was issued by ABC.

14. The information thus shared by the Respondent was not at any time capable of being acted upon by these clients, as the markets were then closed and press releases respecting the material information were issued by ABC prior to the next opening of the relevant markets.

15. Therefore, it was established that neither the Respondent nor any of his clients, as indicated in paragraph 13, have benefited from these instances where material information was received.

16. The Respondent was subsequently reprimanded by Scotia, whereby he was required:

    a) To pay an internal sanction in the amount of $50,000.

    b) To be subject to close supervision for a period of 12 months; and

    c) To re-write the Conduct and Practices Handbook Course (CPH) examination.

PART IV – CONTRAVENTIONS

17. By engaging in the conduct described above, the Respondent committed the following contraventions of Corporation requirements:

Between March 2018 and April 2021, the Respondent failed in his duty to protect the financial markets by not taking appropriate measures when, on twelve different occasions, he learned material information about a listed issuer, contrary to Investment Dealer Rule 1400.

PART V – TERMS OF SETTLEMENT

18. The Respondent agrees to the following sanctions and costs:

a) A fine in the amount of $15,000.

b) An additional amount of $5,000 toward costs.

19. 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

20. 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.

21. 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

22. This Settlement Agreement is conditional on acceptance by the hearing panel.

23. 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.

24. 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.

25. 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.

26. 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.

27. The terms of this Settlement Agreement are confidential unless and until this Settlement Agreement has been accepted by the hearing panel.

28. 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.

29. 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.

30. 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

31. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement.

32. An electronic copy of any signature will be treated as an original signature.

DATED this 24 day of April, 2023.

(S) Witness

Witness

(S) Craig Bishop

Craig Bishop

DATED this 26 day of April, 2023.

(S) Linda Vachet

Witness

(S) Francis Larin

Francis Larin

Enforcement Counsel on behalf of Enforcement Staff of the Corporation

[i]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.